
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: November 7, 2006

SUBJECT: Petition No. 400-05-38 – Initiated by the Salt Lake City Mayor to approve an Ordinance Adopting Title 18, Chapter 95 of the Salt Lake City Code requiring Leadership in Energy and Environmental Design (LEED) Compliance and Certification for City-funded building projects of 10,000 square feet or larger

STAFF REPORT BY: Jennifer Bruno, Policy Analyst

AFFECTED COUNCIL DISTRICTS: City-wide

ADMINISTRATIVE DEPT: Mayor’s Office
AND CONTACT PERSON: Orion Goff, City Building Official

POTENTIAL MOTIONS:

Note: There are two ordinances and one resolution for Council consideration.

LEED Ordinance

1. [**“I move that the Council”**] Adopt an ordinance requiring Leadership in Energy and Environmental Design (LEED) Compliance and Certification for City-funded building projects of 10,000 square feet or larger, and LEED Compliance and Certification to the “Silver” level for City-owned building projects of 10,000 square feet or larger. The effective date of this ordinance shall be as follows:
 - a. January 1, 2006 - (building projects that have received City funds since this date shall also be subject to this ordinance – affects two projects, see information in “Follow-up Items” section below)
 - or
 - b. July 1, 2006 - (building projects that have received City funds since this date shall also be subject to this ordinance – affects one project, see information in “Follow-up Items” section below)
 - or
 - c. Upon ordinance publication
2. [**“I move that the Council”**] Not adopt an ordinance requiring Leadership in Energy and Environmental Design (LEED) Compliance and Certification for City-funded building projects of 10,000 square feet or larger, and LEED Compliance and Certification to the “Silver” level for City-owned building projects of 10,000 square feet or larger.

Board of Appeals and Examiners Ordinance

1. [**“I move that the Council”**] Adopt an ordinance amending section 18.12.010 of the Salt Lake City Code, creating the Board of Appeals and Examiners, to require one board member be a LEED accredited professional.

2. [**"I move that the Council"**] Not adopt an ordinance amending section 18.12.010 of the Salt Lake City Code, creating the Board of Appeals and Examiners, to require one board member be a LEED accredited professional.

Resolution

1. [**"I move that the Council"**] Adopt a resolution encouraging the Library Board and the Board of Directors of the Redevelopment Agency, to adopt similar standards with regard to LEED compliance for applicable building projects funded by the Library and RDA, respectively.
2. [**"I move that the Council"**] Not adopt a resolution encouraging the Library Board and the Board of Directors of the Redevelopment Agency, to adopt similar standards with regard to LEED compliance for applicable building projects funded by the Library and RDA, respectively.

FOLLOW-UP ITEMS

1. Effective Date - There are different options for Council consideration with regard to an effective date. The only private-sector projects that would be applicable in the current year are as follows:
 - a. Stratford Hotel Rehab, 175 East 200 South (Jameson Properties, LLC) - The Council approved this loan on *February 14, 2006*.
 - It should be noted that the following statement was in the staff report relating to this project: "La Porte Properties is proposing to incorporate solar panels as a source of energy, which according to the loan application will reduce tenant utilities by approximately 35%. The loan application indicates that credits are available to assist with this cost."
 - It should also be noted that this project has already commenced construction.
 - b. Providence Place, 309 East 100 South (Wasatch Advantage Group) - The loan was approved September 5th, 2006.
 - The Administration is currently investigating the status of this project, and how far along into the design process the developer is. Further information will be provided to the Council at the meeting.
 - It should be noted that the same developer secured a City loan for a similar project in April of 2005, but that project was never completed, because the land that the developer had planned for the project, was purchased by another entity.
2. Board of Appeals and Examiners Ordinance - The Attorney's Office has prepared a revised ordinance for Council consideration, reflecting the Council's intent to require at least one member of the Board of Appeals and Examiners be a LEED Accredited professional.
3. The Attorney's office has prepared a resolution for Council consideration formally encouraging the Library Board to consider adopting LEED standards similar to those the Council has considered.

The following information was provided previously for the Council Work Session on October 17, 2006. It is provided again for your reference.

FOLLOW-UP ITEMS

The Attorney's Office in conjunction with the Community Development Department has crafted an amended ordinance for Council consideration that makes the following changes, based on the previous Council discussions:

1. The section creating the High Performance Building Board is eliminated. The Definitions section now defines "Board" as the Board of Appeals and Examiners. Currently there is one vacancy on that board. The Council recommended that this vacancy be filled with a LEED Accredited professional. The Council also recommended that the by-laws of this board be examined and amended to require at least one of the five members be LEED Accredited professional.
 - The Administration has indicated that a LEED Accredited professional will be sought after to fill the existing vacancy, and will work on amending the by-laws for the Board of Appeals and Examiners to officially require at least one LEED Accredited professional be a member of the board.
2. The \$10,000 "good faith" deposit is no longer required for non-profit developers. Administratively, the \$10,000 for private sector developers will be handled alongside the existing requirement for any City-funded project to have a performance bond.
3. Language has been added to the "exemption" section to further the intent of the ordinance in the event that an exemption is granted due to one of the listed factors. The language is as follows:
 - "If an exception is granted, the developer must agree to integrate green building practices into the design and construction of the project to the maximum extent possible and feasible."

The Council tabled the following items pending further information (bullet points below the numbers contain follow-up information gathered by the Administration and Council Staff):

1. Consider adding specific time or construction cost thresholds for exemption/waiver factors.
 - Administrative staff communicated that the Attorney's office advised against specific time/percentage thresholds due to the varying scopes of projects.
 - Council Staff and Administrative Staff agreed to investigate experiences in other municipalities.
 - After investigating multiple municipalities and their ordinances, particularly in cities where these ordinances have been successful (Seattle, Portland, San Francisco, etc) - *universally* there are no specific time or financial "thresholds" that justify an exemption or a waiver. The most common reason cited for this is the multitude of types and scopes of projects that municipalities are involved in. In almost every case, exceptions are dealt with by involving a city building official or some other city staff member familiar with building design and LEED, to decide whether or not a given project has exhausted all avenues in attempting to obtain LEED certification.
 - The Administration has communicated that they feel confident that guidelines are specific enough for staff to work within and make those judgments.

- As such, this language has not been altered in the amended ordinance.
 - As mentioned above, language was added to the “exemptions” section that requires the developer to agree to integrate green building practices into the design and construction of the project to the maximum extent possible.
2. Consider whether to have two separate levels of LEED for City-owned projects and city-funded private projects (“Silver” for City, “Certified” for private), or require the same level for both.
 - Administrative staff indicated that the existing state building code results in a building *almost* attaining the LEED “certified” level.
 - The Administration has communicated that if the City is to be a leader in sustainable building design it should take “extra” steps with its own development projects.
 3. Establish LEED incentives for non-City-funded projects -
 - The Administration has indicated support of this idea in general. However, budget and staffing constraints would need to be considered.
 - Many cities that have incentives (such as expedited permitting) for non-City funded projects have a dedicated staff to handle the workload associated with LEED projects. Seattle has a dedicated staff of 5 people to handle expedited permits for LEED certified projects (both residential and commercial).
 - Given the relative size of the Salt Lake City market, the Engineering Division estimates that it would take at least 1.5 FTE, for a total personnel cost of \$102,000 (\$68,000 each) to have a dedicated staff that could offer expedited permitting for LEED certified projects. There may also be an increased need in the permits office, due to increased workload. These costs have not been estimated.
 4. Establish LEED incentives for residential construction – make it a priority to be adopted before the master plan for the Northwest Quadrant.
 - The Planning Division has agreed that this concept should be included and considered in conversations and plans for the Northwest Quadrant Master Plan.
 - The Council may wish to adopt a Legislative Action Item requesting that the Administration specifically include LEED or green building practices in the drafting of the Northwest Quadrant Master Plan.
 5. Establish an effective date – considering current projects that may have already been through the design process.
 - The Council may wish to consider that the costs associated with incorporating LEED are significantly lower the earlier in the design process that it can be considered.
 - Currently the ordinance has a blank space for the Council to decide on an effective date.
 6. Encourage the Library and RDA to follow the City’s lead
 - The Council may wish to formally encourage the Library board to adopt similar standards for LEED certified buildings.

- The Council may wish to express their intent to consider and adopt similar standards as the Redevelopment Agency board.

Additional information requested by the Council:

A. Salt Lake City project "LEED" experience

1. Intermodal Hub – Of the approximate \$9.5 million construction budget, the "upcharge" for building the Intermodal Hub to LEED Certified standards was \$215,000 (approximately 2%). The Administration notes in the transmittal that in the case of the Intermodal Hub, saves 20-25% per year in energy costs. The engineers of the Hub estimated a 10 year payback for the extra cost of construction using the LEED rating system. It should be noted that the Utah Transit Authority, pursuant to the City's interlocal agreement signed earlier this year, will be the owner/operator of the Intermodal Hub.
2. Unity Center – Currently the Unity Center is budgeted and planned to be built to LEED "Certified" standards. The City's consultants have communicated that it would cost an additional \$100,000 to \$200,000 to achieve LEED "Silver" rating, depending on which points the City would pursue. This represents a premium of 1.9-3.8% over the estimated \$5.2 million budget.

The following information was provided previously for the Council Work Session on September 12, 2006. It is provided again for your reference.

FOLLOW-UP ITEMS

The Council discussed the proposed ordinance at the September 7, 2006 work session. The following items were raised by the Council that could potentially alter the language of the ordinance and/or affect the policy direction for the City in conjunction with the proposed ordinance:

1. Consider removing the RDA and Library Fund exemption, requesting that they also comply with the proposed ordinance.
2. Consider eliminating the creation of the High Performance Building Board, and specify that an existing City board would address LEED issues.
 - *Note:* In the work session discussion, Administrative staff indicated that they have had preliminary discussion with the Board of Appeals and Examiners, which contains architects and construction professionals and meets a couple of times per year, and that this board is willing to act in the capacity that the ordinance sets forth for the High Performance Building Board.
3. Consider adding specific time or construction cost thresholds for exemption/waiver factors
 - *Note:* Administrative staff communicated that the Attorney's office advised against specific time/percentage thresholds due to the varying scopes of projects.
 - Council Staff suggested specific thresholds (can be altered)
 - Construction cost threshold – costs increase by 30%
 - Time delay threshold – construction is delayed by 6 months
4. Consider reducing/altering the \$10,000 deposit requirement for non-profit developers
5. Establish LEED incentives for non-City-funded projects

6. Establish LEED incentives for residential construction – make it a priority to be adopted before the master plan for the Northwest Quadrant
7. Establish an effective date – considering current projects that may have already been through the design process

Council Staff recommends that the Council review and straw poll the above items so that alterations can be made to the ordinance, if necessary.

The following information was provided previously for the Council Work Session on September 7, 2006. It is provided again for your reference.

KEY ELEMENTS:

- A. The Administration’s transmittal contains an ordinance for Council consideration to amend the Zoning Ordinance to require certain City-funded building projects to comply with and be certified within the Leadership in Energy and Environmental Design (LEED) rating system prepared by the United States Green Building Council (USGBC).
- B. The stated purpose of the proposed ordinance “...is to promote development consistent with sound environmental practices...” The proposed ordinance:
 1. Requires all commercial or multi-family residential buildings, new construction or major renovation, that receive City funds, that are more than 10,000 square feet to be designated as “Certified” according to the USGBC’s LEED standards.
 2. Requires all municipal buildings, new construction or major renovation, to be designated “Silver” according to the USGBC’s LEED standards.
 - “Major Renovation” is defined as affecting more than 25% of a building’s square footage, and/or demolishing the space down to the shell of the structure.
 3. Excludes Library and Redevelopment Agency-funded projects from the “Applicable building project” definition. Projects funded by the Library or the Redevelopment Agency are not subject to the proposed ordinance.
 4. Creates a “High Performance Building Board” consisting of five members, appointed by advice of the Mayor and consent by the Council, serving two years each, that will hear appeals and approve exceptions or findings of “substantial compliance.” Each member shall either be a LEED certified professional, or shall have substantial knowledge of other, related fields.
 5. Creates the following “outs” for a City-funded project – the Building Official (Director of the Building Services Division or designee), and either the Chief Procurement Officer or the City Engineer jointly determine, in writing, that any of the following circumstances exist:
 - a) The project will serve a specialized, limited function (such as a pump station, garage, storage building, equipment area, etc);
 - b) The project is intended to be “temporary” (defined in the ordinance as intended to be in existence for 5 years or less, or any existing building that was, at the time of construction, intended to be in existence for 5 years or less);
 - c) The useful life of the project or other factors do not justify whatever additional expense would be incurred to increase the long-term efficiency;

- d) The application of LEED standard factors will increase construction costs beyond the funding capacity for the project, or will require that the project's scope of work or programmatic needs be diminished to meet budget constraints;
 - e) The use of LEED standard factors will create an impediment to construction because of conflicts of laws, building code requirements, federal or state grant funding requirements, or other similar requirements;
 - f) LEED factors are not reasonably attainable due to the nature of facilities or the schedule for construction;
 - g) LEED certification will violate any other federal, state or local law.
6. Provides for an appeal of the Building Official's decision to *not* grant an exception. An applicant may submit an appeal in writing to the board within 30 days of the Building Official's written determinations.
 7. Provides for the option of a waiver (similar to an exception). The High Performance Building Board will have the authority to grant a waiver from the proposed LEED requirements, to any project if it makes any of the following findings in writing:
 - a) Literal enforcement of the requirements will create an unnecessary hardship for the applicant that is not necessary to carry out the general purpose of the ordinance;
 - b) There are special circumstances attached to the project that do not generally apply to other projects subject to this chapter;
 - c) The waiver would not have a substantially negative affect on the Master Plans, policies, and resolutions of the City;
 - d) Any asserted economic hardship is not self-imposed;
 - e) The spirit of the ordinance will be observed.
 8. Allows for the High Performance Building Board's decisions to be appealed, in writing, to the Mayor or the Mayor's designee, within 30 days of the decision.
 9. Requires that all private sector developers who receive City funds for these applicable building projects submit a \$10,000 "good faith" deposit to the City, to be refunded upon the building project receiving the applicable level of LEED certification.
 10. Requires that within 30 days from receiving notice that the City will fund an applicable building project, the private sector developer will submit written proof that said project is registered with the USGBC. City funds will not be dispersed until the required deposit and proof of registration are received by the City. (*Council Staff note: Basic project information is needed to complete the USGBC registration process, but not detailed building plans. There is a \$600 non-refundable charge for registration - \$450 for members of the USGBC. Salt Lake City Corporation is currently a member of the USGBC. Please see attached LEED Registration form for further details on what kind of information is required).*)
 11. Provides for an option if the USGBC does not issue the certified level required for this chapter. A private sector developer may request that the City issue a determination of "substantial compliance." The Building Official, and either the Chief Procurement Officer or the City Engineer must jointly determine that the developer has established the following:
 - a) That reasonable, appropriate, and on-going efforts to comply with this chapter were taken;
 - b) That compliance would otherwise have been obtained but for the practical or economic infeasibility of the LEED standards or construction techniques;

- The ordinance notes that cost increases due solely to aesthetic elements shall not constitute “unreasonable burden.”
12. Provides that if a private sector developer does not receive the required LEED certification, and does not receive the finding of “substantial compliance” described above, the developer then forfeits their \$10,000 good faith deposit, and may be assessed a penalty, up to the original amount loaned by the City. The penalty may be assessed based on a direct analysis of the 26 possible LEED design credits, on the following schedule:

Design credits the City determines the project “could have reasonable received”	Percentage of original City funds to be paid back (up to)
21 - 25 credits	25%
16-20 credits	50%
6-15 credits	75%
0-5 credits	100%

13. The ordinance is effective 90 days after the date of its publication. However the ordinance leaves the Council the option of filling in a “start date” for a defined “applicable building project.”

C. Key points from the Administration’s transmittal are as follows:

1. The petition was initiated by Mayor Anderson following his signing of an Executive Order (issued July 8, 2005, amended January 19, 2006) requiring that City-owned new buildings and major renovation projects be built using LEED standards. *(Council Staff note: the original Executive Order required that City-owned buildings be built to the “Certified” standard. On January 19, 2006, the Executive Order was amended to increase the requirement to the “Silver” standard).*
2. The primary purpose is to ensure that projects utilizing City funds are built to high performance building standards with respect to energy, water, and material resource conservation.
3. The LEED rating system is a point-based certification process for high-performance, environmentally responsible building design and operation. Points are awarded by the USGBC, based on various factors, such as proximity to public transportation, energy efficiency, erosion control, building innovation and design, indoor environmental quality, reducing construction waste, water efficiency and use of recycled materials. The number of points awarded determine the level of LEED achieved, as follows:

LEED Level	Points Needed
Certified	26 - 32
Silver	33 - 38
Gold	39 - 51
Platinum	52-69

4. There are separate LEED certification standards for new construction (LEED-NC), commercial interiors (LEED-CI), and existing building upgrades (LEED-EB).
5. As of May 2005, 2,000 buildings have been registered with the USGBC for certification. An additional 216 buildings have completed certification and are rated as Platinum, Gold, Silver, or Certified.

6. The following are select LEED Certified or registered buildings in Utah:
- Olympic Speed Skating Oval – Kearns (LEED, Certified)
 - OSHA Salt Lake Technical Center – Sandy (LEED, Silver)
 - Scowcroft Building – Ogden (LEED, Silver)
 - Big-D Construction corporate office – Salt Lake City (LEED, registered)
 - Intermodal Hub – Salt Lake City (LEED, registered)
 - Broadway Office Building – Salt Lake City (LEED, registered)
 - University of Utah Health Sciences Education Building – Salt Lake City (LEED, registered)
7. Exhibit #2 in the Administration’s Transmittal (in the Planning Commission’s packet section), details the technical review of costs of LEED certification. It notes that upfront costs can vary depending on the project and the site (with some aspects achieved at no cost – solar orientation, south facing windows, etc). It also notes that the stage at which the LEED concepts are introduced into the design can drastically affect costs (if LEED is considered at the outset, re-design costs are minimized). *“The Cost and Financial Benefits of Green Buildings: A Report to California’s Sustainable Building Task Force”* (Exhibit 3) issued in October 2003 provided a now nationally-recognized cost analysis:

Level of LEED Certification	No. of Buildings	Average Premium
Platinum	1	6.50%
Gold	6	1.82%
Silver	18	2.11%
Certified	8	0.66%
<i>Average</i>	33	1.84%

- *Council Staff Note:* in the recent discussions involving the costs of a proposed Public Safety Building, the consultants estimated a premium of 13% to build to a “Gold” Standard of LEED. Admittedly the consultants were cautious in their estimate, and have communicated to the Police Department that the premium will likely be much lower. No cost premium analysis has been done for other City buildings proposed in the next few years (Fleet Facility, Fire Stations, etc).
- The Administration notes that in the case of the Intermodal Hub, which will eventually be a LEED Certified building, saves 20-25% per year in energy costs. The engineers of the Hub estimated a 10 year payback for the extra cost of construction using the LEED rating system. It should be noted that the Utah Transit Authority, pursuant to the recent Council decision, will be the owner/operator of the Intermodal Hub.

D. The following chart shows the various costs, charged to a developer by the USGBC, associated with LEED project certification:

	Less than 50,000 Square Feet	50,000 - 500,000 Square Feet	More than 500,000 Square Feet
LEED-NC, LEED-CI, & LEED-CS	Fixed Rate	Based on Sq. Ft.	Fixed Rate
Design Review			
Members	\$1,250.00	\$0.025/Square Ft.	\$12,500.00
Non-Members	\$1,500.00	\$0.03/Square Ft.	\$15,000.00
Construction Review			

Members	\$500.00	\$0.01/Square Ft.	\$5,000.00
Non-Members	\$750.00	\$0.015/Square Ft.	\$7,500.00
LEED-NC, LEED-CI, & LEED-CS	Fixed Rate	Based on Sq. Ft.	Fixed Rate
Combined Design & Construction Review			
Members	\$1,750.00	\$0.035/Square Ft.	\$17,500.00
Non-Members	\$2,250.00	\$0.045/Square Ft.	\$22,500.00
LEED-EB	Fixed Rate	Based on Sq. Ft.	Fixed Rate
Initial Certification Review			
Members	\$1,250.00	\$0.025/Square Ft.	\$12,500.00
Non-Members	\$1,500.00	\$0.030/Square Ft.	\$15,000.00

Source: www.usgbc.org

E. City Departments and Divisions provided comments:

1. Building Services – identified the need for staff training in order to provide specialized plan reviews associated with LEED certification.
2. Management Services – would need to include the LEED certification fee and additional building costs as a line item.
3. Economic Development – small business owners applying for the Revolving Loan Fund would need to identify the benefits of LEED and would likely need assistance with the certification process.
4. Airport – The Department of Airports supports the general ordinance and the importance of sustainability, but encourages exceptions to allow for flexibility, should the situation arise that additional expense and time for construction are not in the best interest of the City. The Airport is concerned that LEED certification may be very difficult to obtain for airport buildings because of the unique nature of airports. The costs of certification seem to be prohibitive as well. Based on the Airport’s current master plan, it would cost in excess of \$40,000 in fees to the USGBC to pursue the certification process, and the upfront development costs would be \$59 to \$109 million more than the previously planned costs. The Airport contacted the project manager for the new Delta terminal and concourse in Boston, which was constructed with the sole intent of having a LEED “Certified” rating (and has received much national and international media attention as the first LEED certified airport terminal). As of July, the project manager indicated that they had still not received certifications, and because of the criteria are geared towards standard commercial buildings. Because the certification committee adheres to a strict interpretation of these criteria, it has been difficult to convey to them the unique aspects related to airport facilities.
 - Note: The Administration responded to the Airport’s response, indicating that the USGBC is now working on guidelines specific to airport construction, and that will ideally address these concerns.
5. Fire – The Fire Department supports this ordinance and communicates that it will be a positive feature of the City.
6. Transportation – The Transportation Division supports the ordinance.
7. Public Services

F. On November 16, 2005 the petition was presented at an open house. 19 people attended, with limited representation from Community Councils and non-profit groups (the majority of attendees were architects and engineers). Twelve were in support of the ordinance, one inquired about alternatives, and six left no comments.

G. The Planning Commission discussed the petition on two occasions.

1. On December 14, 2005, the Planning Commission voted unanimously to transmit a favorable recommendation with the following modifications:
 - Add a requirement for a \$10,000 good faith deposit
 - Add standards for review of requests for exceptions
 - Determine whether exceptions should be decided and granted by the Procurement Officer or the Board
 - Require City buildings to be “Silver” rather than “Certified”
 - Develop incentives for the private sector to obtain LEED certification, such as an expedited permitting process
 - a) Discussions included a desire to see incentives for the private sector to building LEED Certified buildings (expedited permitting), public education and awareness of LEED.
2. On January 25, 2006, the Planning Commission discussed the Administration’s revisions as a result of the original Commission meeting. The Administration included all of the above revisions with the exception of creating incentives for private sector developers to obtain LEED certification.
 - Staff clarified that incentives were not included as a part of the ordinance because of the comprehensive budget and staffing considerations that need to be addressed. Administration Staff notes in the transmittal memo to the City Council that this will be addressed as a separate but related issue.
 - The Planning Commission voted to forward a positive recommendation regarding the revised ordinance, but also voted to reaffirm that incentives for private sector LEED certification should be developed by the City.
 - a) Discussions included concern that incentives for the private sector were not included as a part of the ordinance.
 - b) The Planning Director informed the Planning Commission that an incentive program would be worked on, and the Commission would be informed of the City’s progress.

MATTERS AT ISSUE:

- A. The Council may wish to re-visit two of the factors that can be used as a justification for an exemption from the proposed ordinance (B.5.d and f, above, and re-listed below). While it is prudent for the City to give the option of exemption for developers facing funding or construction challenges, the language in the proposed ordinance is fairly vague. The Council may wish to ask the Administration if there is any more specific and objective way to judge these factors (possibly a percentage threshold - if construction costs increase beyond 25%, than the exemption is granted; or a time threshold - if construction would need to be delayed for more than *6 months* to attain LEED certification, than the exemption is granted). It should be noted that Administrative Staff contacted the Attorney’s Office regarding specific number thresholds. The Attorney’s Office advised against specific numbers because projects vary so considerably. The following are the factors that the Council may wish to revisit, that can be used to grant an exemption:
 - The application of LEED standard factors will increase construction costs beyond the funding capacity for the project, or will require that the project’s scope of work or programmatic needs be diminished to meet budget constraints;
 - LEED factors are not reasonably attainable due to the nature of facilities or the schedule for construction;

- B. The Council may wish to consider if and how the \$10,000 “good faith” deposit may negatively impact non-profit developers, who routinely seek City funding, and who generally do not have additional working capital available. The Council may wish to clarify with the Administration if the intent of the ordinance was to include non-profit developers as a “private sector” developer.
- C. The Council may wish to ask the administration if any financial analysis has been conducted to determine the additional costs/benefits to build the recently-approved new Fleet Facility, to Silver LEED standard.
- D. The Council may wish to revisit the policy basis for exempting Redevelopment Agency and Library Fund projects from the LEED Certification requirement. While there may need to be more specific exemption procedures, due to the number and various scales of Redevelopment Agency projects, the Council may wish to ask that these be revisited.

MASTER PLAN AND POLICY CONSIDERATIONS:

- A. On May 8, 2001, the Council adopted a Resolution entitled “Regarding Reducing the Demand for Electrical Power and other Forms of Energy.” The resolution states:
 - “NOW BE IT THEREFORE RESOLVED, that it is the policy of the City Council that Salt Lake City Corporation should set an example to the residents and businesses it represents to conserve electrical power and other forms of energy.
 - BE IT FURTHER RESOLVED, that the City Council requests that the City Administration review its current policies and implement additional policies as necessary to conserve all forms of energy within its departments, divisions, and agencies, particularly during peak hours of energy use and to schedule an update for the City Council by July 1, 2001.”
- B. While no adopted City Master Plans address LEED certification specifically, the following details references to energy efficiency in the various plans:
 1. East Bench Master Plan (1987) – “Advertise and support energy conservation techniques such as car-pooling, home insulation, site design, etc...Require energy efficiency in new and rehabilitated housing which employs public funds...Work with residents interested in constructing greenhouses, solar panels, and other energy efficiency systems.” (p. 7)
 2. Northwest Jordan River/ Airport Master Plan (1992) – “Many energy saving techniques have been published in recent years identifying ways to improve energy efficiency, but they have not been widely applied to existing structures. The perceived cost/benefit for retrofitting for energy conservation limits its application. The City should investigate strategies supporting increased use of energy conservation techniques on a citywide basis...Energy conservation should be addressed comprehensively as a city-wide issue.” (p. 8)
 3. West Salt Lake Community Master Plan (1995) – “Provide for energy efficiency and conservation within the existing infrastructure of the community. Encourage energy efficiency improvements in existing structures; promote the use of energy conservation techniques in all new construction...” (p. 15)
 4. Capitol Hill Master Plan (1999) – “Improve transportation circulation and encourage transportation alternatives that reduce vehicle emissions, such as mass transit, flexible work schedules, and telecommuting.” (p. 22)

5. Sugar House Master Plan (2001) – “Reducing urban heat is of particular importance because of it affects the overall health, comfort and livability for citizens within every community. Urban heating has a direct affect on energy consumption, regional climate, air and water quality, storm water management and urban wildlife. Cool communities strategies should be incorporated into the design of new development wherever possible.” (p. 65)

C. The Salt Lake City Vision and Strategic Plan states the following goal relating to the proposed amendment: “Develop ‘business friendly’ licensing and regulatory practices.”

D. The City’s 1990 Urban Design Element includes statements that emphasize preserving the City’s image, neighborhood character and maintaining livability while being sensitive to social and economic realities.

CHRONOLOGY:

Please refer to the Administration’s transmittal for a complete chronology of events relating to the proposed text amendment.

- July 8, 2005 Mayor issues Executive Order relating to City buildings.
- October 17, 2005 Petition received in the Community Development Dept.
- November 16, 2005 Open House
- December 14, 2005 Planning Commission public hearing
- December 21, 2005 Revised Ordinance request from the City Attorney
- January 25, 2006 Planning Commission considers revised ordinance
- January 26, 2006 Transmittal completed by project planner
- April 27, 2006 Transmittal received in Council Office

cc: Rocky Fluhart, Sam Guevara, Jordan Gates, Rick Graham, Kevin Bergstrom, Tim Harpst, Louis Zunguze, LuAnn Clark, Alexander Ikefuna, Brent Wilde, Doug Wheelwright, Cheri Coffey, Kurt Larson, Val Pope, Barry Esham, Marge Harvey, Janice Jardine, Dave Oka, Valda Tarbet

File Location: Community Development Dept., Requiring LEED Compliance and Certification for City-funded building projects of 10,000 Square Feet or larger, Mayor initiated request

SALT LAKE CITY ORDINANCE

No. _____ of 2006

(Enacting Chapter 18.95 of the Salt Lake City Code Requiring that City Funded Construction obtain a “Certified” or “Silver” Leadership in Energy and Environmental Design (LEED) Designation from the United States Green Building Council (USGBC) under Certain Conditions)

AN ORDINANCE ENACTING TITLE 18, CHAPTER 95, *SALT LAKE CITY CODE*,
REQUIRING LEED CERTIFICATION FOR CERTAIN CITY-FUNDED CONSTRUCTION.

WHEREAS, the City desires to promote sound environmental practices in construction work that is funded by the City; and

WHEREAS, various local stakeholders, including architects, planners, environmental consultants, professors, political leaders, energy experts, health officials, and City staff members have worked with the City extensively to review the Leadership in Energy and Environmental Design (LEED) rating system, which is a system created by the United States Green Building Council (USGBC) to provide a national standard for healthy environmental and energy efficient design; and

WHEREAS, many professionals in our region are familiar with the LEED process, which is considered to be a consensus-based national standard for developing high-performance, sustainable buildings; and

WHEREAS, at this time, the USGBC has formally adopted and promulgated three alternative certification standards, being the LEED Green Building Rating System for New Construction and Major Renovations (LEED-NC) as adopted in November 2002 and revised in November 2005, the LEED Green Building Rating System for Commercial Interiors (LEED-CI) as adopted in November 2002, and the LEED Green Building Rating System for Existing

Buildings Upgrades, Operations and Maintenance (LEED-EB) as adopted in October 2004 and updated in July 2005; and

WHEREAS, the foregoing alternative standards provide for various certifications designated as “Certified,” “Silver,” “Gold,” or “Platinum,” based on the number of specified environmental practices incorporated into a project, with “Certified” being the lowest level of certification; and

WHEREAS, LEED standards are considered to promote a healthy environment, provide long-term cost benefits through the efficient use of energy, optimize building performance, and create healthier workplaces for employees and visitors; and

WHEREAS, the City has determined to require the use of LEED standards under certain circumstances to obtain the benefits promoted by those standards.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Title 18, Chapter 95 of the Salt Lake City Code shall be and hereby is enacted to read as follows:

Chapter 18.95

USE OF LEED STANDARDS IN CITY-FUNDED CONSTRUCTION

18.95.010 PURPOSE. The purpose of this ordinance is to promote development consistent with sound environmental practices by requiring, subject to Sections 18.95.040, 18.95.050, and 18.95.120, that applicable building projects constructed with City construction funds obtain, at a minimum, (1) “Silver” for City owned and operated buildings, or (2) “Certified” for private building projects that receive City funds. These designations shall be from the USGBC as defined herein.

18.95.020 DEFINITIONS. As used in this Chapter:

A. “Applicable building project” means the construction or major renovation of a commercial, multi-family residential, or municipal building that will contain more than 10,000 square feet of occupied space when the design contract for such project commences on or after [to be determined at time of Council consideration], 2006.

B. “Board” means the Board of Appeals and Examiners created under Chapter 18.12 of this Code, hereinafter called “board.”

C. “Building Official” means the director of the division of building services or the designee of the director.

D. “Certified” means the level of compliance with the Leadership in Energy and Environmental Design (LEED) standards designated as “Certified” by the United States Green Building Council (USGBC).

E. “Chief Procurement Officer” means the City employee designated pursuant to Subsection 3.24.040A of this Code or that employee’s designee pursuant to Section 3.24.050 of this Code, or any successor to those Sections.

F. “City construction funds” means funds that are authorized to be used for construction by the City Council for use by any person or City department in order to construct an applicable building project, including, without limitation, loans, grants, and tax rebates. However, this term shall not apply to the funds of the Library or Redevelopment Agency.

G. “City Engineer” means the City employee designated pursuant to Subsection 2.08.080B of this Code or that employee’s designee to Section 3.24.050 of this Code, or any successor to those Sections.

H. "LEED standard" means the Leadership in Energy and Environmental Design (LEED) Green Building Rating System for New Construction and Major Renovations (LEED-NC) as adopted in November 2002 and revised in November 2005, the LEED Green Building Rating System for Commercial Interiors (LEED-CI) as adopted in November 2002, or the LEED Green Building Rating System for Existing Buildings Upgrades, Operations and Maintenance (LEED-EB) as adopted in October 2004 and updated in July 2005.

I. "Major renovation" means work that demolishes space down to the shell structure and rebuilds it with new walls, ceilings, floors and systems, when such work affects more than twenty five percent (25%) of the building's square footage, and the affected space is at least 10,000 square feet or larger.

J. "Silver" means the level of compliance with LEED standards designated as "Silver" by the USGBC.

K. "Substantial compliance" means a determination of good faith efforts to comply as further described in Section 18.95.110 of this Code.

L. "Temporary structure" means any proposed building that is intended to be in existence for five (5) years or less or any existing building that at the time it was constructed was intended to be in existence for five (5) years or less.

M. "USGBC" means the organization known as the United States Green Building Council.

18.95.030 APPLICATION. Whenever City construction funds are used for an applicable building project, such project shall at a minimum obtain a Silver certification by the USGBC in the case of a City-owned building project or Certified certification in the case of all other

projects, subject to the exceptions, waivers, and determinations of substantial compliance provided for in this Chapter.

18.95.040 EXCEPTIONS. The provisions of this Chapter shall not apply if the Building Official and either the Chief Procurement Officer or the City Engineer jointly determine in writing that any of the following circumstances exist:

A. The applicable building project will serve a specialized, limited function, such as a pump station, garage, storage building, equipment area, or other similar area, or a single family residence;

B. The applicable building project is intended to be a temporary structure;

C. The useful life of the applicable building project does not justify whatever additional expense would be incurred to increase the building's long-term efficiency;

D. The application of LEED standard factors will increase construction costs beyond the funding capacity for the project, or will require that the project's scope of work or programmatic needs be diminished to meet budget constraints;

E. The use of LEED standard factors will create an impediment to construction due to conflicts of laws, building code requirements, federal or state grant funding requirements, or other similar requirements;

F. LEED factors are not reasonably attainable due to the nature of the facilities or the schedule for construction; or

G. LEED certification will violate any other federal, state or local law, including, without limitation, other sections of this Code.

If an exception is granted, the developer must agree to integrate green building practices into the design and construction of the project to the maximum extent possible and feasible. A determination that an exception does not apply may be appealed to the board. Such appeal must be submitted in writing to the board within thirty (30) days of the determination.

18.95.050 WAIVERS. The denial of an exception pursuant to Section 18.95.040 does not preclude an application for waiver pursuant to this Section. The board shall have the authority to grant a waiver from the requirements of this Chapter only if it makes the following findings in writing:

A. Literal enforcement of this Chapter would cause unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Chapter;

B. There are special circumstances attached to the project that do not generally apply to other projects that are subject to this Chapter;

C. The waiver would not have a substantially negative affect on the Master Plans, policies, and resolutions of the City and would not be contrary to the purposes of this Chapter;

D. Any asserted economic hardship is not self-imposed; and

E. The spirit of this Chapter will be observed and substantial justice done.

18.95.060 APPEAL OF CITY DECISIONS.

Any private sector developer who is denied an exception, or a determination of substantial compliance, or who is assessed a penalty by the Building Official and either the Chief Procurement Officer or the City Engineer, may appeal such decision in writing to the board within thirty (30) days of the decision and shall state the basis to support the relief sought. The

board shall review the circumstances of the appeal and shall issue a written determination of the receipt of the appeal within thirty (30) days consistent with the requirements of this Section.

18.95.070 APPEAL OF BOARD DECISIONS. Any private sector developer denied a waiver by the board or denied an exception, or determination of substantial compliance, or has had financial penalties imposed on appeal to the board under this Chapter may appeal such decision by the board in writing to the Mayor or the Mayor's designee within thirty (30) days of the decision and shall state the basis to support the relief sought. The Mayor or the Mayor's designee shall review the circumstances of the appeal and shall issue a written determination within thirty (30) days of the receipt of the appeal consistent with the requirements of this Section.

18.95.080 REQUIRED DEPOSIT. All private sector developers, excluding non-profit developers, who receive City funds for applicable building projects shall submit a ten thousand dollar (\$10,000) "good faith" deposit with the City which shall be refunded upon the building project receiving the applicable level of LEED certification or after a determination of substantial compliance.

18.95.090 PROOF OF REGISTRATION. Within thirty (30) days from receiving notice that the City will fund an applicable building project, all private sector developers shall submit written proof that said project is registered with the USGBC. City funds will not be dispersed until the required deposit under Section 18.95.080 and the proof of registration under this Section are received by the City.

18.95.100 REQUEST FOR EXTENSION. If a project is not LEED certified or has not been granted a determination of substantial compliance within one (1) year after a temporary

certificate of occupancy is issued by the City, then a private sector developer must file a written application with the City for an extension to obtain LEED certification. Said application must be filed with the City no later than three hundred and ninety five (395) days after the date on which the certificate of occupancy was issued by the City. The City may grant a one (1) year extension pursuant to this Section and any additional extensions as may be necessary so long as a private sector developer is actively pursuing LEED certification. Extensions pursuant to this Section shall begin on the date granted by the City.

18.95.110 REQUEST FOR SUBSTANTIAL COMPLIANCE. Receipt of LEED certification from the USGBC shall be conclusive evidence of the level of certification stated therein. If certification is not received from the USGBC or is not at the level required by this Chapter, a private sector developer may request that the City issue a determination that the project has substantially complied with this Chapter upon a reasonable demonstration that such project as constructed is consistent with the intent of this Chapter and that strict enforcement of this Chapter would create an unreasonable burden in light of the needs of such project, the ability of the project owner to control cost increases, and other relevant circumstances. The request for determination of substantial compliance must contain the following information:

- A. Final LEED certification application, documentation, and response from the USGBC;
- B. An explanation of the efforts and accomplishments made by the private sector developer to achieve compliance with this Chapter;
- C. An explanation of the practical or economic infeasibility of implementing certain high performance building design or construction techniques that, if implemented, would otherwise have likely resulted in certification; and

D. Any other supporting documents the private sector developer wishes to submit.

18.95.120 DETERMINATION OF SUBSTANTIAL COMPLIANCE

The Building Official and either the Chief Procurement Officer or the City Engineer shall review within sixty (60) days of receipt of a request for determination of substantial compliance and shall approve or deny the request based on the good faith efforts of the private sector developer to comply with this Chapter. In making a determination of the good faith efforts, review of the request shall include whether the private sector developer has established the following:

A. That reasonable, appropriate, and on-going efforts to comply with this Chapter were taken; and

B. That compliance would otherwise have been obtained but for the practical or economic infeasibility of implementing high performance building design or construction techniques.

In making any such determination, cost increases due solely to aesthetic elements shall not constitute any part of a demonstration of unreasonable burden. A determination of substantial compliance pursuant to this Section shall satisfy Section 18.95.030.

If the request for determination of substantial compliance is denied, the private sector developer will be deemed to have not satisfied Section 18.95.030 and shall forfeit the “good faith” deposit under Section 18.95.080 and may be assessed an additional penalty up to the amount originally funded by the City. Any penalty assessed shall be offset by the “good faith” deposit.

18.95.130 PENALTY.

Any private sector developer who fails to (1) comply with this Chapter, (2) apply for an extension pursuant to Section 18.95.100, or (3) receive a determination of substantial

compliance, shall forfeit the “good faith” deposit to the City to cover the cost and inconvenience to the City. An additional penalty may be assessed based on a direct analysis of possible LEED design credits. Given that a total of twenty-six (26) LEED design credits are required for certification, the additional penalty shall be based on the following considerations:

A. If the City determines that a project could have reasonably received 21-25 LEED credits, then the private sector developer shall pay the City up to 25% of the amount originally funded.

B. If the City determines that a project could have reasonably received 16-20 LEED credits, then the private sector developer shall pay the City up to 50% of the amount originally funded.

C. If the City determines that a project could have reasonably received 6-15 LEED credits, then the private sector developer shall pay the City up to 75% of the amount originally funded.

D. If the City determines that a project could have reasonably received 0-5 LEED credits, then the private sector developer shall pay the City up to 100% of the amount originally funded. Failure to pay a penalty within ninety (90) days of written notice from the City shall result in a lien against the project.

18.95.140 RULEMAKING AUTHORIZATION. The Building Official and either the Chief Procurement Officer or the City Engineer are authorized to issue administrative rules under this Chapter.

18.95.150 ADMINISTRATIVE INTERPRETATIONS. Pursuant to the authority granted under Section 18.50.040B, the Building Official may render interpretations of this Chapter. Such

interpretations shall conform with the intent and purpose of this Chapter, and shall be made available in writing for public inspection upon request.

18.95.160 LIMITATIONS. Nothing required under this Chapter shall supersede any federal, state or local law, including, without limitation, other provisions of this Code; or any contract, grant, or other funding requirement; or other standards or restrictions that may otherwise apply to an applicable building project. This Chapter shall not apply whenever its application would disadvantage the City in obtaining federal funds.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective ninety (90) days after the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____, 2006.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 2006.

Published: _____.

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APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date Oct 16, 2006
By Melanie Geif

SALT LAKE CITY ORDINANCE

No. _____ of 2006

(Amending Section 18.12.010 of the Salt Lake City Code to Require One Member of the Board of Appeals and Examiners to be LEED Accredited)

AN ORDINANCE AMENDING SECTION 18.12.010, *SALT LAKE CITY CODE*,

BOARD OF APPEALS CREATED—PURPOSE AND AUTHORITY.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. That Section 18.12.010 of the *Salt Lake City Code*, pertaining to Board Of Appeals Created—Purpose And Authority be, and hereby is, amended to read as follows:

18.12.010 Board Of Appeals Created—Purpose And Authority:

In order to provide for reasonable interpretations of the provisions of Title 18 of this code, and to determine the suitability of alternates, there shall be created a board of appeals and examiners, hereinafter called "board," consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction, housing, and abatement codes and technical disciplines therein. One board member shall be a LEED accredited professional. The board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this title. The board may also recommend new ordinances to the city council.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____,
2006.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 2006.

Published: _____.

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date October 18, 2006
By Melanie Geif

RESOLUTION NO. _____ OF 2006

(Formally Encouraging Adoption of LEED Standards by Library and RDA)

WHEREAS, the City desires to promote sound environmental practices in construction work that is funded by the City; and

WHEREAS, the Leadership in Energy and Environmental Design (LEED) rating system is a system created by the United States Green Building Council (USGBC) to provide a national standard for healthy environmental and energy efficient design; and

WHEREAS, the LEED process is considered to be a consensus-based national standard for developing high-performance, sustainable buildings; and

WHEREAS, LEED standards are considered to promote a healthy environment, provide long-term cost benefits through the efficient use of energy, optimize building performance, and create healthier workplaces for employees and visitors; and

WHEREAS, there are presently four (4) levels of certification available: "Certified," "Silver," "Gold," and "Platinum."

NOW, THEREFORE, BE IT RESOLVED by the City Council of Salt Lake City, Utah, that the City Council formally encourages the Salt Lake City Library Board and the Board of Directors of the Salt Lake City Redevelopment Agency, to pursue the adoption of LEED standards at a level of certification equal to or greater than the City's recently adopted standards, for applicable projects funded by the Library Fund and Redevelopment Agency, for the purpose of promoting development consistent with sound environmental practices.

Passed by the City Council of Salt Lake City, Utah, this _____ day of _____, 2006.

SALT LAKE CITY COUNCIL

By _____
CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

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APPROVED AS TO FORM
Salt Lake City Attorneys Office
Date November 1, 2006
By Melanie King