



DRAFT LEGISLATIVE TEXT

Private Sector Incentives for LEED Buildings

DRAFT Ordinance/Resolution NO. ____

WHEREAS, the ____ [legislative body] of ____ [state or county/city/town] desires to grow the twenty-first century economy by encouraging the expansion healthy, resilient, high-performing building design and practice; and

WHEREAS, public policy that promotes healthy, resilient, high-performing building design and practices complements existing policies relating to development and environmental stewardship; including ____ [list relevant policies such as solid waste/recycling/ stormwater/ energy efficiency policies and specific provisions from current version of comprehensive plan]; and

WHEREAS, the U. S. Green Building Council has, in a national collaborative process, created and supports the Leadership in Energy and Environmental Design (LEED) green building rating systems and maintains certification processes for new and existing buildings that – together – identify and verify a range of responsible design, construction and maintenance practices that can improve human and environmental health in buildings and their surroundings while saving energy, water and money; and

WHEREAS, a building that has been designed, renovated, built, operated and certified as compliant with LEED is recognized to provide – on average – a wide array of benefits compared to typical building practices including, but not limited to: reduced energy consumption and costs; reduced water consumption and costs; improved occupant comfort, health and associated costs; reduced carbon footprint and other building-related environmental impacts; improved building value; reduced operating costs; significant return on investment – especially when applying life cycle cost methodology; and

WHEREAS, these benefits to human and environmental health are mostly externalized in today's market economy, requiring additional support to ensure that the twenty-first century labor, technology and materials that these buildings require may be developed, sourced and proliferated here in ____ [state or county/city/town]; and

WHEREAS, more than 400 local governments in the U.S., 33 states, 14 federal agencies or departments have embraced public policy initiatives that promote benchmarking buildings with LEED – the world's preeminent green building rating system – many of which match key elements of the proposed green building incentive[s], including: ____ [find comparable green building incentives and policies at USGBC.org/advocacy/priorities];

NOW, THEREFORE, BE IT RESOLVED BY THE ____ [legislative body of city/town/county, state] THAT:

Section 1: Scope and Intent

It shall be the policy of the ____ [state or county/city/town] to promote, reward and invest in healthy, resilient, environmentally responsible, high-performing buildings in our ____ [community/state] through the establishment of incentives for projects that take on additional responsibility in building design and construction for the benefit of not only building owners and occupants but also neighbors, public infrastructure, our shared land, air and water resources, and the development and growth of the twenty-first century economy in our community.

These incentives, detailed in the sections below, include: an Expedited Permit Program, a Development Density Bonus, Green Building Permit Fee Reduction, Green Building Tax Credit, and Green Building Grant. [strike those that do not apply] In order to align realities of timing with the goals and objectives of these incentives, a Binding Pledge shall be required of project owners desiring to take advantage of these incentives. Failure to meet the targets and objectives of the incentive may result in a penalty.

The ____ [state or county/city/town] Manager [or appropriate authority] shall draft and adopt any rules and regulations necessary to administer this section and to facilitate the review and determination process.

Section 2: General Definitions

(a) **LEED**: The LEED green building certification program is developed and managed by U.S. Green Building Council, Inc. Building type and use will dictate the most appropriate rating system for the Covered Building. The available rating systems include: LEED® for New Construction and Major Renovations™; LEED® for Core and Shell™; LEED® for Commercial Interiors™; LEED® for Schools™; LEED® for Retail™; LEED® for Healthcare™; LEED® for Homes™; and LEED® for Neighborhood Development™. [note [technical guidance](#) for LEED for Neighborhood Development developed by the PACE University Law Center]



DRAFT LEGISLATIVE TEXT

Private Sector Incentives for LEED Buildings

- i. **Applicable Version:** LEED version ____ [2009, 4] is the edition currently being administered at the date of this action [verify here: usgbc.org/LEED] and is the applicable edition for the provisions of this ordinance.
 - ii. **LEED certification.** The LEED green building certification program is administered by the Green Building Certification Institute [the project verification affiliate of USGBC]. LEED certification includes the submission of documentation to the Green Building Certification Institute for official, independent third-party review against LEED credit criteria. Satisfactory compliance will result in an award of LEED certification, including: LEED Certified®, LEED Silver®, LEED Gold®, and LEED Platinum®.
- (b) **Binding Pledge:** Projects desiring to take advantage of an incentive shall submit a letter of intent to achieve LEED certification at the level required for the desired incentive, signed by both the construction project manager in responsible charge and the project owner. The letter shall also include proof of LEED project registration with the Green Building Certification Institute, the project verification affiliate of USGBC.

Section 3: Expedited Permit Program.

- (a) It shall be the policy of the ____ [state or county/city/town] to prioritize and expedite the review and processing of permits for commercial and residential construction and renovations that are pursuing LEED certification at at least the ____ [Gold recommended] level, as affirmed by a Binding Pledge. [Consider also a tiered approach offering faster reviews for higher levels of certification. Note that Silver requires 10 points more than Certified, Gold requires 10 more points than Silver, and Platinum requires 20 more points than Gold.]
- (b) **Enforcement:** To protect the public from disadvantaging all other permits for the benefit of a building project that may ultimately fail to meet the requirements committed to in the Binding Pledge, the jurisdiction may impose a fine of \$____ [a 2012 [law](#) in the District of Columbia establishes a \$7.50/sq. ft. penalty for buildings less than 100,000 sq.ft. and a \$10/sq. ft. penalty for buildings greater than 100,000 sq. ft., not to exceed \$3 million] should the project not meet the requirements of this section within eighteen months after issuance of Certificate of Occupancy.
- i. **Executive exceptions.** The ____ [chief executive] may reduce any or all of the fines for good cause.

Section 4: Development Density Bonus.

- (a) It shall be the policy of the ____ [state or county/city/town] to offer an increased allowance of Floor Area Ratio (FAR) within Priority Development Zone[s] at the levels described in this section for commercial and residential construction and renovations that are pursuing LEED certification at the levels described in this section, as affirmed by a Binding Pledge. [The below thresholds are adapted from [Arlington County, VA](#)]
- i. **Commercial Buildings:**
 - (a) LEED Certified® – ____ [0.05] FAR
 - (b) LEED Silver® – ____ [0.15] FAR
 - (c) LEED Gold® – ____ [0.30] FAR
 - (d) LEED Platinum® – ____ [0.55] FAR
 - ii. **Residential Buildings:**
 - (a) LEED Certified® – ____ [0.10] FAR
 - (b) LEED Silver® – ____ [0.20] FAR
 - (c) LEED Gold® – ____ [0.35] FAR
 - (d) LEED Platinum® – ____ [0.60] FAR
- (b) **Priority Development Zone[s].** Priority Development Zone shall be defined as ____ [In accordance with the comprehensive plan, identify areas where such exceptions to the zoning would be permissible and desired – often times downtowns, other business districts, or neighborhoods in need of investment and development. See also, Section 5: Neighborhood Development Floating Zone.]
- (c) **Enforcement:** To protect the public from disadvantaging all other permits for the benefit of a building project that may ultimately fail to meet the requirements committed to in the Binding Pledge, the jurisdiction may impose a fine of \$____ [the District of Columbia [proposes](#) \$7.50/sq. ft. for buildings less than 100,000 sq.ft. and \$10/sq. ft. for buildings greater than 100,000 sq. ft., not to exceed \$3 million] should the project not meet the requirements of this section within eighteen months after issuance of Certificate of Occupancy. [Given the nature of this incentive, jurisdictions may consider an additional fee per annum as compensation for the added FAR that the building owner is able to rent or enjoy – possibly for ten years or until earning certification under LEED for Existing Buildings: Operations & Maintenance.]
- i. **Executive exceptions.** The ____ [chief executive] may reduce any or all of the fines for good cause.



DRAFT LEGISLATIVE TEXT

Private Sector Incentives for LEED Buildings

Section 5: Neighborhood Development Floating Zone

[In partnership with the Land Use Law Center at PACE University, USGBC developed a model ordinance to incentivize healthy, efficient, low-impact development without a comprehensive overhaul to the local zoning code. The [Neighborhood Development Floating Zone](#) enables communities with limited resources to establish a new district in the local zoning code and invite developers who wish to propose projects meeting sustainability goals (such as those intended for LEED for Neighborhood Development certification) to apply to the local legislative body for the new district to be mapped to their parcels. The floating zone approach saves a more limited municipality time and money, while still creating an incentive mechanism to advance greener, more socially and environmentally responsible development, and while still allowing the local government to have significant control over the approval process.]

Section 6: Green Building Permit Fee Reduction

- (a) It shall be the policy of the _____ [state or county/city/town] to provide a reduction of building permit fees for commercial and residential construction and renovations that are pursuing LEED certification at the levels described in this section.
 - i. **Commercial and Residential Buildings:**
 - (a) LEED Certified – ____ [20%, consider also only offering grants for higher levels of certification]
 - (b) LEED Silver – ____ [30%]
 - (c) LEED Gold – ____ [40%]
 - (d) LEED Platinum – ____ [60% - note that Silver requires 10 points more than Certified, Gold requires 10 more points than Silver, and Platinum requires 20 more points than Gold.]
 - (b) **Enforcement:** To protect the public from providing permit fee reductions for the benefit of a green building project that may ultimately fail to meet the requirements committed to in the Binding Pledge, the jurisdiction shall require proof of LEED certification at the level at which the fees were reduced within eighteen months after issuance of Certificate of Occupancy. Should the project not meet the requirements of this section, the jurisdiction shall require the full refund of permit fees from the project to the Building Department [or appropriate agency] and also impose a fine not to exceed \$____ [\$5,000].
 - i. **Executive exceptions.** The _____ [chief executive] may reduce any or all of the fines for good cause.
- (c) **Available Funds:** [Jurisdictions may wish to protect themselves from use of the permit fee reduction at a level that cannot be sustained. Consider detailing a cap on total expenditures, a cap on a per project basis, and a time when the permit fee reduction will be revisited.]

Section 7: Green Building Tax Credit

- (a) It shall be the policy of the _____ [state or county/city/town] to provide a tax credit for the construction or renovation of commercial and residential buildings that have earned LEED certification at the levels described in this section, as affirmed by a Binding Pledge.
 - i. **Commercial and Residential Buildings:** [some jurisdictions prefer to prioritize certain building types and incentivize them differently – many for a duration of five or ten years. See the State of New Mexico’s “[sustainable building tax credit](#)” as an example, which was largely renewed in 2013.]
 - (a) LEED Certified® – ____ [Consider a % basis or \$/sq.ft. basis and define for how many years the credit will be valid, consider also only offering tax credits for higher levels of certification]
 - (b) LEED Silver® – ____
 - (c) LEED Gold® – ____
 - (d) LEED Platinum® – ____ [When calibrating the tax credit(s), note that Silver requires 10 points more than Certified, Gold requires 10 more points than Silver, and Platinum requires 20 more points than Gold.]
 - (b) **Enforcement:** To protect the public from disadvantaging all other permits for the benefit of a building project that may ultimately fail to meet the requirements committed to in the Binding Pledge, the jurisdiction shall require proof of LEED certification at the level at which the tax credit is being sought prior to the issuance of the tax credit.
 - (c) **Available Funds:** [Jurisdictions may wish to protect themselves from use of the tax credit at a level that cannot be sustained. Consider detailing a cap on total expenditures, a cap on a per project basis, and a time when the tax credit will be revisited.]

Section 8: Green Building Grants

- (a) It shall be the policy of the _____ [state or county/city/town] to provide grants for the design, construction or renovation of commercial and residential buildings that are pursuing LEED certification at the levels described in this section, as affirmed by a Binding Pledge.
 - i. **Commercial and Residential Buildings:** [Some jurisdictions prefer to prioritize certain building types and incentivize them differently. See a 2006 example of a green building grants program in [King County, WA](#) as an example.]



DRAFT LEGISLATIVE TEXT

Private Sector Incentives for LEED Buildings

- (a) LEED Certified® – __ [Consider a \$/sq.ft. basis, or only offering grants for higher levels of certification]
- (b) LEED Silver® – __
- (c) LEED Gold® – __
- (d) LEED Platinum® – __ [When calibrating the Green Building Grants, note that Silver requires 10 points more than Certified, Gold requires 10 more points than Silver, and Platinum requires 20 more points than Gold.]
- (b) **Enforcement:** To protect the public from providing grants for the benefit of a building project that may ultimately fail to meet the requirements committed to in the Binding Pledge, the jurisdiction shall require proof of LEED certification at the level at which the grant is being sought prior to the issuance of the grant.
- (c) **Available Funds:** [Jurisdictions may wish to protect themselves from use of grant funds at a level that cannot be sustained. Consider a cap on total expenditures, a cap on a per project basis, and a time when the grant program will be revisited.]

Notes:

- This draft legislation is intended to be a draft from which state and local policymakers can work with stakeholders to identify and legislate appropriately tailored and effective green building policy.
- Some of the incentives listed above may overlap in scope. Most jurisdictions will choose to tailor incentives from the list above or legislate still other incentives (like revolving loan funds, programs for technical assistance or marketing assistance, etc.)
- Some jurisdictions have legislated language that does not require LEED certification, instead offering “LEED certifiable” as an alternative. The rigor of the LEED certification process is what enables most good buildings to become great buildings by ensuring full execution of smart design plans, minimizing corner-cutting in critical areas that undeniably happens on any construction project. No newly-constructed building – LEED or otherwise – will perform optimally if not properly operated and maintained, but LEED certification is the best available means of assurance that the building starts out with the best possible advantage. USGBC’s existing buildings rating system and program carry this performance forward through verifying superior operations and maintenance.
- Some municipalities may be limited in their authority to regulate or incentivize development activity based on state law. Legal and legislative counsel is advised for any adopting authority or jurisdiction.
- To better ensure regular, timely and proactive input on green building policy developments, consider formalizing feedback loops into the lawmaking process. For more information, see policy brief: [Guiding Green Building Policy](#).

Find the full list of LEED-based public policies and initiatives, as well as other green building policy resources at: USGBC.org/advocacy. See also, USGBC’s [Leadership with LEED](#) campaign, including [draft legislative text](#) for green public buildings.