TOWN of GREENBURGH

Local Law No. 2009/2


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§ 1. Enactment of new Chapter 233, Entitled “Green Building Initiative and Energy Conservation Construction Standards.”

§ 233-1. Legislative Findings and Intent.

The Town of Greenburgh is committed to enhancing the public welfare and assuring that further commercial and civic development is consistent with the Town’s desire to create a more sustainable community by incorporating green building measures into the design, construction, and maintenance of buildings that minimize the short-term and long-term negative impacts on the environment.
In recent years, green building design, construction and operational techniques have become increasingly widespread. Many homeowners, businesses, and building professionals have voluntarily sought to incorporate green building techniques into their projects. A number of local and national systems have been developed to serve as guides to green building practices. At the national level, the U.S. Green Building Council, developer of the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building Rating System and LEED™ Reference Guide, has become a leader in promoting and guiding green building. The Town finds that by requiring certain commercial and Town-sponsored projects to incorporate LEED™ green building measures is necessary and appropriate to achieve the benefits of green building.

The intent of this article is to provide for green building practices designed to achieve the following goals: to encourage resource conservation; to reduce the waste generated by construction projects; to encourage a reduction in the use of energy in both the initial construction of a project, as well as its daily operation; to increase energy efficiency; to promote the health and productivity of residents, workers, and visitors to the Town; to encourage the construction of environmentally sustainable municipal and privately-owned buildings and to encourage the reduction of greenhouse gas (GHG) emissions in the Building Sector to lessen the effects of climate change. A further intent of this article is to benefit the owners and occupants of new commercial buildings, offices, industrial buildings, mixed use building, multiple family residences and senior citizen multiple family residences with the economic benefits of energy and water savings, good indoor air quality and healthy, pleasant and productive surroundings.


For the purposes of this Chapter, certain words and terms used are defined as follows:

ALTERATION -- A change in the supporting members of a building, such as bearing walls, columns, beams, girders or floors, or any other change which is not merely a repair or replacement of any existing part, where such change would tend to:

A. Enlarge or diminish the floor area or usable floor area of the building or any part thereof.

B. Cause a change in the location or height of the exterior walls or roof of the building or structure.

C. Make possible a greater intensity of occupancy or use of the building or structure.

BUILDING -- Any structure intended for the shelter, housing or enclosure of any person, animal, property or substance. Also see "Structure."

APPLICANT -- Any person, corporation, partnership, firm or any other entity making an application to the Town pursuant to this chapter.

FLOOR AREA, GROSS (MULTI-FAMILY AND NON-RESIDENTIAL) -- The sum of the horizontal area of all stories of a building, measured from the exterior faces of exterior walls, or,
in the case of a common wall separating two buildings, from the center line of such common
walls, but excluding unenclosed porches, porticoes, balconies, raised platforms, roof overhangs,
gutters and chimneys, and non-habitable space in a basement devoted to mechanical equipment,
accessory storage, parking and/or loading.

GREEN BUILDING -- The practice of increasing the efficiency of buildings and their use of
energy, water, and materials, and reducing building impacts on human health and the
environment, through better siting, design, construction, operation, maintenance, and removal.

LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) STANDARDS -- A
voluntary, third-party rating system where credits are earned for satisfying specified green
building criteria. Developed by the United States Green Building Council (USGBC), LEED™ is
the nationally accepted benchmark for the design, construction, and operation of high
performance green buildings. LEED™, as defined in this bylaw, will refer to the most current
standards as revised by the USGBC.

COMMERCIAL PROJECT -- Any project, other than a Town-sponsored project, which involves
the construction of commercial buildings, offices, industrial buildings, mixed use building,
multiple family residences and senior citizen multiple family residences.

CONDITIONED SPACE -- an enclosed space in a building that is provided with a mechanical
heating system that has a capacity exceeding 10 Btu/(hr. x ft.2), or is provided with a mechanical
cooling system that has a capacity exceeding 5 Btu/(hr. x ft.2), unless the space-conditioning
system is designed and thermostatically controlled to maintain a process environment
temperature less than 55ºF or to maintain a process environment temperature greater than 90ºF
for the entire space the system serves.

CONSTRUCTION -- The building of any building or structure or any portion thereof.

COVERED PROJECT -- All Town-sponsored construction projects and all commercial projects
within the Town that include 4,000 gross square feet or more of conditioned space. For the
purposes of this Chapter, covered project shall include alteration construction projects that
incorporate 4,000 gross square feet or more of additional conditioned space. An alteration
construction project that consists solely of interior improvements to an existing building shall not
be considered a covered project.

GREEN BUILDING -- A whole systems approach to the design, construction, and operation of
buildings that helps mitigate the environmental, economic, and social impacts of buildings.
Green building practices recognize the relationship between natural and built environments and
seek to minimize the use of energy, water, and other natural resources and provide a healthy,
productive indoor environment.

GREEN BUILDING COMPLIANCE OFFICIAL -- The Commissioner of Community
Development and Conservation or his or her designee.
GREEN BUILDING PROJECT CHECKLIST -- A checklist or scorecard developed by the U. S. Green Building Council, and as may be amended, for the purpose of calculating a score on the LEED™ Commercial Green Building Rating System. Covered projects shall utilize the Green Building Project Checklist that corresponds with the Green Building Rating System approved for use.

GREEN BUILDING WORKSHEET -- A worksheet or form developed by the Green Building Compliance Official, and as may be amended, which specifies information to be submitted prior to any public hearing for site plan review for a covered project. The Green Building Worksheet shall specify the form and content of the required documentation.


LEED™ GREEN BUILDING REFERENCE GUIDE - a supporting document published by the U.S. Green Building Council that provides detailed information, resources, and standards for the five environmental categories covered by the LEED™ Rating System, including information regarding the documentation required for LEED™ certification. Town staff shall maintain the most recent version of the LEED™ Reference Guide at all times.

PRE-PERMITTING DOCUMENTATION -- The documentation required by Section 233-5.

TOWN SPONSORED PROJECT -- Any construction project primarily funded and sponsored by the Town or on Town-owned land.

STRUCTURE -- A building which is constructed or erected is built or constructed, an edifice or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner and permanently attached to the ground


A. The Town of Greenburgh hereby adopts, in principle, the USGBC’s LEED for New Construction (LEED-NC) Rating System, Version 3, and, further, automatically adopts any future versions promulgated by the USGBC. As new rating systems are developed by the U.S. Green Building Council, the Green Building Compliance Official shall have the authority to specify the applicable LEED™ Rating System for a covered project. For the first six months after the release of any new version of the Green Building Rating System, the applicant shall be given the choice at the time the project is formally submitted to the Planning Department for approval with the payment of appropriate fees of using the most current version or the version to be superseded. Town staff shall maintain the most recent version of the applicable LEED™ Rating Systems at all times.

B. The LEED-NC system establishes several levels of environmental achievement from a "Certified" rating to a "Platinum" rating. The ratings are attained by earning LEED points

A. Covered Projects: All covered projects shall meet a minimum LEED™ “Certified” rating, except as modified by the provisions of Section 233-4B.

B. Actions Not Required.
   (1) LEED™ Registration and Certification.
      (a) Applicants are encouraged to register covered projects with the U.S. Green Building Council LEED™ certification through the U.S. Green Building Council but this not a requirement under this Chapter.
   (2) Building Commissioning.
      (a) Building commissioning, although specified as a prerequisite for all LEED™ ratings, is not required under this Chapter. Applicants are encouraged to verify that fundamental building systems are designed, installed, and calibrated to operate as intended.

C. Non-Covered Projects.

   (1) Applicants for non-covered projects are encouraged to use their best efforts to incorporate as many green building measures as feasible from the LEED™ Commercial Rating System.

D. Residential Construction.

   (1) All buildings or structures that are single and two-family residential are exempt from the requirements of this Chapter but must follow the requirements of Section 100-15.

E. Compliance as a Condition of Approval

   (1) Compliance with the provisions of this Chapter shall be listed as a condition of approval on any site plan approval issued for a covered project. Failure to comply with any of the terms of this Chapter shall subject the covered project to the full range of enforcement mechanisms set forth in Section 233-10, below.

§ 233-5 Submission of Site Plan Application Review Documentation.

A. Site Plan Application Review Documentation

   (1) In conjunction with the application for site plan review, the applicant shall submit documentation indicating the measures to be used to achieve the applicable LEED™ rating. The documentation, which shall be submitted to the Green Building
Compliance Official for review, shall also indicate how many credits the covered project will achieve in each category and the level of LEED™ certification that will be met. This documentation shall include:

(a) The Green Building Project Checklist, must be filled out by a LEED™ Accredited Professional, must document which points can and cannot be earned, and must include an estimated cost for each point;

(b) The Green Building Worksheet with an analysis of each credit claimed; and,

(c) Any other documentation that may be necessary to show compliance with this Chapter.

(2) After submission of the documentation required by Section 233-5A, but prior to a public hearing on the site plan application, the Green Building Compliance Official shall arrange a meeting with the applicant to discuss the proposed measures, as needed.

§ 233-6 Review of Pre-Permitting Documentation.

A. Approval.

(1) Notwithstanding any other provision of this Town Code, no building permit shall be issued for any covered project unless and until the Green Building Compliance Official has approved the pre-permitting documentation submitted for the covered project.

(2) The Green Building Compliance Official shall only approve the pre-permitting documentation if it is determined that the pre-permitting documentation indicates that the covered project can achieve the applicable LEED™ rating, as set forth in Section 233-4A. If the Green Building Compliance Official determines that these conditions have been met, the pre-permitting documentation shall be marked “Approved,” and returned to the applicant. The Green Building Compliance Official shall notify the Planning Board and the Building Department that the pre-permitting documentation has been approved.

(3) No site plan approval or building permit shall be issued until the pre-permitting documentation has been approved under this section or an exemption has been granted under Section 233-8.

B. Nonapproval.

(1) If the Green Building Compliance Official determines that the pre-permitting documentation is incomplete or fails to indicate that the covered project will meet the required LEED™ rating for the covered project as set forth in Section 233-4A, he or she shall either:
(a) Return the pre-permitting documentation to the applicant marked “Denied”, including a statement of reasons, and so notify the Planning Board and the Building Department; or

(b) Return the pre-permitting documentation to the applicant marked “Further Explanation Required,” and detail the additional information needed.

C. Re-Submission.

(1) If the pre-permitting documentation is returned to the applicant, the applicant may re-submit the pre-permitting documentation with such additional information as may be required or may apply for an exemption under Section 233-8.

D. Timing of Review.

(1) The Green Building Compliance Official shall review the Green Building Project Checklist and all other pre-permitting documentation for compliance with this Chapter prior to the public hearing on site plan, and again during plan check with the Building Department.

§ 233-7 Compliance.

A. Compliance Review

(1) Building Department staff shall verify that the green building measures and provisions indicated in the pre-permitting documentation are being implemented at foundation inspection, framing inspection, and prior to issuance of a final certificate of occupancy.

(2) The Green Building Compliance Official, Town Engineer or the Building Department staff may also conduct other inspections as needed to ensure compliance with this Chapter. If, as a result of any such inspection, the Green Building Compliance Official Town Engineer, and/or Building Department staff have made a determination that the covered project does not comply with the pre-permitting documentation, a stop-work order may be issued.

(3) At the discretion of the Green Building Compliance Official Town Engineer or Building Inspector, such a stop-work order may apply to the portion of the project impacted by noncompliance or to the entire project. The stop-work order shall remain in effect until the Green Building Compliance Official determines that the project will be brought into compliance with the pre-permitting documentation and this Chapter.
B. Substitution of Credits.

(1) During compliance review for covered projects, flexibility may be exercised by the Green Building Compliance Official to substitute the approved credits with other credits in the approved LEED™ Rating System.

(2) Substitution shall occur only at the request of the applicant and when it is determined that the originally approved credits are no longer feasible.

C. Compliance Documentation

(1) Documentation shall occur in up to three stages:

   (a) Prior to issuance of a final certificate of occupancy;

   (b) After one year of occupancy of any covered project; and

   (c) After five years of occupancy, if deemed necessary by the Green Building Compliance Official.

(2) Prior to issuance of a Certificate of Occupancy certificate.

   (a) Prior to final building approval and/or issuance of a final certificate of occupancy, the applicant shall submit the following to the Green Building Compliance Official:

      [1] Documentation that verifies incorporation of the design and construction related credits from the pre-permitting documentation for the covered project; and

      [2] A letter from the project architect or project contractor that certifies that the building has been constructed in accordance with the approved Green Building Project Checklist. The applicant may also provide:

         [a] Any additional documentation that would be required by the LEED™ Reference Guide for LEED™ certification, and

         [b] Any additional information the applicant believes is relevant to determining its good faith efforts to comply with this Chapter.

(3) After one year of occupancy of any Covered Project.

   (a) After one year of occupancy of any covered project, the applicant, property owner, or building tenant shall submit to the Green Building Compliance Official documentation detailing conformance with the operation, efficiency, and
conservation related credits from the pre-permitting documentation for the covered project. The applicant may also provide:

[1] Any additional documentation that would be required by the LEED™ Reference Guide for LEED™ certification, and

[2] Any additional information the applicant believes is relevant to determining its good faith efforts to comply with this Chapter.

(4) After five years of occupancy of any Covered Project.

(a) If required by the Green Building Compliance Official, after five years of occupancy of any covered project, the applicant, property owner, or building tenant shall submit to the Green Building Compliance Official documentation that details conformance with the operation, efficiency, and conservation related credits approved with the pre-permitting documentation for the covered project. The applicant may also provide any additional information the applicant believes is relevant to determining its good faith efforts to comply with this Chapter.

D. Final Determination of Compliance.

(1) Prior to issuance of an occupancy permit, the Green Building Compliance Official shall review the information submitted by the applicant and determine whether the applicant has achieved the required LEED™ rating, as set forth in Section 233-4A. If the Green Building Compliance Official determines that the applicant has not achieved the required LEED™ rating, the Green Building Compliance Official shall find as follows:

(a) Good Faith Effort to Comply.

[1] If the Green Building Compliance Official determines that the covered project has not met the requirements for the applicable LEED™ rating, as set forth in Section 233-4A, he or she shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with this Chapter.

[2] In making this determination, the Green Building Compliance Official shall consider the availability of markets for materials to be recycled, the availability of green building materials and technologies, and the documented efforts of the applicant to comply with this Chapter.

[3] The Green Building Compliance Official may require additional reasonable green building measures as authorized in Section 233-7D(1)(c)[1] to be taken in the operation of the covered project to mitigate the failure to comply fully with this Chapter.
(b) Noncompliance.

[1] If the Green Building Compliance Official determines that the applicant has not made a good faith effort to comply with this Chapter, or if the applicant fails to submit the documentation required by Section 233-7C(2) within the required time period, then the final occupancy certificate may be withheld.

[2] The Green Building Compliance Official may require additional reasonable green building measures as authorized in Section 233-7D(1)(c)[1] to be employed in the operation of the covered project to mitigate the applicant’s failure to comply with this Chapter. Once the applicant has performed such additional reasonable green building measures, the Green Building Compliance Official shall certify to the Building Inspector that all site plan conditions have been met for final building approval and/or issuance of a certificate of occupancy permit.

[3] If the documentation submitted by the applicant as required by Sections 233-7C(3)(a) and 233-7C(4)(a) reveals that the applicant has not made a good faith effort to maintain the originally approved conservation and energy related credits in the operation of the building, the Green Building Compliance Official may require additional reasonable green building measures as authorized in Section 233-7D(1)(c)[1].

(c) Mitigation

[1] If the Green Building Compliance Official determines that the applicant has not complied with this Chapter, the Green Building Compliance Official may require further reasonable green building measures to be employed in the operation and maintenance of the covered project to mitigate the applicant’s failure to comply fully with this Chapter. Such mitigation measures may include, but are not limited to, landscaping the covered project to decrease water and energy consumption, use of energy efficient fixtures, including the use of energy efficient light bulbs, and education of the building’s occupants and owners regarding on-going energy and resource savings techniques.

E. LEED™ Certification.

(1) For covered projects that have voluntarily registered with the U.S. Green Building Council with the intent to certify the building at the “Certified” level or above, the Green Building Compliance Official may reduce the scope of the Town’s compliance review. Depending on the timing of certification, the documentation required by Sections 233-7C(2)(a), 233-7C(3)(a), and 233-7C(4)(a) may be reduced or eliminated.
§ 233-8 Hardship or Infeasibility Exemption.

A. Exemption.

(1) If an applicant for a covered project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Chapter, he or she may apply for an exemption as set forth below. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.

B. Application.

(1) If an applicant for a covered project believes such circumstances exist, the applicant may apply for an exemption at the time that he or she submits the pre-permitting documentation required under Section 233-5. The applicant shall indicate in the pre-permitting documentation the maximum number of credits he or she believes is practical or feasible for the covered project and the circumstances that he or she believes make it a hardship or infeasible to comply fully with this Chapter. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and compatibility of green building requirements with existing building standards.

C. Meeting with Green Building Compliance Official

(1) The Green Building Compliance Official shall review the information supplied by the applicant, may request additional information from the applicant, and may meet with the applicant to discuss the request.

D. Granting of Exemption

(1) If the Green Building Compliance Official determines that it is a hardship or infeasible for the applicant to meet fully the requirements of this Chapter based on the information provided, the Green Building Compliance Official shall determine the maximum feasible number of credits reasonably achievable for the covered project and shall indicate this number on the pre-permitting documentation submitted by the applicant.

(2) The Green Building Compliance Official shall return a copy of the pre-permitting documentation to the applicant marked “Approved with Exemption” and shall notify the Building Division that the pre-permitting documentation has been approved.

(3) If an exemption is granted, the applicant shall be required to comply with this Chapter in all other respects and shall be required to achieve, in accordance with this Chapter, the number of credits determined to be achievable by the Green Building Compliance Official.
E. Denial of Exemption

(1) If the Green Building Compliance Official determines that it is possible for the applicant fully meet the requirements of this Chapter, he or she shall so notify the applicant in writing.

(2) The applicant may resubmit the pre-permitting documentation in full compliance with Sections 233-5 and 233-6. If the applicant does not resubmit the pre-permitting documentation, or if the resubmitted pre-permitting documentation does not comply with Sections 233-5 and 233-6, the Green Building Compliance Official shall deny the pre-permitting documentation in accordance with Section 233-6B.

§ 233-9 Appeal.

A. Any aggrieved applicant may appeal to the Planning Board the determination of the Green Building Compliance Official regarding:

(1) The granting or denial of an exemption pursuant to Section 233-8;
(2) Compliance with the ordinance pursuant to Section 233-7E; or
(3) The type or scope of mitigation measures required for noncompliance pursuant to Section 233-7D(1)(b).

B. Any appeal must be filed in writing with the Town Clerk for to the Planning Board within fifteen (15) calendar days of the determination by the Green Building Compliance Official. The appeal shall state the alleged error or reason for the appeal. In reviewing the appeal, the Planning Board may request additional written or oral information from the applicant or the Green Building Compliance Official. The Planning Board shall issue a written determination within thirty (30) business days of the first meeting of the receipt of the appeal.

C. The determination by the Planning Board may be appealed to the Town Board by filing a written appeal with the Town Clerk, within fifteen (15) calendar days of the written determination by the Planning Board. The Town Board shall hold a public hearing regarding the appeal within forty (40) business days of the date when the appeal was filed. The Town Board shall issue a written determination within fifteen (15) business days of the close of the public hearing.

§ 233-10 Enforcement.

A. Violation of any provision of this Chapter due to the applicant’s failure to build the covered project in accordance with the covered project’s plans, including the pre-permitting documentation and the conditions of approval in the applicable permit, shall be punishable as provided in Section 285-47 of the Zoning Code of the Town of Greenburgh.

B. Where the applicant has violated any provision of this Chapter due to the applicant’s failure to build the covered project in accordance with the project’s plans, including the pre-
permitting documentation and the conditions of approval in the applicable permit, the Green Building Compliance Official may require mitigation as set forth in Section 233-7D(1)(c)[1].

C. Enforcement pursuant to this section shall be undertaken by the Town through its Green Building Compliance Official, Town Engineer, Town Building Inspector or the Town Attorney.

D. These remedies are cumulative and the choice of one by the Town shall not preclude pursuing the others.

§ 233-11. Fees

Every applicant shall pay a fee of $0.03 per square foot of the project, not to exceed $15,000, to the Town of Greenburgh Green Building Fund. An applicant who registers covered projects with the U.S. Green Building Council LEED™ certification through the U.S. Green Building Council shall have this fee refunded.

§ 2. Severability. If any clause, sentence, paragraph, subdivision, section or part of this chapter or the application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this chapter, or its application to the person or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 3. Effective Date. This law shall take effect six months after filing with the Secretary of State.