

AN ACT
D.C. ACT 19-336

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 28, 2012

*Codification
District of
Columbia
Official Code*

2001 Edition

2012 Summer
Supp.

West Group
Publisher

To amend the Green Building Act of 2006 to provide for a fine alternative as a financial security option and to make certain technical corrections and clarifications; and to amend the Construction Codes Approval and Amendments Act of 1986 to require the Mayor to submit revisions to the Construction Codes incorporating green building practices to the Council for approval.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012".

Sec. 2. The Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 6-1451.01) is amended as follows:

(1) Paragraph (2) is amended by striking the phrase "building construction permit" and inserting the phrase "building permit" in its place.

(2) Paragraph (4) is repealed.

(3) New paragraphs (5A) and (5B) are added to read as follows:

"(5A) "Certificate of occupancy" means the first certificate of occupancy issued for a usable, habitable space at grade or above grade.

"(5B) "Common space" means gross floor area within a project shared or available for common use by various occupancies within a project that includes both residential and nonresidential occupancies, including lobbies, corridors, stairways, amenity areas, laundry rooms, boiler rooms, furnace rooms, generator rooms, elevator hoistways, mechanical duct shafts, elevator machine rooms, off-street loading facilities, and off-street parking facilities at or above grade."

(4) A new paragraph (10A) is added to read as follows:

"(10A) "District-financed" or "District instrumentality-financed" means:

"(A) Financing of a project or contract where funds or resources to be used for construction and development costs, excluding ongoing operational costs, are received from

Amend
§ 6-1451.01

ENROLLED ORIGINAL

the District, or funds or resources which, in accordance with a federal grant or otherwise, the District administers, including a contract, grant, loan, tax abatement or exemption, land transfer, land disposition and development agreement, or tax increment financing, or any combination thereof; provided, that federal funds may be applied to the financing percentage only if permitted by federal law and grant conditions; or

“(B) Financing whose stated purpose is, in whole or in part, to provide for the new construction or substantial rehabilitation of affordable housing.”.

(5) A new paragraph (14A) is added to read as follows:

“(14A) “First building permit” means the first permit intended to cover the primary scope of work for a project; provided, that this shall not include permit applications for raze, sheeting and shoring, foundation, or specialty, miscellaneous, or supplemental permits.”.

(6) Paragraph (19) is repealed.

(7) Paragraph (31A) is amended to read as follows:

“(31A) “LEED standard for commercial and institutional buildings” means the green building rating system designed by the USGBC for Core & Shell, New Construction, Schools, and Retail: New Construction & Major Renovations.”.

(8) A new paragraph (32A) is added to read as follows:

“(32A) “Mixed-use space” means demised space in any residential project that contains at least 50,000 contiguous square feet of gross floor area, exclusive of common space, that is or would be occupied for a nonresidential use.”.

(9) A new paragraph (33A) is added to read as follows:

“(33A) “Nonresidential” means any project in which at least 50% of the gross floor area of the project, subject to allocation of area for common space, has nonresidential purposes.”.

(10) Paragraph (38) is repealed.

(11) Paragraph (39) is amended by striking the phrase “chartered by DCPS”.

(12) A new paragraph (39A) is added to read as follows:

“(39A) “Residential” means any project in which more than 50% of the gross floor area of the project, subject to allocation for common space, is used for residential purposes.”.

(13) Paragraph (40) is amended to read as follows:

“(40) “Substantial improvement” means any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started.”.

(b) Section 3 (D.C. Official Code § 6-1451.02) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended as to read follows:

“(1) This subsection shall apply to all new construction and substantial improvement of:

“(A) Projects that are District-owned or District instrumentality-owned;

Amend
§ 6-1451.02

and

“(B) Projects where at least 15% of the total cost is District-financed or District instrumentality-financed.”.

(B) Paragraph (2)(A) is amended as follows:

(i) The existing text is designated as sub-subparagraph (i).

(ii) A new sub-subparagraph (ii) is added to read as follows:

“(ii) Notwithstanding sub-subparagraph (i) of this subparagraph, a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher if sufficient funding for the construction or renovation is provided.”.

(C) New paragraphs (5) and (6) are added to read as follows:

“(5) The Mayor shall, as a condition of the financing of a District-financed or District instrumentality-financed project governed by this subsection, include a penalty that will be levied upon an applicant for failure to fulfill the requirements of this act. The penalties may include:

“(A) Prohibiting the applicant from receiving additional District or District instrumentality financing for a period of up to 5 years;

“(B) Assessing a fine as set forth in section 6(f); or

“(C) Imposing an alternative penalty commensurate with the seriousness of the applicant’s failure to fulfill requirements of this act, as determined by the Mayor.

“(6) An applicant for new construction or substantial improvement of a mixed-use space shall fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level for the mixed-use space of the project. Any requirements of section 6 shall apply to the mixed-use space of the project. For the purposes of mixed-use space in this paragraph, the term:

“(A) “LEED” also includes LEED for Commercial Interiors and LEED for Retail: Commercial Interiors; and

“(B) “Certificate of occupancy” refers to the first certificate of occupancy issued for a usable, habitable space at grade or above grade for the mixed-use space of the project.”.

(2) Subsection (b)(2) is amended by striking the phrase “institutional buildings” and inserting the phrase “institutional buildings, LEED for Commercial Interiors, or LEED for Retail: Commercial Interiors” in its place.

(c) Section 4 (D.C. Official Code § 6-1451.03) is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended as follows:

(i) Subparagraph (A) is amended by striking the phrase “construction permit” wherever it appears and inserting the word “permit” in its place.

(ii) Subparagraph (B) is amended by striking the period and inserting the phrase “; provided, that a public school shall be verified as having fulfilled or

Amend
§ 6-1451.03

exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher if sufficient funding for the construction or renovation is provided.” in its place.

(B) Paragraph (2) is amended as follows:

(i) Subparagraph (A) is amended by striking the phrase “1st building construction permit” and inserting the phrase “first building permit” in its place.

(ii) Subparagraph (B) is amended by striking the phrase “1st building construction permit” and inserting the phrase “first building permit” in its place.

(C) New paragraphs (3) and (4) are added to read as follows:

“(3) The area of common space in a project shall be allocated to either residential or nonresidential square footage of a project based upon the percentage of gross floor area of the project occupied by each of the residential and nonresidential occupancies calculated after excluding the area of common space.

“(4) An applicant for new construction or substantial improvement of a mixed-use space shall fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level for the nonresidential portion of the project. Any requirements set forth in section 6 shall apply to the mixed-use space of the project. For the purposes of mixed-use space in this paragraph, the term:

“(A) “LEED” also includes LEED for Commercial Interiors and LEED for Retail: Commercial Interiors; and

“(B) “Certificate of occupancy” refers to the first certificate of occupancy issued for a usable, habitable space at grade or above grade for the mixed-use space of the project.”.

(2) Subsection (c) is amended as follows:

(A) Paragraph (2) is amended as follows:

(i) Subparagraph (A)(ii)(I) is amended by striking the phrase “January 1 of the respective following year.” and inserting the phrase “April 1 of the respective following year. In 2011 only, the scores and statements shall be made available to DDOE no later than July 1.” in its place.

(ii) New subparagraphs (C) and (D) are added to read as follows:

“(C) Benchmarking data required in this paragraph shall include water consumption data as incorporated in the Portfolio Manager Benchmarking Tool.

“(D) A building owner or tenant who fails to timely, accurately, and completely submit the benchmarking information required by this paragraph to DDOE or to the building owner shall be assessed a penalty by DDOE of no more than \$100 for each day during which the required submission has not been made. Civil infraction fines, penalties, and fees may be imposed as alternative sanctions for such failure, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.* (“Civil Infractions Act”). Adjudication of an infraction shall be pursuant to the Civil Infractions Act.”.

ENROLLED ORIGINAL

(B) Paragraph (3) is amended by striking the phrase "1st building construction permit" and inserting the phrase "first building permit" in its place.

(d) Section 5(c) (D.C. Official Code § 6-1451.04) is amended to read as follows:

Amend
§ 6-1451.04

"(c) Notwithstanding the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), for the purposes of establishing compliance with sections 3 and 4, verification of a project shall be based upon the standards in effect one year prior to the applicant's first of the following interactions with the District:

"(A) The approval of a land disposition agreement;

"(B) The submission of an application to the Board of Zoning Adjustment for a variance or special exception relief;

"(C) The submission of an application to the Zoning Commission for a planned unit development or other approval requiring Zoning Commission action;

"(D) The submission of an application to the Historic Preservation Review Board or the Mayor's Agent for the Historic Preservation Review Board; or

"(E) Other substantial land-use interactions with the District as defined through rulemaking by the Mayor."

(e) Section 6 (D.C. Official Code § 6-1451.05) is amended to read as follows:

Amend
§ 6-1451.01

"Sec. 6. Financial security.

"(a) Beginning January 1, 2012, an applicant governed by section 4(a) shall provide a financial security, which shall be due prior to receipt of a certificate of occupancy.

"(b)(1) The financial security requirement of subsection (a) of this section may be fulfilled by:

"(A) Evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District;

"(B) An irrevocable letter of credit from a financial institution authorized to do business in the District;

"(C) A bond secured by the applicant to ensure compliance with this section; or

"(D) A binding pledge that within 2 years of receipt of the certificate of occupancy the applicant will fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level.

"(2)(A) A binding pledge pursuant to paragraph (1)(D) of this subsection shall be recorded as a covenant in the land records of the District between the applicant and the District in a form that is satisfactory to the District's Attorney General or the Attorney General's delegate.

"(B) The covenant shall bind the applicant and any successors in title to pay any fines levied pursuant to this section.

"(c) If, within 2 years of receipt of the certificate of occupancy, the project provides evidence that it has fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certified level, a financial security previously provided by the

applicant in the form of cash, an irrevocable letter of credit, or a bond shall be returned to the applicant.

“(d) If, within 2 years of receipt of the certificate of occupancy, the project does not provide evidence that it has fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certified level, the Mayor shall, as applicable, either:

“(1) Draw down on a financial security provided in the form of cash, an irrevocable letter of credit, or a bond, in whole, or in part; or

“(2) Levy a fine against an applicant that provided a financial security in the form of a binding pledge as set forth in subsection (f) of this subsection.

“(e) A financial security in the form of cash, an irrevocable letter of credit, or a bond shall be calculated by square foot as set forth in subsection (f) of this section but shall be discounted by 20% of the amount of the fine described in subsection (f) of this section.

“(f) A fine issued pursuant to subsection (d)(2) of this section shall be calculated as follows:

“(1) In the amount of \$7.50 per square foot of gross floor space if the project is less than 100,000 square feet of gross floor space.

“(2) In the amount of \$10 per square foot, if the project is at least 100,000 square feet of gross floor space.

“(3) Beginning 4 years after receipt of the certificate of occupancy, the applicant shall pay a monthly fine of \$0.02 per square foot to the District for failure to provide evidence that it has fulfilled or exceeded either the current edition of the LEED standard for commercial and institutional buildings at the certified level or the current edition of the LEED standard for Existing Buildings: Operations & Maintenance at the certified level. The monthly fines shall accumulate but shall be assessed annually.

“(4) The fine described in paragraphs (1) and (2) of this subsection shall not exceed \$3 million; provided, that an annual fine issued pursuant to paragraph (3) of this subsection shall not count toward the \$3 million limit.

“(g) The Mayor, for good cause, may issue time extensions to a project; provided, that the Mayor shall not grant more than 3, one-year extensions.

“(h) Fines issued under this section shall be civil penalties.

“(i) Substantial improvements shall be subject to the requirements of this section; provided, that only square feet included in a substantial improvement project shall be calculated for the purposes of a fine.

“(j) The financial security option provided in subsection (b)(1)(C) of this section shall become effective upon the issuance of rules by the Mayor.

“(k) Any payment made to the District for failure to meet the standards required by sections 3 and 4 shall be deposited in the Green Building Fund.”

(e) Section 7 (D.C. Official Code § 6-1451.06) is repealed.

(f) Section 8(c) (D.C. Official Code § 6-1451.07(c)) is amended to read as follows:

“(c)(1) The purpose of the Fund is to streamline administrative green building

Amend
§ 6-1451.06
Amend
§ 6-1451.07

processes, improve sustainability performance outcomes, build capacity of development and administrative oversight professionals in green building skills and knowledge, institutionalize innovation, overcome barriers to achieving high-performance buildings, and continuously promote the sustainability of green building practices in the District.

“(2) Fund shall be used for the following:

“(A) costs for at least 3 full-time employees at DCRA, or elsewhere as assigned by the Mayor, whose primary job duties are devoted to technical assistance, plan review, and inspections and monitoring of green buildings;

“(B) Additional staff and operating costs to provide training, technical assistance, plan review, inspections and monitoring of green buildings, and green codes development;

“(C) Research and development of green building practices;

“(D) Education, training, outreach, and other market transformation initiatives; and

“(E) Seed support for demonstration projects, their evaluation, and when successful, their institutionalization.

“(3) The Mayor may receive and administer grants for the purpose of carrying out the goals of this act.”.

(g) Section 9(b) (D.C. Official Code § 6-1451.08(b)) is amended by striking the phrase “building construction permit” and inserting the phrase “building permit” in its place.

Amend
§ 6-1451.08

(h) Section 10 (D.C. Official Code § 6-1451.09) is amended as follows:

Amend
§ 6-1451.09

(1) Subsection (c)(1) is amended as follows:

(A) Subparagraph (C) is amended by striking the phrase “Office of Property Management” and inserting the phrase “Department of General Services” in its place.

(B) Subparagraph (G) is amended by striking the phrase “building construction permit” and inserting the phrase “building permit” in its place.

(2) A new subsection (g) is added to read as follows:

“(g) The Mayor shall provide GBAC with the following to be included in the annual report required by subsection (f) of this section:

“(1) An accounting of funds deposited into the Green Building Fund during the past fiscal year, separated by category;

“(2) An accounting of funds spent from the Green Building Fund during the past fiscal year, referencing that year’s annual green plan’s goals; and

“(3) A 2-year District Green Building Plan updated annually, with goals and associated projections of expenditures for the upcoming fiscal year, produced in consultation with the GBAC .”.

(i) Section 11(b) (D.C. Official Code § 6-1451.10(b)) is amended by striking the phrase “building construction permits” and inserting the phrase “building permits” in its place.

Amend
§ 6-1451.10

(j) Section 12 (D.C. Official Code § 6-1451.11) is amended to read as follows:

Amend
§ 6-1451.11

“Sec. 12. Rules.

ENROLLED ORIGINAL

“(a) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

“(b) The Mayor may issue proposed rules to adopt another rating system, in whole or in part. Proposed rules to adopt another rating system shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved.

“(c) Notwithstanding the requirements of section 302(c) of the District of Columbia Administrative Procedure Act, effective March 6, 1979 (D.C. Law 2-153; D.C. Official Code § 2-552), where the Mayor chooses to adopt a LEED or Green Communities standard as the District’s standard under this act, DDOE may do so by incorporating the LEED or Green Communities standard by reference in a Notice of Intent to take rulemaking action. When incorporating the LEED or Green Communities standard by reference, the notice shall include a specific indication of how and where a paper or electronic copy of such document may be inspected or obtained. Any amendments, supplements, or future editions to the LEED or Green Communities Standard shall be deemed to be included in the District’s standard; provided, that DDOE shall annually issue a Notice of Intent to adopt any amendments, supplements, or future editions to the LEED or Green Communities, in whole, or in part, or announce an intent to adopt a different standard.”

Sec. 3. Section 10c of the Construction Codes Approval and Amendments Act of 1986, effective March 8, 2007 (D.C. Law 16-334; D.C. Official Code § 6-1412), is amended as follows:

Amend
§ 6-1412

(a) Subsection (a) is amended to read as follows:

“(a) By June 1, 2013, and at least once every 3 years thereafter, the Mayor, in consultation with the Green Building Advisory Council, shall submit to the Council, for approval, revisions to the Construction Codes that shall incorporate as many significant green building practices as practicable for the District of Columbia urban environment. The Mayor shall include as many green building provisions as practicable from the current versions of codes and standards published by the International Code Council. The Mayor may exclude provisions that are not practicable for the District of Columbia urban environment but shall provide evidence of cost or implementation impracticality for the excluded provisions; provided, that the Mayor is not required to consider codes or standards issued by the International Code Council within one year of the submittal date.”

(b) Subsection (b) is amended as follows:

(1) Strike the phrase “On or before By January 1, 2010” and insert the phrase “By June 1, 2013” in its place.

(2) Strike the phrase “January 1” and insert the phrase “June 1” in its place.

Sec. 4. Fiscal impact statement.

ENROLLED ORIGINAL

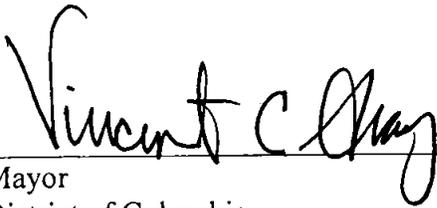
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
March 28, 2012