

BE IT ENACTED, by the Town Board of the Town of New Castle as follows:

Section 1 The Town Code of the Town of New Castle is hereby amended by adding a new Chapter 74 entitled “Green Building Law” to read as follows:

“Green Building Law

74-1. Purpose & Intent

1. The Town of New Castle (“Town”) is committed to enhancing the public welfare and assuring that further 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 short-term and long-term negative impacts on the environment.
2. 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 buildings. A number of local and national systems have been developed to serve as guides to green building practices. The Town finds that requiring certain buildings to incorporate green building measures is necessary and appropriate to realize the benefits of green building.
3. The intent of this chapter is to mandate green building practices designed to encourage the following: resource conservation; reduction of waste generated by construction; reduction in the use of energy in both initial construction and daily operations; energy efficiency; promoting the health and productivity of residents, workers, and visitors to the Town; construction of environmentally sustainable municipal and privately owned buildings; and reduction of greenhouse gas emissions to mitigate the impacts of climate change. A further intent of this chapter is for the owners and occupants of new commercial buildings, offices, mixed-use buildings, and residences to gain the economic benefits of energy and water savings, and the health benefits of good indoor air quality.

74-2. Applicability

- A. This chapter shall apply to all applications for building permits in the following categories:
 1. All new construction of municipal buildings greater than 5,000 square feet of conditioned space or major modifications to municipal buildings greater than 5,000 square feet of conditioned space;

2. All new construction of commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space or major modifications to commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space;

B. This chapter shall apply to all existing municipal buildings that are greater than 5,000 square feet of conditioned space at the conclusion of any subject work.

C. This Chapter shall not apply to new single- or two-family dwellings, and multifamily dwellings of three stories or less, including townhouses, which dwellings are subject to Energy Star requirements as set forth in Chapter 46 of the Code of the Town of New Castle.

74-3. Definitions

APPLICANT

Any person, corporation, partnership, firm, or any other entity making an application to the municipality pursuant to this article.

BENCHMARKING

Collecting building data regarding the total energy and water usage for the previous calendar year, to be used in comparing data from that building in other calendar years, and data for other similar buildings.

BENCHMARKING TOOL

The U.S. Environmental Protection Agency's Energy Star Portfolio Manager internet-based database system and any complementary interface used to track and assess the energy and water use of certain buildings relative to similar buildings.

BUILDING

Any edifice 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, used or intended for supporting or sheltering any use or occupancy.

CERTIFIABLE

To attain the number of points, as determined by the Building Inspector, that are necessary to meet the requirements of the applicable level of the green building rating system. It is not required that the building be certified by the U.S. Green Building Council or other applicable green building authority.

COMMERCIAL BUILDING

Any building other than a residential, manufacturing, utility, or municipal building, including without limitation: offices, retail facilities, warehouses, mixed-use buildings, schools and other educational buildings, and sports and entertainment facilities.

CONDITIONED SPACE

Any area within a building that is artificially heated or cooled by fixed equipment. Spot heating of small portions of a larger space does not render the area

conditioned space.

CONSTRUCTION

The erection of any building or structure or any portion thereof.

COVERED BUILDING

A building that is required to meet the green building standards of this article.

ENERGY AND WATER BENCHMARKING DATA

Information required by U.S. Environmental Protection Agency's Energy Star Portfolio Manager internet-based database system to determine the total energy and water usage of a covered building for the previous calendar year.

ENERGY STAR HOMES RATING SYSTEM

A set of guidelines for energy efficiency developed by the EPA and the Department of Energy.

ENERGY STAR HOME REPORT

A report completed by a Home Energy Rating System rater which yields a projected Energy Star rating for a home before construction begins.

FIXED EQUIPMENT

Equipment that is fixed or attached to real property permanently as an appendage and is not readily portable. For example, a space heater and a floor fan are not fixed equipment.

FUNDED

To provide direct financial contributions to the building; it does not include to guarantee a loan, provide incentives, or otherwise provide indirect financial assistance.

GREEN BUILDING

A whole systems approach to the design, construction, and operation of buildings that helps mitigate the environmental impact 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 indoor environment. Green building can also refer to a building built to standards that are more environmentally friendly than normal building standards.

HERS

See Home Energy Rating System.

HIGH RISE MULTI-FAMILY RESIDENTIAL

Multi-family residential construction of four stories or more.

HISTORIC BUILDING

Buildings that are listed in or have been officially declared eligible for listing in the National Register of Historic Places, or are designated as historic under an applicable state or local law.

HOME ENERGY RATING SYSTEM (HERS) RATER

A person who has passed the Residential Energy Services Network (RESNET) National Rater Test.

HOME ENERGY RATING SYSTEM (HERS) INDEX

A scoring system established by RESNET in which homes are compared to a HERS Reference Home (based on the 2006 International Energy Conservation Code).

INDUSTRIAL BUILDING

A building whose principal use is manufacturing, vehicle maintenance, fueling or storage, waste storage or treatment, water treatment, equipment maintenance or storage, telecommunications equipment, or public utility.

LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) STANDARDS

A voluntary, third-party rating system developed by the U.S. Green Building Council where credits are earned for satisfying specified green building criteria.

LEED ACCREDITED PROFESSIONAL (AP)

Any person who has passed the LEED Professional Accreditation Exam administered by the Green Building Certification Institute (GBCI).

LEED CHECKLIST

A checklist developed by the U.S. Green Building Council for the purpose of calculating a score on the LEED Rating System.

LOW RISE MULTI-FAMILY RESIDENTIAL

Multi-family residential construction, including townhomes, of three stories or less.

MAJOR RENOVATION

Modification of an existing building where the scope of work of the project includes at least one of the following:

1. Construction work in space containing at least fifty percent of the building's floor area; or
2. Construction work which increases the square footage of conditioned space in the building by at least fifty percent.

MULTI-FAMILY

Containing three or more dwelling units.

MUNICIPAL BUILDING

Any building that is either:

1. Owned, or
2. At least fifty percent funded, or
3. On land owned, or
4. Where greater than fifty percent of the conditioned floor area is leased by the Town or any unit thereof.

This definition applies notwithstanding any outside federal, state or county funding for the building.

PROJECT

A design and construction undertaking comprised of work related to one or more site improvements. Multiple modifications of the same building or simultaneous related work in conjoined structures under common ownership or control may constitute a single project for the purposes of the size requirements of this article. Separate modifications within a project may have different design professionals and job numbers, and may result in the issuance of one or more permits.

RATING SYSTEM

A system designed to rate green building criteria for particular buildings. For example, LEED for New Construction (LEED-NC), LEED for Existing Buildings: Operations and Maintenance (LEED EB:OM), LEED for Schools, and LEED for Homes are all different rating systems.

REHABILITATION

Renovation, alteration, or reconstruction.

RESIDENTIAL BUILDING

Any building used for living, sleeping, eating, and cooking. Residential buildings include one-family, two-family, and multi-family residences and dormitories. For the purposes of this article, a residential building does not include long term care facilities, assisted-living facilities, or hotels, motels, inns, or any similar commercial enterprises wherein rooms or suites of rooms are occupied transiently. Buildings used for purposes identified in the preceding sentence are considered commercial buildings.

SPECIAL PURPOSE UNIT OF GOVERNMENT

Independent governmental units that exist separately from, and with substantial administrative and fiscal independence from, general purpose local governments such as county, city, town, and village governments, and that are created to provide a specific service in a specific region.

VERSION

A particular iteration of a specific LEED green building rating system. For example, LEED-NC 3.0 is a version of the LEED-NC rating system.

74-4. Green Building Rating Systems

- A. The Town hereby adopts the USGBC's LEED for New Construction (LEED-NC) Rating System, Version 3.0. The Town Clerk shall maintain copies of the current green building standards in effect under this article and any additional documents necessary for applicants to comply with the standards of this article.
- B. Because green building standards are highly technical and the Building Inspector has the proper expertise to determine whether new standards are appropriate, he or she shall be in charge of adopting new LEED or Energy Star rating systems, new versions of LEED or Energy Star, a green construction code, or a different green building rating system. Whenever the Building Inspector considers adopting a new system, version, or code, he or she shall follow the

process below.

1. The Building Inspector shall determine whether or not to adopt the new rating system, version, or code based on the following standards:

- a. The new rating system, version, or code must have been established by a government agency or by a not for profit organization whose standards have achieved widespread acceptance,
- b. The new rating system, version, or code, looked at as a whole, must be no less protective of the environment than the prior rating system, version, or code,
- c. The new rating system, version, or code must be designed to reflect recent scientific, engineering, and technological knowledge,
- d. The new rating system, version, or code cannot be adopted primarily for the benefit of a particular project or applicant, and
- e. The new rating system has been determined by the town attorney to be consistent with applicable law.

2. If the Building Inspector decides to adopt the new rating system, version, or code, he or she must make public this adoption by filing the adoption with the Town Clerk and giving public notice of the adoption in the manner customary for the Town. The new rating system, version, or code shall not apply to any new buildings for which a building permit had already been issued at the time that such filing and notice have been effectuated.

3. Nothing in this section shall abrogate the authority of the Town Board to adopt, modify, or repeal green building standards that have been adopted by the Building Inspector.

C. If a different green building rating system other than LEED or Energy Star is adopted pursuant to § 4(B), the other provisions of this article are deemed modified to conform thereto.

74-5. Standards for Compliance

A. All new construction of covered buildings must comply with the following standards:

1. All municipal buildings greater than 5,000 square feet of conditioned space must be at least LEED Silver certifiable.
2. All commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space must be at least LEED Silver certifiable.

3. All new construction of covered commercial, high rise multi-family residential and municipal buildings must attain at least 4 points from the Energy and Atmosphere Credit 1 of the LEED – NC check list.
- B. All major renovations to covered buildings (municipal, commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space) must comply with the following standards.
1. Any new boiler, furnace, hot water heater, and central air conditioning unit installed in a covered building undergoing a major renovation must be Energy Star compliant.
 2. Attain at least 4 points from the Energy and Atmosphere Credit 1 of the LEED – NC check list.
- C. Applicants for covered buildings are not required to attain LEED certification from the USGBC nor are they required to share energy and water usage data with USGBC under LEED’s minimum program requirements.

74-6. Compliance Process

- A. New construction and major modifications.
1. Applications. Every applicant who files a building permit application for new construction of or major modification to a covered building must submit to the Building Inspector:
 - a. A completed LEED checklist demonstrating the LEED points a building is designed to obtain.
 - b. A written explanation of how the building will obtain the LEED points identified in the checklist.
 - c. Design plans that demonstrate compliance with the applicable standard required by § 5 of this article,
 - d. Any other documents or information the Building Inspector finds necessary to decide whether the building will achieve the applicable standard required by § 5 of this article, and
 - e. An application fee to cover the cost of Town and third party inspection services. The application fee will be established by the Town Board and published in the annual fee schedule and will be graduated depending on the size of the building. The Town has the right to obtain an additional fee from the applicant if the application fee does not cover the full cost of the Town

and third party inspection services. Any unused portion of this fee will be returned once the building attains the required rating as set forth in § 5(A) or the application is withdrawn.

- f. If the applicant can show a clear and specific inconsistency between meeting a state or federal legal requirement and the attainment of one or more particular LEED points, or that antitrust laws prevent the municipality from requiring a particular LEED point or set of points, either of which could invalidate this article or a provision thereof, the applicant should document the conflict in the application. The Building Inspector shall review the documentation in consultation with the Town's legal counsel and if such inconsistency exists, will deem the LEED point to have been achieved by the building if otherwise applicable building and energy conservation code requirements have been met.
2. Approval. No building permit shall be issued for any covered building unless the Building Inspector determines the application demonstrates that the covered building will attain the applicable standard as required by § 5 of this article.
3. Non-approval. If the Building Inspector determines that the documentation is incomplete or indicates that the covered building will not meet the required standard in § 5 of this article, the Building Inspector shall either:
 - a. Return the documentation to the applicant marked "denied," including a statement of reasons for the denial; or
 - b. Return the documentation to the applicant marked "further explanation required," and detail the additional information needed.
4. Resubmission. If the documentation is returned to the applicant, the applicant may resubmit the documentation with such additional information as may be required or may apply for a partial exemption under § 8 of this article.
5. Decisions by the Building Inspector. All decisions by the Building Inspector, including but not limited to: approval or non-approval of applications for a building permit, issuance of a stop work order, substitution of LEED points or Energy Star features, and temporary approval and mitigation measures, shall be in writing. These decisions will be provided to the affected applicants. Copies will be retained by the Town and made available for public inspection.

74-7. Enforcement

- A. Compliance Review. The Building Inspector shall determine whether the

specifications identified in the documentation provided pursuant to § 6(A) have been implemented by conducting inspections at any time during construction or until the issuance of a final certificate of occupancy. The applicant shall provide the Building Inspector with access to the premises in order to conduct inspections to ensure compliance with this chapter. The Town may require the applicant to provide information and documents showing use of products, equipment, and materials specified in the documentation provided pursuant to § 6(A). If the Town determines that the building is not being constructed in accordance with the documentation, the Building Inspector may issue a stop work order. This order may apply to a portion of the building or to the entire building and shall remain in effect until the Building Inspector determines that the building will be brought into compliance with the documentation and the requirements of this article.

- B. **Inspection Services.** The Building Inspector may contract with a qualified individual or entity to perform inspection services to advise with respect to whether an applicant has met the requirements of this Chapter. The inspection reports and recommendations issued by such individual or entity will be reviewed by the Building Inspector, who will decide whether to accept, reject or modify them. The Building Inspector may enter into an agreement with one or more municipalities to retain the services of an individual or entity to perform such services. The cost of these services will be borne by the applicant through application fees as set forth in § 6(A)(1)(e).
- C. **Substitution of LEED points or Energy Star features.** During compliance review, the Building Inspector may exercise flexibility to substitute the approved LEED points with other LEED points or to substitute approved Energy Star features with other Energy Star features so long as the building will still attain the green building rating required by this chapter. Substitution shall occur only at the request of the applicant and when it is determined by the Building Inspector that the originally approved points or features are no longer feasible or that the substitute point or feature will realize a more favorable result as determined by the Building Inspector. Substitution is at the discretion of the Building Inspector.
- D. **Final Approval.** The Town Building Department shall not issue a final certificate of use and occupancy for any construction of a covered building unless it finds that the building has achieved the standard required under § 5 of this chapter.
- E. The Town Board shall establish a penalty schedule to be applied when the Building Inspector determines that a violation of this Chapter has occurred with respect to any existing building. This penalty schedule will be published in the annual schedule of fees.

74-8. Exemptions

The provisions of this chapter apply to all covered buildings with the following exemptions.

- A. **Hardship or infeasibility.** If an applicant believes that circumstances exist that

make it a hardship or infeasible to meet the requirements of this chapter, the applicant may apply for a partial exemption as set forth below. The burden is on the applicant to show hardship or infeasibility.

1. Factors to consider in determining whether hardship or infeasibility exist include, but are not limited to: availability of green building materials and technologies, compatibility of green building requirements with other government requirements and building standards, availability of markets for materials to be recycled, and financial infeasibility
 2. "Hardship" means some verifiable level of difficulty or adversity arising from the factors identified in § 8(A)(1) or other circumstances beyond the control of the applicant, by which the applicant cannot reasonably comply with the requirements of this chapter.
 3. "Infeasible" means the existence of verifiable obstacles arising from the factors identified in § 8(A)(1) or other circumstances beyond the control of the applicant which render the applicant incapable of complying with the requirements of this chapter.
 4. Application. The applicant may apply for an exemption at the time of submission of the documentation required in § 6 of this chapter. The applicant shall indicate the maximum number of credits he or she believes is feasible for the building to obtain and the circumstances that make it a hardship or infeasible to fully comply with this chapter.
 5. Granting of Exemption. If the Building Inspector determines that it is a hardship or infeasible for the applicant to meet the requirements of this chapter, he or she shall determine the maximum feasible number of credits reasonably achievable for the building. If an exemption is granted, the applicant shall be required to comply with this chapter in all other respects and shall be required to attain the number of credits determined to be achievable by the Building Inspector.
 6. Denial of Exemption. If the Building Inspector determines that it is not a hardship or infeasible for the applicant to meet the requirements of this chapter, he or she shall so notify the applicant in writing with a statement of reasons for the denial.
- B. Historic buildings. If an applicant believes that circumstances exist under which a historic building should not be required to meet the standards of this chapter to maintain historic integrity, he or she may apply for a partial exemption. The process for granting a partial exemption shall be the same as that in §§ 8(A)(4) – (6) above.

74-9. Exclusions

County, state, and federal facilities, special purpose unit of government facilities, buildings of municipalities other than the one enacting this chapter, and houses of worship are excluded from the requirements of this chapter.

74-10. Construction and Demolition Diversion

- A. This section shall apply to all new construction of and major renovations to commercial, high rise multi-family residential and municipal buildings.
- B. An applicant shall meet the requirements necessary to obtain at least one point under LEED v 3.0 MR Credit 2, entitled "Construction Waste Management," by developing and implementing a construction waste management plan that, at a minimum, identifies the materials to be diverted from disposal and whether the materials will be sorted on-site or comingled. The plan shall be submitted to the Building Inspector during the compliance process as set forth in § 6 of this chapter.
- C. Exemption. If an applicant believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this section, the applicant may apply for an exemption in the same manner as set forth in § 8 of this chapter. In determining whether to grant or deny the request, the Building Inspector shall comply with the requirements of § 8 of this chapter.

74-11. Appeals

Any person aggrieved may appeal in writing any decision or determination by the Building Inspector under this chapter including the granting or denial of an exemption or compliance with the chapter to the Town Zoning Board of Appeals. Any appeal must be filed with the secretary of the Town Zoning Board of Appeals not more than 60 days after the decision or determination by the Building Inspector is furnished to the applicant. The appeal shall state the alleged error or reason for the appeal. The Town Zoning Board of Appeals shall review the decision or determination under the same standard of review it would generally use in its appellate capacity and may uphold, reverse or modify the decision or determination, or refer the matter back to the Building Inspector for such further action as may be directed by the Town Zoning Board of Appeals. The Town Zoning Board of Appeals may not grant variances from the technical requirements of the applicable rating system, version, or code, but it may review the Building Inspector's interpretation of such requirements.

74-12. Severability

If any subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions or any part thereof.

74-13. Other Applicable Regulations

Notwithstanding anything in this chapter, nothing in this chapter obviates the need to comply with otherwise applicable building code requirements for building permits, temporary certificates of use and occupancy, final certificates of use and occupancy, fire, safety and electrical codes, and any other applicable land use or environmental requirements such as subdivision regulations, site plan review, or special use permit approval.”

§2. This local law shall take effect immediately upon its adoption and filing in the office of the Secretary of State.

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