

Order 82-13/14

Given first reading on 10/21/13

Passage as amended 6-0 (Mavodones, Anton and Leeman absent) 11-4-13

MICHAEL F. BRENNAN (MAYOR)  
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**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 6 (BUILDINGS AND BUILDING REGULATIONS)  
ARTICLE VII. GREEN BUILDING CODE  
SECTIONS 6-166 through 6-172

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN  
CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Sections 6-166 through 6-172 are hereby amended to read  
as follows:

**Sec. 6-166. Definitions.**

The following words and phrases shall be defined as set  
forth below for use in this article.

American Society of Heating, Refrigerating, and Air-  
Conditioning Engineers (ASHRAE) Standards: ASHRAE is a building  
technology society which publishes a recognized series of  
standards and guidelines relating to HVAC systems and  
performance. The Maine Uniform Building and Energy Code  
currently references ASHRAE Standard 90.1 which is an energy  
standard for buildings except low-rise residential buildings.

Conditioned Space: Any area within a building that is  
artificially heated or cooled by fixed equipment.

*Funded in whole or in part:* (a) Receipt of tax increment  
financing in an amount greater than two hundred thousand dollars  
(\$200,000); or (b) receipt of grants by the city, HOME loans,  
Community Development Block Grant loans or Neighborhood  
Stabilization Program loans, the sum of which is greater than  
two-hundred thousand dollars (\$200,000.00).

Hardship: Some verifiable level of difficulty or adversity  
arising from factors identified in Sec. 6-170 or other  
circumstances beyond the control of the applicant, by which the  
applicant cannot reasonably comply with the requirements of this  
ordinance.

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Infeasible: The existence of verifiable obstacles arising from the factors identified in Sec. 6-170 or other circumstances beyond the control of the applicant which render the applicant incapable of complying with the requirements of this ordinance.

Leadership in Energy and Environmental Design (LEED) Standards: A third-party rating system developed by the United States Green Building Council (USGBC) where credits are earned for satisfying specified green building criteria.

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Renovation:

- (a) At the time of the application, the total construction cost is greater than or equal to the market value of the property as determined by the city's tax assessor;  
or
- (b) A conversion from non-conditioned to conditioned space;  
or
- (c) An addition of building gross square footage greater than or equal to the gross square footage of the existing building. ~~or~~

**Sec. 6-167. Standards for new buildings and renovation projects.**

All new construction and renovation projects to be owned, or occupied by the city of Portland that are of 2,000 square feet in floor area or greater shall be certified to the ~~U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design ("LEED")~~ LEED Silver Standard using the appropriate LEED Rating System, particularly those listed below thereof and whole thereof:

- a. LEED 2009 for Commercial Interiors.
- b. LEED 2009 for Existing Buildings, Operations, and Maintenance.
- c. LEED 2009 for Healthcare.
- d. LEED 2009 for New Construction and Major Renovations.
- e. LEED 2009 for Schools.

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7. All new construction and renovation projects to be funded in whole or in part by the City of Portland that are of 10,000 square feet in floor area or greater shall demonstrate, under any third-party certification system (e.g. LEED or Green Globes) or energy model signed by a licensed engineer, a certain percentage improvement in the proposed energy performance of the building compared to the baseline performance rating per ASHRAE Standard 90.1, being particularly the 2010 version thereof and the whole thereof, or equivalent standard if the ASHRAE Standard 90.1 is not applicable to the project. Such percentage improvement shall be thirty percent (30%) for new construction, twenty-five percent (25%) for existing buildings, and twenty percent (20%) for historic buildings.

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Copies of the LEED Rating Systems and ASHRAE Standard 90.1 are on file with the City Clerk.

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#### **Sec. 6-168. Submissions.**

Upon submission of an application for a building permit for new construction or renovation projects that are required to meet the standards set forth in section 6-167, the applicant shall also submit the following, as applicable:

- a. aA LEED checklist, and a LEED application number (or other proof of LEED applications status); or
- b. A third-party certification system document of verification; or
- c. aA preliminary energy model, along with a statement of certification from a licensed engineer that the project meets the standard(s); and
- d. A written explanation of how the building will obtain the applicable standards using design plans to demonstrate compliance where applicable (example: LEED submittal templates).

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#### **Sec. 6-169. Certificate of Occupancy.**

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A copy of the final submission of LEED documentation to the USGBC or final LEED certification decision, or a statement of final certification from a licensed engineer indicating that the project meets the standards along with any amendment to the preliminary energy model shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy for new construction or renovation projects that are required to meet the standards set forth in section 6-167. A temporary certificate of occupancy may be issued by the city if necessary prior to the submission of final LEED documentation to the USGBC.

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**Sec. 6-170. Partial exemptionWaivers.**

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If it is a hardship or infeasible for an applicant to meet the standards set forth in section 6-167, the applicant may request a partial exemption from regulation. may be waived under The burden is on the applicant to show hardship or infeasibility. Factors to consider in determining whether hardship or infeasibility exists include, but are not limited to:

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- a. Availability of green building materials and technologies; or
- b. Compatibility of green building requirements with other government requirements and building standards; or
- c. Required alterations to an historic building that would compromise its historic character; or
- d. Specific circumstances that would defeat the purpose of the standards.

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Any request for a partial exemption must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. In order for a partial exemption to be granted, the applicant must demonstrate all possible effort to maximize building performance according to the standards set forth in section 6-167 and shall indicate the maximum level of standards which are reasonably achievable for the building as follows:

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a. In the case of a LEED standard requirement, the applicant will list the number of credits reasonably achievable and verified by each applicable licensed professionals.

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b. In the case of ASHRAE 90.1 or equivalent standard requirement, the applicant will document the percentage above the standard that is reasonably achievable with a statement of certification from a licensed engineer.

If the partial exemption is granted, the applicant shall be required to comply with this ordinance in all other respects. A copy of the final submission of LEED documentation to the USGBC or a statement of final certification from each applicable licensed professionals or licensed engineer indicating that the project meets the level of standard presented at the time of application along with any amendment shall be submitted to the city's department of planning and urban development prior to the issuance of a certificate of occupancy.

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~~documented circumstances showing that compliance with the standards would create an unreasonable financial burden require alterations to an historic building that would compromise its historic character; or, if due to specific circumstances, would defeat the intent of the standards. For purposes of this section, an unreasonable financial burden means that compliance with the standards would result in a cost increase to the project (including the cost of LEED certification, but not including land costs) of greater than three percent (3%) above the development costs prior to meeting the standards. Any request for waiver of must be accompanied by specific reasons for the waiver and approved by the director of planning and urban development. If a waiver is granted, the applicant must demonstrate all possible effort to maximize building performance according to the standards set forth in section 6-167.~~

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#### **Sec. 6-171. Appeals.**

Any applicant aggrieved by the decision of the director of planning and urban development may appeal that decision to the zoning board of appeals (Article VI. Board of Appeals, Sec. 14-541- 14-553).

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**Sec. 6-172. Applicability.**

This ordinance shall apply to new construction and renovation projects to be owned, occupied, or funded in whole or in part by the city of Portland for which site plan applications, building permit applications (not associated with an approved site plan), or funding assistance requests are submitted on or after the effective date of this ordinance. Any new construction or renovation that received an exemption under a previous version of this ordinance shall be considered to have a partial waiver under this ordinance, provided that the Director of Planning & Urban Development determines that the scope of the new construction or renovation has not changed the originally approved construction to an extent that would require review under this version of the ordinance. Any new construction or renovation project to which this ordinance is not applicable but which voluntarily meets any of the standards set forth in Section 6-167 or equivalent shall receive expedited review and permitting status.

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