



## Legislation Details (With Text)

<b>File #:</b>	CB 119252	<b>Version:</b>	2	<b>Name:</b>	CB 119252
<b>Type:</b>	Ordinance (Ord)	<b>Status:</b>	Passed	<b>In control:</b>	City Clerk
<b>On agenda:</b>	6/25/2018				
<b>Final Action:</b>	7/6/2018	<b>Ord. No.</b>	Ord 125612		
<b>Title:</b>	AN ORDINANCE related to land use and zoning; establishing an incentive program for high performance buildings in urban centers; amending Sections 23.40.060, 23.41.004, 23.41.012, and 23.41.014 to the Seattle Municipal Code (SMC); and adding a new Section 23.40.070 to the SMC.				
<b>Sponsors:</b>	Rob Johnson				
<b>Indexes:</b>					
<b>Attachments:</b>	1. Summary and Fiscal Note, 2. Director's Report, 3. Presentation (05/16/18), 4. Central Staff Memo (05/16/18), 5. Central Staff Memo (06/20/18), 6. Signed Ordinance 125612, 7. Affidavit of Publication				

Date	Ver.	Action By	Action	Result
7/6/2018	2	City Clerk	attested by City Clerk	
7/6/2018	2	Mayor	returned	
7/2/2018	2	Mayor	Signed	
6/27/2018	2	City Clerk	submitted for Mayor's signature	
6/25/2018	1	City Council	passed	Pass
6/20/2018	1	Planning, Land Use, and Zoning Committee	pass as amended	Pass
6/6/2018	1	Planning, Land Use, and Zoning Committee	discussed	
5/16/2018	1	Planning, Land Use, and Zoning Committee	discussed	
5/14/2018	1	City Council	referred	
4/30/2018	1	Council President's Office	sent for review	
4/24/2018	1	City Clerk	sent for review	
4/24/2018	1	Mayor	Mayor's leg transmitted to Council	

## CITY OF SEATTLE

## ORDINANCE \_\_\_\_\_

## COUNCIL BILL \_\_\_\_\_

AN ORDINANCE related to land use and zoning; establishing an incentive program for high performance buildings in urban centers; amending Sections 23.40.060, 23.41.004, 23.41.012, and 23.41.014 to the Seattle Municipal Code (SMC); and adding a new Section 23.40.070 to the SMC.

**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 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 <sup>SM</sup> 3.1 certification or all of the following:

1. The project meets ILFI Living Building Challenge <sup>SM</sup> ~~((3.1))~~ Petal ~~((Recognition))~~

certification by attaining at least three of the seven performance areas, or "Petals," of the ILFI Living Building Challenge <sup>SM</sup> ~~((3.1))~~ 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))~~

2. Total annual building energy use that is 25 percent less than a baseline defined as the Energy Use Intensity (EUI) targets in the Target Performance Path of Seattle Energy Code Section C401.3;

3. None of the space heating and water heating in the project shall be provided using on-site combustion of fossil fuel; and

~~((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.

C. ~~((Extra))~~ Additional floor area or structure height beyond otherwise applicable maximum

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

a. ~~((Fifteen))~~ Twenty-five percent more gross floor area than the otherwise applicable maximum floor area ratio under the provisions of the zone; or

b. In the case of projects not regulated by floor area ratio, including residential development in Downtown or certain Seattle Mixed zones, ~~((45))~~ 25 percent more floor area than the maximum floor area otherwise resulting from the application of development standards. The Director may promulgate rules to define the measurement of floor area according to this subsection 23.40.060.C.1.b.

2. Projects qualifying for the Living Building Pilot Program that include the renovation of an

unreinforced masonry structure by seismic strengthening, in compliance with Appendix Chapter A1 of the Seattle Existing Building Code, may gain:

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

b. In the case of projects not regulated by floor area ratio, including residential development in Downtown or certain Seattle Mixed zones, 30 percent more floor area than the maximum floor area otherwise resulting from the application of development standards. The Director may promulgate rules to define the measurement of floor area according to this subsection 23.40.060.C.2.b.

~~((2))~~ 3. 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)) as shown in Table A for 23.40.060.

<b>Table A for 23.40.060 Additional Height</b>		
<b><u>Height Limit of the Zone</u></b>	<b><u>Additional height above the otherwise applicable maximum height limit for residential use</u></b>	<b><u>Additional height above the otherwise applicable maximum height limit for non-residential use</u></b>
<b><u>Zones with height limits of 85 feet or less</u></b>	12.5 feet	15 feet
<b><u>Zones with height limits greater than 85 feet</u></b>	25 feet	30 feet

~~((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 additional structure height ~~((bonus))~~ provided in ~~((subsections 23.40.060.C.2 or))~~ subsection 23.40.060.C.3 if the extension is consistent with the applicable standards established for that rooftop feature within the zone.

5. ~~((Extra))~~ Additional floor area or structure height available pursuant to subsections

23.40.060.C.1 through ~~((C.4))~~ 23.40.060.C.3 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. Additional floor area or structure height, including additional stories, approved pursuant to subsections 23.40.060.C.1 through 23.40.060.C.3 shall be disregarded in the application of the limit on the number of stories in a structure in a Lowrise zone that achieves extra height pursuant to subsection 23.45.514.F.

6. ~~((Extra))~~ Additional floor area or structure height included in a project pursuant to subsections 23.40.060.C.1 through ~~((23.40.060.C.4))~~ 23.40.060.C.3 ~~((, 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, 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.

7. For a development containing residential and non-residential uses, the additional gross floor area or structure height included in a project pursuant to subsections 23.40.060.C.1 through 23.40.060.C.3 is that which corresponds to the use that occupies the most gross floor area in the development.

8. As an allowance for mechanical equipment fully contained within a structure related to participation in the pilot:

a. One-half percent shall be deducted in computing gross floor area subject to floor area limits in addition to any allowance for mechanical equipment included in the applicable zone; and

b. Four percent shall be deducted for all mechanical equipment in computing gross floor area subject to floor area limits in zones that do not include an allowance for mechanical equipment; and

c. Calculation of the allowance excludes gross floor area exempt for floor area limits pursuant to the applicable zone(s).

~~((D. 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.))~~

D. Reserved.

\* \* \*

F. Compliance with minimum standards

1. The approved project plans and any other documents, together with any subsequent changes or amendments to those project plans and documents, shall demonstrate to the satisfaction of the Director that the completed building as designed will meet all of the minimum standards in subsection 23.40.060.B.

2. The project shall be constructed and completed in accordance with the approved project plans and documents.

((1)) 3. 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.B. Compliance must be demonstrated through an independent report from a third party. The report must be produced by ILFI or another independent entity approved by the Director.

((2)) 4. 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.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.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 ILFI as a Living Building under the Living Building Challenge <sup>SM</sup>. 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.

((3)) 5. Within 90 days after the Director notifies the owner of the 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 the project complies with the standards in subsection 23.40.060.B.

((4)) 6. 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.F.3, the Director shall determine that the project has failed to demonstrate compliance with the standards contained in subsection 23.40.060.B, and the owner shall be subject to the penalty in subsection 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)) received by the Department.

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

**Table B for 23.40.060**

<b>Percentage of Noncompliance for Energy</b>	<b>Penalty (percentage of construction value)</b>
Greater than zero up to 10	0.15
Greater than 10 up to 20	0.30
Greater than 20 up to 30	0.45
Greater than 30 up to 40	0.60
Greater than 40 up to 50	0.75
Greater than 50 up to 60	0.90
Greater than 60 up to 70	1.05
Greater than 70 up to 80	1.20
Greater than 80 up to 90	1.35
Greater than 90	1.50

**Table C for 23.40.060**

<b>Percentage of Noncompliance for Water</b>	<b>Penalty (percentage of construction value)</b>
Greater than zero up to 10	0.1
Greater than 10 up to 20	0.2
Greater than 20 up to 30	0.3
Greater than 30 up to 40	0.4
Greater than 40 up to 50	0.5
Greater than 50 up to 60	0.6
Greater than 60 up to 70	0.7
Greater than 70 up to 80	0.8
Greater than 80 up to 90	0.9
Greater than 90	1.0

3. A project shall be established in the SDCI Construction and Inspections Fund to receive revenue from penalties under this subsection 23.40.060.G. Revenue from penalties under this subsection 23.40.060.G shall be

restricted to use only for programs that aim to improve energy efficiency, water efficiency, and reduce greenhouse gas emissions of Seattle buildings. The SDCI Director shall recommend allocations of these penalty revenues to the Mayor and City Council.

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**

**A. Applications**

1. Enrollment period. The enrollment period for the 2030 Challenge High Performance Existing Building Pilot Program expires on the earlier of December 31, 2025, or when applications meeting the requirements of subsection 23.40.060.A.2 have been submitted for 20 pilot projects from the effective date of the ordinance introduced as Council Bill 119252.

2. Application requirements. In order to qualify for the 2030 Challenge High Performance Existing Building Pilot Program, an applicant shall submit a complete Master Use Permit application pursuant to Section 23.76.010 and a plan demonstrating how the project will meet the provisions of subsection 23.40.070.B.

**B. Minimum standards.** A project shall qualify for the 2030 Challenge High Performance Existing Building Pilot Program if:

1. It is located within an urban center excluding lots within the shoreline jurisdiction, and lots within the International Special Review District.

2. It is reviewed in accordance with the full design review process provided in Section 23.41.014, except for development subject to special district review under Chapter 23.66 or historic review under Chapters 25.12 through 25.30, in which case the applicable review board shall conduct the design review with the authority to recommend design departures as provided to the Design Review Board pursuant to Section 23.41.012.

3. It includes renovation of an existing structure that complies with the provisions for substantial alterations in the Seattle Energy Code and the Seattle Existing Building Code.

4. It retains either the opaque portions of all exterior walls, or the superstructure of existing structures. The Director may allow openings in the exterior walls to be relocated or resized. For the purposes of



this subsection 23.40.070.B, “superstructure” shall mean the foundation, structural frame, floor framing, and slabs of the structure.

5. Additions comply with the requirements of Table A for 23.40.070.

<b>Table A for 23.40.070</b>		
<b>Height limit of the zone</b>	<b>Minimum height of existing buildings</b>	<b>Maximum increase in area of existing building footprint</b>
<b>Zones with height limits of 85 feet or less</b>	47 percent of the maximum height limit of the zone	20 percent of the area of the footprint of existing buildings
<b>Zones with height limits greater than 85 feet</b>	60 percent of the maximum height limit of the zone	

6. It meets all of the following:

- a. Total annual building energy use that is 25 percent less than a baseline defined as the Energy Use Intensity (EUI) targets in the Target Performance Path of Seattle Energy Code Section C401.3;
- b. None of the space heating and water heating in the project shall be provided using on-site combustion of fossil fuel;
- c. Combined annual stormwater runoff and potable water use is 50 percent lower than the 2030 Challenge High Performance Existing Building Pilot Program baselines, which are as follows:
  - 1) The stormwater baseline is the annual average rainfall on a development site in gallons to be calculated as follows: total site area in square feet x 2.1 feet (Seattle’s average annual runoff depth) x 7.48 (conversion of cubic feet to gallons) = stormwater baseline;
  - 2) The annual potable water baselines are shown in Table B for 23.40.070.

<b>Table B for 23.40.070 Potable Water Baselines</b>	
<b>Uses<sup>1, 2</sup></b>	<b>Potable Water Baseline Usage (gallons/square feet/year)</b>
Restaurant	125.99
Lodging uses	50.07
Multifamily residential use	41.14
Manufacturing uses	32.53
Nursing or assisted living facilities	30.11
Hospital	26.12

Sales and services, general	24.77
Medical services	21.00
Offices	14.21
Warehouses	13.00
Entertainment uses	12.88
Sales and services, automotive	11.74
Religious facilities	11.31
Schools elementary or secondary	11.09
College or university	11.00
Footnotes to Table B for 23.40.070 <sup>1</sup> If a use is not listed, the Director may determine that a proposed use is substantially similar to other uses listed. <sup>2</sup> Baselines for a development are prorated by use based on the proportion of gross floor area occupied within the development.	

d. The project exceeds 2014 mode share baselines such that the project meets mode share percentages pursuant to the Comprehensive Plan as shown in Tables C and D for 23.40.070 for trips made by travel modes other than driving alone for all work trips and non-work trips, respectively.

<b>Table C for 23.40.070 Work Trips by modes other than driving alone</b>		
<b>Urban Center</b>	<b>2014 Mode Share Baselines</b>	<b>Mode Share for Work Trips</b>
Downtown	77 percent	85 percent
First Hill/Capitol Hill	58 percent	70 percent
Uptown	48 percent	60 percent
South Lake Union	67 percent	80 percent
University District	73 percent	85 percent
Northgate	30 percent	50 percent

<b>Table D for 23.40.070 Non-work trips other than driving alone</b>		
<b>Urban Center</b>	<b>2014 Mode Share Baselines</b>	<b>Mode Share for Non-Work Trips</b>
Downtown	88 percent	90 percent
First Hill/Capitol Hill	80 percent	85 percent
Uptown	82 percent	85 percent
South Lake Union	76 percent	85 percent
University District	79 percent	90 percent
Northgate	46 percent	55 percent

C. Extra floor area and/or structure height beyond otherwise applicable maximums

1. Projects qualifying for the 2030 Challenge High Performance Existing Building Pilot Program

are allowed:

- a. Twenty-five percent more gross floor area than the otherwise applicable maximum floor area ratio under the provisions of the zone; or
- b. In the case of projects not regulated by floor area ratio, including residential development in Downtown or certain Seattle Mixed zones, 25 percent more floor area than the maximum floor area otherwise resulting from the application of development standards. The Director may promulgate rules to define the measurement of floor area according to this subsection 23.40.070.C.1.b.

2. Projects qualifying for the 2030 Challenge High Performance Existing Building Pilot Program that include the renovation of an unreinforced masonry structure by seismic strengthening, in compliance with Appendix Chapter A1 of the Seattle Existing Building Code, may gain:

- a. Thirty percent more gross floor area than the otherwise applicable maximum floor area ratio under the provisions of the zone; or
- b. In the case of projects not regulated by floor area ratio, including residential development in Downtown or certain Seattle Mixed zones, 30 percent more floor area than the maximum floor area otherwise resulting from the application of development standards. The Director may promulgate rules to define the measurement of floor area according to this subsection 23.40.070.C.2.b.

3. A project qualifying for the 2030 Challenge High Performance Existing Building Pilot Program may employ additional structure height as shown in Table E for 23.40.070.

Table E for 23.40.070 Additional height		
Height Limit of the Zone	Additional height above the otherwise applicable maximum height limit for residential use	Additional height above the otherwise applicable maximum height limit for non-residential use
Zones with height limits of 85 feet or less	12.5 feet	15 feet
Zones with height limits greater than 85 feet	25 feet	30 feet

4. A rooftop feature of a project qualifying for the 2030 Challenge High Performance Existing Building Pilot

Program may extend above the additional structure height provided in subsection 23.40.070.C.3 if the extension is consistent with the applicable standards established for that rooftop feature within the zone. In such cases, the additional structure height shall be deemed the height limit above which rooftop features are permitted.

5. Additional floor area or structure height available pursuant to subsections 23.40.070.C.1 through 23.40.070.C.3 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. Additional floor area or structure height, including additional stories, approved pursuant to subsections 23.40.070.C.1 through 23.40.070.C.3 shall be disregarded in the application of the limit on the number of stories in a structure in a Lowrise zone that achieves extra height pursuant to subsection 23.45.514.F.

6. Additional floor area or structure height included in a project pursuant to subsections 23.40.070.C.1 through 23.40.070.C.3 shall be excluded for the 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.

7. For a development containing residential and non-residential uses, the additional floor area or structure height included in a project pursuant to subsections 23.40.060.C.1 through 23.40.060.C.3 is that which corresponds to the use that occupies the most gross floor area in the development.

8. As an allowance for mechanical equipment fully contained within a structure related to participation in the pilot:

- a. One-half percent shall be deducted in computing gross floor area subject to floor area limits in addition to any allowance for mechanical equipment included in the applicable zone; and
- b. Four percent shall be deducted for all mechanical equipment in computing gross floor area subject to floor area limits in zones that do not include an allowance for mechanical equipment; and

c. Calculation of the allowance excludes gross floor area exempt for floor area limits pursuant to the applicable zone(s).

D. For a project qualifying for the 2030 Challenge High Performance Existing Building Pilot Program, the provisions of the remainder of this Title 23 apply unless specifically modified by the provisions of this Section 23.40.070. In the event of a conflict, the provisions of this Section 23.40.070 prevail.

E. Compliance with minimum standards

1. The approved project plans and any other documents, together with any subsequent changes or amendments to those project plans and documents, shall demonstrate to the satisfaction of the Director that the completed building as designed will meet all of the minimum standards in subsection 23.40.070.B.

2. The project shall be constructed and completed in accordance with the approved project plans and documents.

3. 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 23.40.070.B. Compliance must be demonstrated through an independent report produced by an independent entity approved by the Director.

4. If the Director determines that the report submitted provides satisfactory evidence that the project has complied with the standards contained in subsection 23.40.070.B, the Director shall send the owner a written statement that the project has complied with the standards of the 2030 Challenge High Performance Existing Building Pilot Program. If the Director determines that the project does not comply with the standards in subsection 23.40.070.B, the Director shall notify the owner of the aspects in which the project does not comply. Components of the project that are included in order to comply with the minimum standards of the 2030 Challenge High Performance Existing Building Pilot Program shall remain for the life of the project.

5. Within 90 days after the Director notifies the owner of the aspects in which the project does not comply with the standards in subsection 23.40.070.B, or such longer period as the Director may allow for good cause, the owner will have the opportunity to take corrective action and submit a supplemental report

demonstrating that the project complies with the standards in subsection 23.40.070.B.

6. If the owner fails to timely submit the report required by subsection 23.40.070.E.1 or to timely demonstrate compliance with the standards contained in subsection 23.40.070.B, or if the owner fails to submit a supplemental report within the time allowed pursuant to subsection 23.40.070.E.3, the Director shall determine that the project has failed to demonstrate compliance with the standards contained in subsection 23.40.070.B, and the owner shall be subject to the applicable penalty in subsection 23.40.070.F.

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

1. Failure to submit the report required by subsection 23.40.070.E.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 received by the Department.

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 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 =  $100 \times \frac{[(\text{Metered Energy Use Intensity}) - (\text{2030 Target})]}{[(\text{SEC target}) - (\text{2030 Pilot Target})]}$ ;

b. Water: Percentage of noncompliance =  $100 \times \frac{[(\text{2030 Pilot Target}) - (\text{water managed } (\%))]}{[(\text{2030 Pilot Target})]}$ ;

c. Transportation: Percentage of noncompliance =  $100 \times \frac{[(\text{Mode share result}) - (\text{2030 Pilot Target})]}{[(\text{2014 baseline}) - (\text{2030 Pilot Target})]}$ ;

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

**Table F for 23.40.070**

<b>Percentage of Noncompliance for Energy</b>	<b>Penalty (percentage of construction value)</b>
Greater than zero up to 10	0.15
Greater than 10 up to 20	0.30
Greater than 20 up to 30	0.45
Greater than 30 up to 40	0.60
Greater than 40 up to 50	0.75
Greater than 50 up to 60	0.90
Greater than 60 up to 70	1.05
Greater than 70 up to 80	1.20
Greater than 80 up to 90	1.35
Greater than 90	1.50

**Table G for 23.40.070**

<b>Percentage of Noncompliance for Water</b>	<b>Penalty (percentage of construction value)</b>
Greater than zero up to 10	0.1
Greater than 10 up to 20	0.2
Greater than 20 up to 30	0.3
Greater than 30 up to 40	0.4
Greater than 40 up to 50	0.5
Greater than 50 up to 60	0.6
Greater than 60 up to 70	0.7
Greater than 70 up to 80	0.8
Greater than 80 up to 90	0.9
Greater than 90	1.0

**Table H for 23.40.070**

<b>Percentage of Noncompliance for Transportation</b>	<b>Penalty (percentage of construction value)</b>
Greater than zero up to 10	0.1
Greater than 10 up to 20	0.2
Greater than 20 up to 30	0.3
Greater than 30 up to 40	0.4
Greater than 40 up to 50	0.5
Greater than 50 up to 60	0.6
Greater than 60 up to 70	0.7
Greater than 70 up to 80	0.8
Greater than 80 up to 90	0.9
Greater than 90	1.0

3. A project shall be established in the SDCI Construction and Inspections Fund to receive revenue from penalties under this subsection 23.40.070.F. Revenue from penalties under this subsection 23.40.070.F shall be restricted to use only for programs that aim to improve energy efficiency and water efficiency, and reduce greenhouse gas emissions, of Seattle buildings. The SDCI Director shall recommend allocations of these penalty revenues to the Mayor and City Council.

Section 3. Section 23.41.004 of the Seattle Municipal Code, last amended by Ordinance 125291, 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 residential gross floor area
b.	Midrise (MR)	20 dwelling units or 4,000 square feet of residential gross floor area
c.	Highrise (HR)	20 dwelling units or 4,000 square feet of residential gross floor area
d.	Neighborhood Commercial (NC1, NC2)	4 dwelling units or 4,000 square feet of residential gross floor area
e.	Commercial (C1, C2)	4 dwelling units or 12,000 square feet of residential gross floor area, located in an urban center or urban village <sup>1</sup> , or on a lot that abuts or is across a street or alley from a lot zoned single-family, or on a lot located between NE 95th St., NE 145th St., and Lake Washington



f.	Seattle Mixed (SM)	20 dwelling units or 12,000 square residential gross floor area
g.	Industrial Commercial (IC) zone w designated urban villages and urban area	12,000 square feet of non-residential gross floor area
h.	Master Planned Community (MPC)	20 dwelling units or 12,000 square residential gross floor area
i.	All zones-congregate residences, and uses in which more than 50 percent of units are small efficiency dwelling units	Developments containing at least 50,000 square feet of gross floor area are subject to Streamlined Design Review pursuant to Section 23.41.018. Developments containing at least 12,000 but less than 50,000 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 Section 23.41.017.

Footnotes  
to Table A  
for  
23.41.004 <sup>1</sup>  
Urban  
centers and  
urban  
villages are  
identified  
in the  
Seattle  
Comprehen  
sive Plan. <sup>2</sup>  
If an  
application  
in a Master  
Planned  
Communit  
y 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  
Communit  
y zone  
includes a  
request for  
departures,  
then the  
applicable  
design  
review  
procedures  
are in  
Section

23.41.014. <sup>3</sup>

When a  
congregate  
residence  
or  
developme  
nt 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:

<b>Table B for 23.41.004 Thresholds for Downtown Design Review</b>	
<b>DOC1, DOC2, or DMC zones</b>	
<b>Use</b>	<b>Threshold</b>
Non-residential	50,000 square feet of gross floor area
Residential	20 dwelling units
<b>DRC, DMR, DH1 or DH2 zones, or PMM zone outside the Pike Place Market Historical District</b>	
<b>Use</b>	<b>Threshold</b>
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 non-residential 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)) Full design 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 or 2030 Challenge High Performance Existing Building Pilot Program authorized by Sections 23.40.060 and 23.40.070, including a development proposal for an existing structure.

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. ((Design)) Full design review pursuant to Section 23.41.014 is required for any project seeking to participate in the Living Building or 2030 Challenge High Performance Existing Building Pilot Program, including a development proposal for an existing structure.

\* \* \*

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**

**1. Criteria for departures. Departures from Land Use Code requirements for projects qualifying**

for the Living Building and 2030 Challenge High Performance Existing Building Pilot Programs pursuant to Sections 23.40.060 and 23.40.070 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 or the 2030 Challenge High Performance Existing 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 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.

Section 5. Section 23.41.014 of the Seattle Municipal Code, last amended by Ordinance 125429, is amended as follows:

**23.41.014 Full design review process**

\* \* \*

G. Director's decision

1. A decision on an application for a permit subject to design review shall be made by the Director. The Director may condition a proposed project to achieve compliance with design guidelines and to achieve the purpose and intent of this Chapter 23.41. For applications accepted into the Living Building and 2030 Challenge High Performance Existing Building Pilot Programs established under Sections 23.40.060 and 23.40.070, the Director may also condition a proposed project to achieve the purpose and intent of the ((Living Building)) applicable Pilot Program.

2. The Director's design review decision shall be made as part of the overall MUP decision for the project. The Director's decision shall consider the recommendation of the Design Review Board, pursuant to subsection 23.41.008.F.

\* \* \*

Section 6. The City Council directs the Office of Sustainability and Environment and the Department of Construction and Inspections to prepare recommendations for: expansion of the Living Building and the 2030 Challenge High Performance Existing Building Pilot Programs into upland lots in shoreline districts where height limits are established by underlying zoning, and into urban villages; use of a Transfer of Development Rights (TDR) program to facilitate the sustainable redevelopment of buildings using the Pilot Programs; applying this TDR program to eligible TDR sending and receiving lots where appropriate, including upland lots in shoreline environments where the height limits are established by underlying zoning, designated landmark structures, and within the Pioneer Square Historic District; and allow development below design review thresholds to be eligible to participate in the Pilot Programs and maintain their exemption from design review. The recommendations shall include consideration of an analysis of the use of the current TDR programs in the City underway by the Office of Planning and Community Development. The recommendations shall be sent to the City Council by December 31, 2018.

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, collects and analyzes 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 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.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2018, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Jenny A. Durkan, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk  
(Seal)