

Ordinance No. 124535

Council Bill No. 118080

AN ORDINANCE relating to land use and zoning, amending Sections 23.40.060, 23.41.012 and 23.90.018 to revise the Living Building and Seattle Deep Green Pilot program.

Related Legislation File: CF 313772

|  |   |
|--|---|
| Date Introduced and Referred:<br><u>5/5/14</u> | To: (committee):<br><u>Planning, Land Use, and Sustainability</u> |
| Date Re-referred:                              | To: (committee):  |
| Date Re-referred:                              | To: (committee):  |
| Date of Final Action:<br><u>7/21/14</u>        | Date Presented to Mayor:<br><u>7/22/14</u>                        |
| Date Signed by Mayor:<br><u>7/25/14</u>        | Date Returned to City Clerk:<br><u>7/25/14</u>                    |
| Published by Title Only <u>✓</u>               | Date Vetoed by Mayor:   |
| Published in Full Text                         |   |
| Date Veto Published:                           | Date Passed Over Veto:  |
| Date Veto Sustained:                           | Date Returned Without Signature:                                  |

# The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: [Signature]

## Committee Action:

| Date           | Recommendation | Vote                 |
|----------------|----------------|----------------------|
| <u>7/15/14</u> | <u>PASS</u>    | <u>2-0 (MOB, TB)</u> |

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

## Full Council Action:

| Date           | Decision      | Vote       |
|----------------|---------------|------------|
| <u>7/21/14</u> | <u>Passed</u> | <u>9-0</u> |

*Law Department*

**CITY OF SEATTLE**  
**ORDINANCE** 124535  
**COUNCIL BILL** 118080

AN ORDINANCE relating to land use and zoning, amending Sections 23.40.060, 23.41.012 and 23.90.018 to revise the Living Building and Seattle Deep Green Pilot program.

WHEREAS, the City of Seattle has been a leader in encouraging sustainable building since it adopted a Sustainable Building Policy in February 2000, and the City has implemented other processes, regulations, and incentives to encourage the private market to follow the City's lead; and

WHEREAS, the *Living Building Challenge*<sup>TM</sup> establishes goals for building owners, architects, design professionals, engineers, and contractors to build in a way that provides for a sustainable future through buildings informed by their ecoregion's characteristics, that generate all of their own energy with renewable resources, that capture and treat all of their water, and operate efficiently with maximum beauty; and

WHEREAS, the City Council adopted Ordinance 123206 in December 2009 and adopted Ordinance 123942 in July 2012 to establish and expand the Living Building Pilot Program and add a new category of building typology called Seattle Deep Green; and

WHEREAS, the City Council adopted Resolution 31400 in June 2013, requesting the Department of Planning and Development develop recommendations for improving the Living Building Pilot Program by December 31, 2013, and legislation implementing a new Seattle Deep Green Pilot Program no later than December 31, 2014; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The title and subsections B and E of Section 23.40.060 of the Seattle Municipal Code, which Section was last amended by Ordinance 123942, are amended as follows:

**23.40.060 Living Building ((and Seattle Deep Green))Pilot Program**

\* \* \*

B. Project qualification((-))



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

4           2. Enrollment period. The enrollment period for (~~both~~)the Living Building Pilot  
5 Program(~~and the Seattle Deep Green Pilot Program~~) expires on the earlier of December 31,  
6 2015 or (~~for each program as follows:~~

7                 a. ~~The enrollment period for the Living Building Pilot Program shall~~  
8 ~~expire~~)when applications for (~~twelve~~)12 projects have been submitted for a Master Use  
9 Permit. (~~for the Living Building Pilot Program; and~~

10                b. ~~The enrollment period for the Seattle Deep Green Pilot Program shall~~  
11 ~~expire when applications for three projects have been submitted for a Master Use Permit under~~  
12 ~~the standards of subsection 23.40.060.E.1.a or b for the Living Building Pilot Program or the~~  
13 ~~Seattle Deep Green Pilot Program.~~)

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

20           4. Qualification process. An eligible project shall qualify for the Pilot Program  
21 upon determination by the Director that it has submitted a complete application pursuant to  
22 Section 23.76.010 and has complied with the application requirements of (~~S~~)subsection  
23 23.40.060.B.3.



1 C. Design review. All Living Building Pilot Program projects are subject to ~~((D))~~design  
2 ~~((R))~~review and shall be reviewed in accordance with the ~~((D))~~design ~~((R))~~review ~~((P))~~process  
3 provided in Section 23.41.014.

4 D. Height measurement technique. At the discretion of the applicant, the height of a  
5 qualifying project shall be determined using either the definition of building height in Section  
6 502 of the Seattle Building Code or the method described in Chapter 23.86 of the Land Use  
7 Code.

8 E. Compliance with minimum standards~~((:))~~

9 1. ~~((Minimum Standards for both the Living Building Pilot Program and the  
10 Seattle Deep Green Pilot Program.))~~Qualifying projects under ~~((both))~~the Living Building Pilot  
11 Program ~~((and the Seattle Deep Green Pilot Program))~~that are granted departures shall meet one  
12 of the following:

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

16 1) all of the ~~((I))~~imperatives of the Living Building Challenge,  
17 version 2.1; or

18 2) at least three of the seven performance areas, or "petals," of the  
19 Living Building Challenge, version 2.1 (Site, Water, Energy, Health, Materials, Equity, and  
20 Beauty), including at least one of the following three petals: Energy, Water, or Materials, and all  
21 of the following standards:

22 a) total building energy usage~~((, not including energy  
23 generated on-site,))~~ shall be ~~((25))~~75 percent or less of the ~~((average energy usage for a  
24 comparable building not in the Living Building Pilot Program))~~energy consumed by a "standard



1 reference design building." ~~((based on))~~ as defined in the Seattle Energy Code in effect at the  
2 time a complete building permit application is submitted;

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

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

9 b. RESERVED ~~((Seattle Deep Green Pilot Program. Qualifying Seattle  
10 Deep Green Pilot Program projects that are granted departures shall meet a minimum of 60  
11 percent of the Imperatives of the Living Building Challenge, version 2.1, and all of the following  
12 alternative standards:~~

13 ~~1) total building energy usage, not including energy generated on  
14 site, shall be 25 percent or less of the average energy usage for a comparable building not in the  
15 Living Building or Seattle Deep Green Pilot Program, based on the Energy Information  
16 Administration's 2003 Commercial Buildings Energy Use Survey, Energy Information  
17 Administration's 2005 Residential Energy Consumption Survey, or other baseline approved by  
18 the Director that would provide a comparable estimate; and~~

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

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



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

8           3. If the Director determines that the report submitted (~~pursuant to subsection~~  
9 ~~23.40.060.E.2))~~ provides satisfactory evidence that the project has complied with the standards  
10 contained in subsection 23.40.060.E.1.a(~~(or E.1.b)~~), the Director shall(~~, in consultation with the~~  
11 ~~International Living Future Institute (ILFI) and subject to procedures and requirements~~  
12 ~~established by Director's Rule,)) send the owner a (~~letter of approval stating~~)written statement  
13 that the project has complied with the (~~performance~~) standards of the Living Building Pilot  
14 Program(~~(or Seattle Deep Green Pilot Program)~~). If the Director determines that the project does  
15 not comply with the standards in subsection 23.40.060.E.1.a, the Director shall notify the owner  
16 of the aspects in which the project does not comply. Nothing in the (~~letter of approval~~)written  
17 statement or participation in the Living Building Pilot Program (~~(or the Seattle Deep Green Pilot~~  
18 ~~Program)~~) shall constitute or imply certification of the project by International Living Future  
19 Institute (ILFI) as a Living Building under the Living Building Challenge. Components of the  
20 project that are included in order to comply with the minimum standards of (~~either~~) the Living  
21 Building Pilot Program (~~(or the Seattle Deep Green Pilot Program)~~) shall remain for the life of  
22 the project.~~

23           4. Within 90 days after the Director notifies the owner of the ways in which the  
24 project does not comply, or such longer period as the Director may allow for good cause, the  
25 owner may submit a supplemental report demonstrating that it has made alterations or



1 improvements such that the project now meets the standards in subsection 23.40.060.E.1.a(~~or~~  
2 E.1.b)).

3 5. If the owner fails to submit a supplemental report within the time allowed  
4 pursuant to ~~((S))~~subsection 23.40.060.E.4, the Director shall determine that the project has failed  
5 to demonstrate full compliance with the standards contained in ~~((S))~~subsection  
6 23.40.060.E.1.a(~~or E.1.b~~), and the owner shall be subject to the penalty in ~~((S))~~subsection  
7 23.90.018.B.6.

8 Section 2. Subsection D of Section 23.41.012 of the Seattle Municipal Code, which  
9 Section was last amended by Ordinance 124172, is amended as follows:

10 **23.41.012 Development standard departures**

11 \* \* \*

12 D. Departures for the Living Building Pilot Program(~~or the Seattle Deep Green Pilot~~  
13 ~~Program.~~)

14 1. Criteria for ~~((D))~~departures. Departures from Land Use Code requirements for  
15 projects participating in the Living Building Pilot Program(~~or the Seattle Deep Green Pilot~~  
16 ~~Program~~) pursuant to Section 23.40.060 may be allowed if an applicant demonstrates that the  
17 departure would result in a development that better meets the intent of adopted design guidelines  
18 or that the departure would result in a development that better meets the goals of ~~((one of))~~the  
19 Pilot Program~~((s))~~ and would not conflict with adopted design guidelines. In making this  
20 recommendation, the Design Review Board shall consider the extent to which the anticipated  
21 environmental performance of the building would be substantially compromised without the  
22 departures.

23 2. Scope of ~~((D))~~departures. In addition to the departures allowed under  
24 subsection 23.41.012.B, departures for projects participating in the Living Building Pilot



1 Program (~~or the Seattle Deep Green Pilot Program~~) established under Section 23.40.060 may  
2 also be granted for the following:

3 a. Permitted, prohibited or conditional use provisions, but only for  
4 accessory uses that would directly address an ~~((I))~~ imperative of the Living Building Challenge,  
5 version 2.1, including but not limited to uses that could re-use existing waste streams or reduce  
6 the transportation impacts of people or goods; ~~((:))~~

7 b. Residential density limits;

8 ~~((e. Downtown view corridor requirement))~~

9 ~~c((d)). Floor ((A))area ((R))ratios ((limits, as follows:~~

10 ~~1) Up))~~ up to 15 percent above the otherwise applicable limit;

11 ~~((2) In addition, up to all gross floor area for street level general  
12 sales and services, eating and drinking establishments, or entertainment uses, when located in:~~

13 ~~a) An IC zone with a height limit of 45 feet or less; and~~

14 ~~b) An urban village or urban center;))~~

15 ~~d((e)). Maximum size of use;~~

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

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

19 ~~((f))2) Structure height up to 20 feet for development ~~((on sites in~~  
20 ~~IC zones with height limits of 45 feet or less, when the sites are located in an Urban Village or~~  
21 ~~Urban Center, and the gross floor area of each floor above 45 feet is limited to 66 percent of the~~  
22 ~~lot area on which the structure is located))~~ in zones with height limits greater than 45 feet, to  
23 allow increased floor-to-floor heights;((and))~~



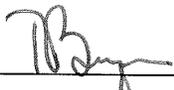


1 structure and a minimum penalty of 1 percent of construction value, based on the extent of  
2 compliance with standards contained in subsection 23.40.060.E.1.a.

3 \* \* \*

4 Section 4. This ordinance shall take effect and be in force 30 days after its approval by  
5 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
6 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

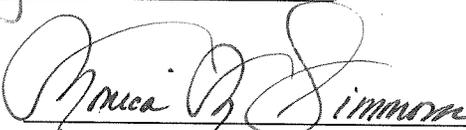
7 Passed by the City Council the 21<sup>st</sup> day of July, 2014, and  
8 signed by me in open session in authentication of its passage this  
9 21<sup>st</sup> day of July, 2014.

10  
11   
12 President \_\_\_\_\_ of the City Council

13  
14 Approved by me this 25 day of July, 2014.

15  
16   
17 Edward B. Murray, Mayor

18  
19 Filed by me this 25<sup>th</sup> day of July, 2014.

20  
21   
22 Monica Martinez Simmons, City Clerk

23 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b>       | <b>Contact Person/Phone:</b> | <b>CBO Analyst/Phone:</b> |
|--------------------------|------------------------------|---------------------------|
| Planning and Development | Aly Pennucci/6-9132          | Melissa Lawrie/4-5805     |

**Legislation Title:**

An Ordinance relating to land use and zoning, amending Sections 23.40.060, 23.41.012 and 23.90.018 to revise the Living Building and Seattle Deep Green Pilot program.

**Summary of the Legislation:**

On June 6, 2013, the City Council passed Resolution 31400, directing DPD to establish a technical advisory group (TAG) to advise the City on sustainable building practices; develop recommendations to revise the Living Building Program; and develop recommendations to revise the Seattle Deep Green Program by December 31, 2014. The resolution was adopted due to concerns about allowable departures.

This legislation will focus the pilot program on the Living Building option. In summary, the legislation would:

- eliminate the existing Seattle Deep Green option (to allow the City and the Living Building and Deep Green TAG time to fully evaluate and develop a new pilot program for Deep Green);
- revise the minimum standards of the program related to energy use to align with the new Seattle Energy Code;
- require an independent report to verify compliance;
- modify or remove some available departures; and
- increase the maximum penalty for projects failing to demonstrate full compliance with the standards from five percent (5%) to ten percent (10%) of construction costs.

Meanwhile, DPD will work with the TAG through 2014 to develop recommendations to revise or replace the Seattle Deep Green pilot program, including reviewing departures available in that pilot.

**Background:**

The Living Building and Seattle Deep Green Pilot Program was adopted by the City Council in December 2009, and amended in 2012, to facilitate the development of buildings that would either meet the Living Building Challenge or suitable alternative minimum standards. The program was developed to provide flexibility for projects seeking Living Building Challenge certification. The Living Building Challenge is a green building rating system created by the International Living Future Institute to recognize buildings meeting the highest level of sustainability. Version 2.1 of the Living Building Challenge requires buildings to meet 20 imperatives (i.e., requirements or prerequisites) within seven performance areas or petals: site,



water, energy, health, materials, equity, and beauty. In general, the imperatives require buildings to be built on non-environmentally sensitive sites, use recycled materials, generate as much or more electricity as 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.

The current pilot program allows for up to 12 projects to participate and sunsets in 2015; this proposal does not modify that timeframe. This proposal continues to allow some flexibility in applying land use standards for projects qualifying for the Living Building Pilot Program, while ensuring that participating projects fit within the context of neighborhoods.

**X This legislation does not have any financial implications.**

(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

**\_\_\_\_\_ This legislation has financial implications.**

**Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

No.

**b) What is the financial cost of not implementing the legislation?**

None.

**c) Does this legislation affect any departments besides the originating department?**

No.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

No alternatives have been identified, as the development of Living Buildings is dependent upon participation in a pilot program to study these buildings and appropriate Land Use Code provisions.

**e) Is a public hearing required for this legislation?**

Yes. The City Council must hold a public hearing before the Planning, Land Use and Sustainability (PLUS) Committee.

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

Yes. Publication of notice of the Council public hearing will be made in *The Daily Journal of Commerce* and in the City's Land Use Information Bulletin. Environmental review under the State Environmental Policy Act (SEPA) is also required for this

legislation, and publication of notice of the environmental determination was also made in *The Daily Journal of Commerce* and in the City's Land Use Information Bulletin.

**g) Does this legislation affect a piece of property?**

The legislation is of general application for projects that are eligible for design review under Section 23.41.004 of the Land Use Code and located outside of the shoreline jurisdiction.

**h) Other Issues: None**

**List attachments to the fiscal note below: None**





**City of Seattle**  
Edward B. Murray  
Mayor

April 22, 2014

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that would amend the Land Use Code to focus the Living Building and Seattle Deep Green pilot program on the Living Building option, in response to Resolution 31400. This proposal continues to allow flexibility in applying standards to projects qualifying for the pilot program while helping to ensure that the design of participating projects fit within neighborhoods. Meanwhile, DPD, working with the technical advisory group, will continue to develop recommendations for a new Seattle Deep Green option.

The pilot program is intended to help us gain a better understanding of innovative "living" buildings that can reduce environmental impacts, test new technologies, and serve as a model for development throughout the city, the region and the country. The program was adopted by the City Council in December 2009, and amended in 2012, to facilitate the development of buildings that would either meet the Living Building Challenge or suitable alternative. The Living Building Challenge is a green building rating system that recognizes buildings meeting the highest level of environmental sustainability.

Seattle is already a leader in sustainable building practices, but we aspire to achieve even greener results. Please join me in supporting this legislation so that we can continue to encourage innovative living buildings in Seattle. Thank you for your consideration of this legislation. Should you have questions, please contact Aly Pennucci in the Department of Planning and Development at 386-9132.

Sincerely,

Edward B. Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

