



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD

### Ordinance No. 16-21, Green Building Requirements

Meeting Date	File No.	Application Type
May 17, 2021	2020-150-LDR	Land Development Regulations Amendment (City-initiated)

#### Request

Provide a recommendation to the City Commission on Ordinance No. 16-21, a City-initiated request to amend the Land Development Regulations (LDR) for the purpose of requiring that all new construction over 5,000 square feet, whether public or private, obtain Leadership in Energy and Environmental Design (LEED) Certification of minimum Gold level or the equivalent of a nationally recognized certification standard.

#### Background Information

In 2019, the Green Implementation Advancement Board (GIAB) made a recommendation to the City Commission to amend the LDRs to require that all new construction, whether public or private, over 5,000 square feet obtain LEED Certification of minimum Gold level or the equivalent of a nationally recognized certification standard. The City Commission agreed with the recommendation as a means of pursuing more sustainable and energy efficient green building requirements for both private and public development within the city.

The LDRs currently require LEED certification of a silver level or higher, or equivalent certification, for new construction of buildings 50,000 square feet or more within the Central Business District (CBD). In the Mixed Residential, Office, and Commercial (MROC) zoning district, a project that includes a self-service storage facility is required to select from a list of development bonuses that includes achieving a minimum of LEED silver level green building certification.

A review of permits from 2018 – 2020 indicated that approximately 50 permits were issued over the three-year period for new development projects or additions 5,000 square feet or greater. Most of these permits were for single-family residences and commercial construction projects. It is anticipated that the proposed amendment will impact a similar number of projects in the future.

The following timeline highlights the City's ongoing support for green initiatives.

- 2009:** Community organized Green Task Force report submitted to the City Commission.  
Green Task Force established by City Commission.  
City established its 1st Sustainability Officer position in Public Works Dept.
- 2010:** Green Task Force evolved to Green Implementation Advancement Board (GIAB)
- 2015:** CBD regulations require new construction 50,000 square feet or more to obtain United States Green Building Council (USGBC) LEED Silver level or higher, or equivalent certification.
- 2016:** City of Delray Beach certified as a Silver Level Green Local Government by the Florida Green Building Coalition.
- 2019:** GIAB recommended requirement for all new development 5,000+ square feet to obtain LEED Certification of minimum Gold Level or equivalent.
- 2020:** Always Delray Comprehensive Plan adopted, includes Conservation, Sustainability, and Resiliency (CSR) Element; and Performance Measure: Increase in the number of green buildings in the city.

#### Description of Proposal

The proposed amendments enact Article 7.11, Resilient Design and Construction Practices and Section 7.11.1, Green Building Regulations intended to *"promote sustainable development within the City of Delray Beach by mandating efficient design and*

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#### Attachments:

- Draft Ordinance No. 16-21
- GIAB Letter 2019

*construction practices for all new construction and addition(s) which propose to build 5,000 square feet gross floor area or more in one or more buildings on a single parcel or as a part of a unified development.”* The new regulations require the following:

- 5,000 square feet gross floor area or more in one or more buildings on a single parcel or as part of a unified development (both public and private), shall be at a minimum certified as Gold by the USGBC LEED standards or an equivalent certification approved by the City.
- Qualified City Development. Contracts for the design and construction of City buildings shall include the requirement to appoint a qualified person to serve as the LEED facilitator and administrator who shall be responsible for submitting the project for review and certification to USGBC. The LEED facilitator and administrator must be a LEED accredited professional or equivalent.
- Qualified Public and Private Development. At the time of Building Permit application, the following shall be provided:
  - Proof of registration with the USGBC, or equivalent entity;
  - A signed and sealed affidavit from a LEED Accredited Professional, or equivalent designation, stating that the proposed building is designed to achieve the required certification; and
  - A LEED Scorecard, or equivalent document, identifying anticipated credits to be achieved.
- Prior to the issuance of a Certificate of Occupancy, proof of complete required LEED Gold level certification, or equivalent certification submitted or a bond posted with the amount dependent on the square footage (i.e. 3% of the total cost of construction for building(s) 5,000 to 25,000 square feet).
- Forfeiture of bond. The bond required shall be forfeited to the City if the building does not meet the requirements for LEED Gold certification or equivalent certification within one year of the City's issuance of the Certificate of Occupancy for the building.
  - If required certification is not achieved, but a majority of the credits have been verified, the owner shall forfeit a portion of the bond based on any outstanding credits.
  - If less than 50 percent of the required points for certification are obtained, the bond shall be forfeited in its entirety. Funds that become available to the City from the forfeiture of the bond shall be placed in the Sustainability and Resilience Fund.
- Draft rating checklist from a Green Building certification entity must be included with all development applications during site plan review.

The ordinance also defines the Sustainability and Resilience Fund, which is the mechanism to hold forfeited performance bonds *that become available to the City (described in Section 7.11). These funds may be used by the City for the following green initiatives: education and training of City staff; education and outreach for the public; energy efficient improvements to municipally owned properties including weatherization, lighting upgrades, heating, ventilation and air conditioning upgrades; open space/green space improvements such as rights-of-way tree plantings, traffic calming, pollution mitigation, low impact drainage and sanitary sewer improvements; and any other additional improvements consistent with green initiatives as deemed appropriate by the Office of Sustainability and Resilience.*

The provisions in the proposed ordinance will be re-evaluated within three years of adoption for their effectiveness in achieving the desired result of sustainable development throughout the City.

#### **LEED Certification and Other Certifying Entities**

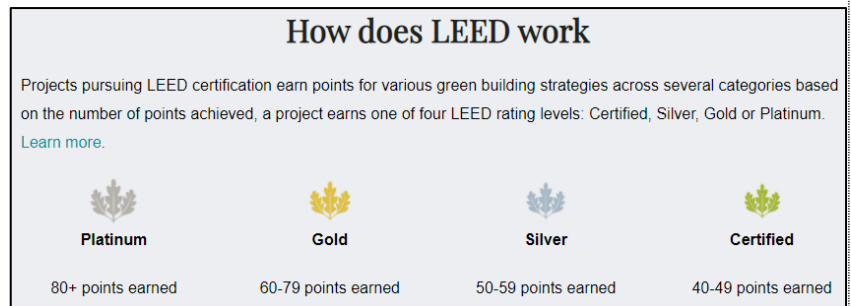
There are a number of green building certifications available; LEED is the most widely recognized with nine certification program types. There are currently six LEED Certified buildings in Delray Beach, three of which are Gold; none of the six LEED certified buildings were required to obtain the certification by the City. Additionally, the Starbucks on Linton Boulevard west of SW 4<sup>th</sup> Avenue obtained the LEED Certified Retail Commercial Interior certification. Since 2015, there have been eight projects in the CBD that reached the minimum 50,000 square foot threshold to require a green building certification.

Other entities that could be utilized for the “equivalent certification” include Green Globes and Florida Green Building Coalition, both of which have been achieved on a variety of building types throughout Delray Beach. Four Green Globes certified buildings have been built, including the Kaufman Lynn Office Headquarters at 3185 South Congress Avenue located within the MROC zoning district (photo at right). Florida Green Building Coalition certifications have been achieved for four buildings in Delray Beach, including two single-family residences. One of the single-family residences is located at 46 SW 14<sup>th</sup> Avenue and was developed by the Delray Beach Community Land Trust.



The LEED v4.1 project checklist for Building Design + Construction: New Construction lists the eight categories of qualifying improvements and their point values to determine the level of certification:

- Location and Transportation- up to 16 points;
- Sustainable Sites- up to 10 points;
- Water Efficiency- up to 11 points;
- Energy and Atmosphere- up to 33 points;
- Materials and Resources- up to 13 points;
- Indoor Environmental Quality- up to 16 points;
- Innovation- up to 6 points; and
- Regional Priority-up to 4 points.



An additional point is available for “Integrative Process.” The maximum number of points available is 110; the points range to achieve the LEED Gold level is 60 to 79. Construction in Florida is required to meet the minimum requirements of the Florida Energy Code, which provides a starting point of approximately 32 points achieved towards a certification.

### Review Process

The existing review process for projects requiring green building certification will not be significantly changed. Applications for projects that require review and approval by a Board or the City Commission prior to the submittal of a building permit will be required to include a draft rating checklist from a green building certification entity. While the draft rating checklist will not be approved by the acting body, its purpose is to illustrate the intended sustainable improvements to be included as part of the development.

The building permit application will require more formalized information such as proof of registration with the certifying entity, an affidavit indicating that the building is designed to meet the required certification, and the scorecard identifying the anticipated credits to be achieved. A qualified City Staff member will be charged with reviewing the documentation upon submittal, reviewing the certification prior to the issuance of the CO, and monitoring the bond requirements, if applicable.

### Review of Best Practices in Green Building Requirements and Incentives in Florida

The City’s Sustainability Office conducted a review of green building requirements throughout the state. Staff’s research found that at least 34 governmental entities either require green building certification or provide incentives for developments to obtain green building certification. Some municipalities, such as Miami Beach and Coral Gables, require that all new construction of a minimum size obtain a green building certification, while others encourage green building certification by providing benefits such as height, density, or floor area ratio (FAR) bonuses. Many municipalities have implemented an expedited permit review process for projects anticipating a green building certification. The City of Tampa has adopted a permit fee rebate program that works as a grant. The City will rebate 50 percent of the building permit fees for single-family residences that obtain a green building certification, and between 20 percent and 80 percent of building permit fees for commercial or multi-family residential development, depending on the certification level. The program has a fixed annual budget, and refunds are available on a first come first served basis.

Florida Statutes Section 255.2575, Energy -efficient and sustainable buildings, requires “all county, municipal, school district, water management district, state university, Florida College System institution, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code. This section applies to all county, municipal, school district, water management district, state university, Florida College System institution, and state court buildings the architectural plans of which

are commenced after July 1, 2008.” Some entities, including the State of Florida, require that new public development obtain a specific type or level of green building certification above the minimum green building compliance required by the State.

## Review and Analysis

Pursuant to **LDR Section 1.1.6(A), Amendments**, the text of these Land Development Regulations may from time to time be amended, changed, supplemented, or repealed. No such action however, shall be taken until a recommendation is obtained from the Planning and Zoning Board and until a public hearing has been held by the City Commission. Any such change shall be made by ordinance, pursuant to procedures found in LDR Section 2.4.5(M).

The Planning and Zoning Board’s recommendation will be provided to the City Commission, where the amendments will be reviewed at two public meetings. The anticipated review dates are June 8, 2021 and July 6, 2021 (Public Hearing).

### Amendments to the Land Development Regulations

Pursuant to **LDR Section 2.4.5(M)(1), Rule**, amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual.

The proposed amendment is City-initiated based on direction by the City Commission at its meeting of December 10, 2019.

Pursuant to **LDR Section 2.4.5(M)(5), Findings**, in addition to LDR Section 1.1.6(A), the City Commission must make a finding that the text amendment is consistent with the Comprehensive Plan.

The following Goals, Objectives, and Policies from the Always Delray Comprehensive Plan support the proposed LDR amendments.

### Housing Element, Goal HOU 4, Innovation and Diversity of Housing Type

Objective HOU 4.2, Housing Sustainability: Promote healthy, safe, and environmentally sustainable housing that is adaptable to changing conditions and diverse households.

Policy HOU 4.2.5: Implement green standards and regulations to require that housing construction and rehabilitation provide durable, adaptable, healthy and energy-efficient homes. [Complete by 2022]

### Capital Improvements Element, Goal CIE 3, Sustainability and Resiliency

Policy CIE 3.1.6: Require green building certification for all new public buildings.

### Conservation, Sustainability and Resiliency Element, Goal CSR 5, Energy Efficiency and Diverse Energy Mix

Policy CSR 5.1.6: Develop sustainable construction standards for City owned buildings and major renovations consistent with Section 255.2575, Florida Statutes, which requires energy efficient and sustainable buildings. Require public infrastructure projects incorporate elements of efficiency for energy and water consumption in new or upgraded infrastructure investments and develop energy efficiency criteria to include in City procurements and capital projects. In the capital improvements planning process, consider the most energy efficient technologies available.

### Performance Measures

Success in addressing the Objectives and Policies of each Goal in the Comprehensive Plan is measured utilizing performance indicators. The following performance measures apply to the proposed amendment.

#### Goal CSR 5, Energy Efficiency and Diverse Energy Mix:

- Reduction in residential, commercial and municipal electricity use;
- Increase in the number of green buildings in the city;
- Increases in energy efficiency municipal retrofit projects; and,
- Increases in City and communitywide renewable energy projects.

#### Goal CSR 7, Sustainable Practices that Increase the Triple Bottom Line:

- Track and increase the number of sustainability policies or regulations adopted including policies incorporated into procurement guidelines;
- Promote the green economy by increasing sustainability-related business within the city.



The proposed amendments move the identified Policies from the Comprehensive Plan forward and provides a standard whereby a majority of new construction in Delray Beach will be required to obtain a certain level of green building certification. The Data, Inventory, and Analysis (DIA) of the Conservation Sustainability and Resilience Element states, “*Delray Beach should evaluate the success of current green building practices and the Central Business District ...then establish more rigorous standards for new City facilities and commercial development projects beyond the Central Business District Zone. The City should extend its sustainable building practices to all City facilities either through requiring participation in a prominent national rating system, or by designing their own menu of requirements, by borrowing techniques from various sustainable building codes. Adopting a green certification requirement for City owned buildings and facilities is a nationally accepted practice.*” The proposed amendment will result in more green buildings in Delray Beach; healthier and more environmentally sustainable housing options and places of employment; and a more sustainable built environment that will spur growth in the local green economy.

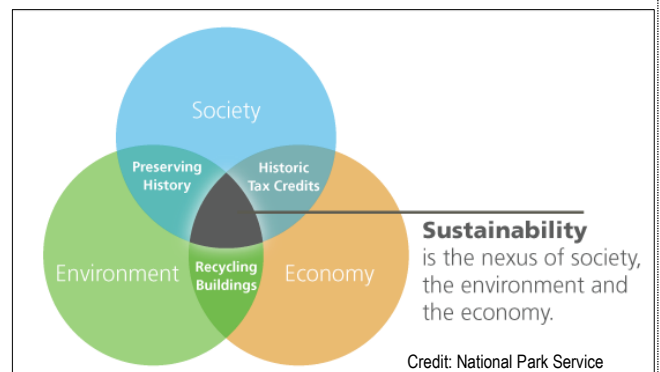
### Advantages of Green Building Requirements

Many programs offer benefits or bonuses to developers and property owners as an incentive to achieve a green building certification while providing a tangible return to offset the additional perceived cost upon improvement. However, studies have shown that there are immediate benefits to green building construction and improvements such as increased property value and reduced day-to-day costs, such as decreased water and electrical usage. The overall added cost to obtain green building certification can be zero, as builders and developers are becoming more familiar with sustainable construction. In instances where the green building certification adds construction cost, often this cost is returned within a few years, at which point the green building is less costly than the conventional construction. However, it must be noted the return on the investment in green building benefits the end user rather than the developer if they are not one and the same. In addition, the improved air quality can reduce health issues and provide a generally overall healthier living or working environment. With the growing climate crisis, requiring green building certification significantly benefits the natural environment by using less water, energy or natural resources and reducing landfill waste. The adoption of the subject amendments would move the City toward a more sustainable and resilient community.

### Historic Preservation Element, Goal HPE 3, Education and Public Awareness

Policy HPE 3.1.1 *Develop an education and outreach program about the benefits of owning a historic site and listing an eligible resource to the Local or National Register of Historic Places; this outreach shall include information about the economic advantages inherent in the rehabilitation of historic buildings and that historic preservation is a form of sustainable development.*

It is important to recognize that preserving a building through adaptive reuse is considered “the ultimate recycling project” as preservation and green building initiatives have overlapping goals, and the larger community benefits from each of these important movements. Historic buildings were traditionally designed with many sustainable features that responded to climate and site orientation. When effectively restored and reused, these historic features can bring about substantial energy savings. Today’s sustainable technology can supplement inherent sustainable features without compromising unique historic character. Many structures across the county, varying in size and use-type, have achieved a green building certification.



A report produced by the Preservation Green Lab of the National Trust for Historic Preservation, *The Greenest Building: Quantifying the Environmental Value of Building Reuse*, provides an analysis of the potential environmental benefit of building reuse. The study concludes that, when comparing buildings of equivalent size and function, building reuse almost always offers environmental savings over demolition and new construction.

Given the square footage threshold, the proposed amendments will not be applicable to a large amount of existing historic structures or new construction in the City’s designated historic districts. Those regulations applicable to the review of new development that is under the purview of the Historic Preservation Board, such as LDR Section 4.5.1, Historic Preservation: Designated Districts, Sites, and Buildings, the Secretary of the Interior’s Standards for Rehabilitation, and the Delray Beach Historic Preservation Design Guidelines, will remain and are not being superseded by the subject amendments. Conflicts between these regulations and green building certification requirements are not anticipated, particularly at a lower certification level, given the inherent benefits that an existing building provides towards supporting green building efforts.

As a Certified Local Government, the City's LDRs require compliance with the Secretary of the Interior's Standards for Rehabilitation. To assist property owners and developers in balancing the requirements of these Standards and sustainable practices, the National Park Service has published "The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings." The guidelines provide both recommended and not recommended methods to providing appropriate sustainable improvements. The Technical Preservation Services division of the National Park Service has a "Sustainability" section with many resources available to assist professionals and property owners in determining the appropriate manner to preserve a historic structure while seeking a sustainable solution.

#### Review By Others

The **Green Implementation Advancement Board (GIAB)** reviewed the proposed LDR amendments at its meeting of February 18, 2021; the amendments were supported as proposed.

The **Downtown Development Authority (DDA)** considered the proposed LDR amendments at its meeting of April 12, 2021. The Board did not support the proposed amendments and expressed concerns about the change from 50,000 square feet to 5,000 square feet in the CBD because the additional requirements could deter development due to additional costs incurred in securing the LEED certification. The Board would like to see the change in requirements phased; and would like more stakeholder input.

The **Pineapple Grove Main Street (PGMS)** group considered the proposed LDR amendments at its meeting of April 14, 2021; the amendments were supported as proposed.

The **Site Plan Review and Appearance Board (SPRAB)** reviewed the proposed LDR amendments at its meeting of April 28, 2021, and the Board was generally supportive of the ordinance. Concerns were expressed regarding the added expense to single-family residences and smaller development; the need for incentives or benefits; and the change from LEED Silver to Gold level certification.

The **Historic Preservation Board (HPB)** reviewed the proposed LDR amendments at its meeting of May 5, 2021; a recommendation of approval was made on a vote of 6 to 0 with the modification that the minimum level is LEED Certification or Silver, and the recommendations that incentives be provided to achieve a higher certification and to consider the need to phase to a higher level as the minimum at the 3-year review.

#### Alternative Actions

- A. Recommend **approval** to the City Commission of **Ordinance No. 16-21**, amending the Land Development Regulations for the purpose of requiring that all new construction over 5,000 square feet, whether public or private, obtain Leadership in Energy and Environmental Design (LEED) Certification of minimum Gold level or the equivalent of a nationally recognized certification standard, by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- B. Recommend **approval** to the City Commission of **Ordinance No. 16-21, as amended**, amending the Land Development Regulations for the purpose of requiring that all new construction over 5,000 square feet, whether public or private, obtain Leadership in Energy and Environmental Design (LEED) Certification of minimum Gold level or the equivalent of a nationally recognized certification standard, by finding that the amendment as amended and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- C. Recommend **denial** to the City Commission of **Ordinance No. 16-21**, amending the Land Development Regulations for the purpose of requiring that all new construction over 5,000 square feet, whether public or private, obtain Leadership in Energy and Environmental Design (LEED) Certification of minimum Gold level or the equivalent of a nationally recognized certification standard, by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.

#### Public and Courtesy Notices

☒ Courtesy Notices were provided to the following:

- Delray Beach Chamber of Commerce

☒ Public Notices are not required for this request.