An Act To Implement a Green New Deal for Portland

An Act to Implement a Green New Deal for Portland promotes sustainability and sustainable communities by: ensuring that all building projects receiving $50,000 or more in public funds are built using up-to-date environmental standards, with solar-ready or living roofs, and additional worker pay and training; increasing the numbers of affordable units built in developments of 10 units or more, and the affordability of those units; and asking the Council to annually monitor use of fossil fuel infrastructure in the city and to come up with plans to reduce this infrastructure to meet stated emissions targets.

1. That Chapter 2, Section 2-302 of the Portland City Code is hereby amended to read as follows:

Sec. 2-302. Contracts; purchases.

... (b) Supplies, materials and/or services procurement. The City Manager shall have the authority to award any bid and to execute any contract or approve any purchase for and in behalf of the City for supplies and/or materials to be furnished and/or services to be performed for the city, including without limitation professional consulting services, provided that:

(1) The Finance Director certifies that funds are available for such procurement; and

(2) The bid is awarded and the contract or purchase executed as the result of a competitive process, which shall mean either by competitive bidding or request for proposals; and

(3) Any firm awarded a city funded contract or contracts aggregating $50,000 or more, for the construction of any buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports, public schools, or any other structures upon which construction may be let to contract by the City, the awardee, including all sub-contractors, must:

a. compensate all employees on the project at no less than the wage rates and benefits determined pursuant to 26 M.R.S.A. §1306 or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater;

b. require all workers employed on the project in construction work to complete, at a minimum, a time-paid 10-hour training
course for safety established and/or approved by the United States Department of Labor, Occupational Safety and Health Administration prior to work on the project, where “construction work” has the same meaning as in 29 C.F.R. § 1926.32(g); and

c. employ on the project the following minimum number of apprentices, to the extent qualified apprentices are determined to be available in accordance with applicable rules adopted by the Maine Department of Labor as provided by Apprenticeship in Energy Facility Construction, 26 M.R.S. § 3501, where “apprentice” has the same meaning as in 26 M.R.S. § 3501, subsection 1:

   i. for any contract awarded on or after January 1, 2021 and before January 1, 2023, a number equal to at least 10% of all persons employed on the project;

   ii. for any contract awarded on or after January 1, 2023 and before January 1, 2025, a number equal to at least 17.5% of all persons employed on the project;

   iii. for any contract awarded on or after January 1, 2025, a number equal to at least 25% of all persons employed on the project.

... 

(e) Exceptions to required competitive process. The requirement of a competitive process set forth in subsection (b) above may be waived by the City Manager, in his or her discretion, if one (1) or more of the following conditions are met, provided that all other provisions set forth in subsection (b) above are met, and the Finance Director has certified that funds are available for such procurement:

...

2. That Chapter 6, Sections 6-98, 6-165, 6-166, 6-167, 6-168, 6-169, 6-170, 6-173, 6-174, 6-175, 6-176 and 6-177 of the Portland City Code are hereby amended to read as follows:

Sec. 6-98. Adoption of standardized codes.

(a) The City hereby adopts the following codes by reference, pursuant to 30-A M.R.S. § 3003:

   1. The Maine Uniform Building and Energy Code (“MUBEC”), as required by 10 M.R.S. § 9724; and
2. The appendix to the Maine Uniform Building and Energy Code ("MUBEC") containing optional energy conservation and efficiency requirements, as provided by 10 M.R.S. §9722, sub-$6, ¶O; and


(b) MUBEC and the appendix to MUBEC containing optional energy conservation and efficiency requirements shall be enforced by the building authority, which shall be accomplished through inspections performed by the City building official and code enforcement officers, pursuant to 25 M.R.S. § 2373.

(c) To the extent that any standard or provision of MUBEC conflicts with any standard or provisions from the appendix to MUBEC containing optional energy conservation and efficiency requirements, the standard or provision contained in the appendix shall control and be enforced by the building authority, as provided above.

(d) The NEC shall be enforced by the building authority.

Sec. 6-165. Purpose.

The purpose of this article is to establish the energy performance and roofing requirements for constructing and renovating city buildings and certain publicly-funded building projects with the goal of planning, designing, constructing, and managing to maximize energy performance, minimize adverse environmental impacts, provide healthy work places, conserve natural resources, and promote sustainable development in Portland.

Sec. 6-166. Definitions.

Funded in whole or in part: (a) Receipt of tax increment financing in an amount greater than two hundred fifty thousand dollars ($200,000$50,000); or (b) receipt of grants by the City, HOME loans, Community Development Block Grant loans or Neighborhood Stabilization Program loans, the sum of which is greater than two hundred fifty thousand dollars ($200,000$50,000); or receipt of other funds, gifts, resources, property, or other thing or things of value from or by the city of Portland, to promote, allow for, contribute to, or
otherwise facilitate the new construction or renovation project, the aggregate dollar value of which, net remuneration to the city of Portland, is greater than fifty thousand dollars ($50,000).

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

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

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

Living roof: The media for growing plants, as well as the set of related components installed exterior to a facility's roofing membrane for the purpose of increasing renewable energy resources, aiding stormwater management, and promoting biodiversity. Living roofs may include roof gardens, green roofs, landscaped roofs, and other rooftop areas designed to achieve such purposes.

Qualified professional: A person (a) engaged or employed in fields of architecture, building design, construction, energy efficiency, engineering, or related specialty or consultancy; and (b) holding relevant professional licensure or “green building” professional certification, including but not limited to Professional Engineer licensure, LEED Accredited Professional (AP), Well AP, Certified Passive House Consultant (CPHC) or Certified Passive House Designer (CPHD), Green Globes Professional, or similar credential.

Renovation:

(a) At the time of the application, the total construction cost is greater than or equal to the market value of the property as determined by the city’s tax assessor; or

(b) A conversion from non-conditioned to conditioned space; or

(c) An addition of building gross square footage greater than or equal to the gross square footage of the existing building; or
(d) Any change to the use category of a structure or property, as defined in chapter 14 of this code.

**Solar zone:** An allocated space on a new construction or renovation project that is unshaded and free of obstructions, serving as a suitable place where solar panels can be installed at a future date. The solar zone can be located at any of the following locations:

(a) Roof of the building.
(b) Overhang of the building.
(c) Roof of another structure located within 250 feet of the primary building.
(d) Overhang of another structure within 250 feet of the primary building.
(e) Covered parking installed with the building project.
(f) Other structures including, but not limited to, trellises, arbors, patio covers, carports, gazebos, and similar accessory structures.

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

All new construction and renovation projects to be owned, or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 2,000 square feet in floor area or greater shall be certified to or above the most recently published and applicable LEED Silver Standard using appropriate LEED Rating System, and shall be certified by a licensed engineer or qualified professional as compliant with the Better Roof Requirements contained in Section 6-175 below, particularly those listed below thereof and whole thereof:

(a) LEED 2009 for Commercial Interiors.

(b) LEED 2009 for Existing Buildings, Operations, and Maintenance.

(c) LEED 2009 for Healthcare.

(d) LEED 2009 for New Construction and Major Renovations.

(e) LEED 2009 for Schools.
All new construction and renovation projects to be owned or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 105,000 square feet in floor area or greater shall demonstrate, under any third-party certification and quality assurance system (e.g. LEED, Passive House, Living Building, or Green Globes) or energy model signed by a licensed engineer or qualified professional, a certain percentage improvement in the proposed energy performance of the building compared to the minimum baseline performance rating per ASHRAE Standard 90.1, being particularly the most recently published version thereof and the whole thereof, or equivalent standard if the ASHRAE Standard 90.1 is not applicable to the project. Such percentage improvement shall be or exceed thirty percent (30%) for new construction, twenty-five percent (25%) for existing buildings, and twenty percent (20%) for historic buildings. All such new construction and renovation projects to be owned or occupied by the city of Portland, or to be funded in whole or in part by the City of Portland, that are of 5,000 square feet in floor area or greater shall be certified by a licensed engineer or qualified professional as compliant with the Better Roof Requirements contained in Section 6-175 below.

Copies of the most recently published LEED Rating Systems and ASHRAE Standard 90.1 shall be maintained by and kept on file with the City Clerk.

Sec. 6-168. Submissions.

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

(a) One of the following:

1. A LEED checklist, and a LEED application number (or other proof of LEED applications status); or

2. A third-party certification system document of verification from a qualified professional; or

3. A preliminary energy model, along with a statement of certification from a licensed engineer or qualified professional that the project meets the standard(s); and
A written explanation of how the building will obtain the applicable standards using design plans to demonstrate compliance where applicable (example: LEED submittal templates or Passive House Pre-Certification report); and

Plans and documentation prepared by a qualified professional demonstrating compliance with the Better Roof Requirements contained in Section 6-175 below, including:

1. Documentation of the as-designed structural loads and plans for interconnecting a photovoltaic (PV) system to the electrical system of the building; or

2. Documentation of the as-designed structural loads and layout plans for the Living Roof system of the building.

Sec. 6-169. Certificate of Occupancy.

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

Sec. 6-170. Partial exemption and exceptions.

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

   (a) Availability of green building materials and technologies; or
(ab) Compatibility - A conflict of green building requirements with other government requirements and building standards; or

(be) Required alterations to an historic building that would compromise its historic character as determined by the Historic Preservation Board; or

(cd) Specific circumstances that would defeat the purpose of the standards.

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

   (a) In the case of a LEED standard requirement, the applicant will list the number of credits reasonably achievable and verified by each applicable licensed professional or qualified professional.

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

   (c) In the case of other third-party “green building” certification and quality assurance systems (example: Passive House), the applicant will submit project performance documentation meeting or exceeding the standards of the certification system prepared by a qualified professional.

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

3. Any request for an exception to the LEED Certification requirement must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. If an applicant submits standardized third-party certification or
documentation signed by a qualified professional, an exception to the LEED Certification requirement may be granted provided that such third-party certification or documentation demonstrates that it meets or exceeds at least one of the following:

(a) LEED Platinum Certification by the USGBC; or

(b) Passive House Certification or EnerPHIT Certification by International Passive House Institute (PHI) or PHIUS+ Certification by the Passive House Institute US (PHIUS); or

(c) Living Building Challenge or Living Community Challenge, Petal Recognition or Net Zero Energy Certification from International Living Future Institute (IFLI); or

(d) Well v2 or current most stringent standard by International WELL Being Institute; or

(e) Green Globes Certification by Green Building Initiative; or

(f) Other equivalent “green building” standards that include published verification and quality assurance procedures when approved on a case-by-case basis by planning director and sustainability director.

Any applicant granted an exception to the LEED Certification requirement as provided above shall be required to comply with the ordinance in all other respects. A copy of any and all papers or documents submitted to the third-party certifying body (example: DOE, PHIUS, IFLI, or PHI) or qualified professional, including any amendment made thereto, and a statement of final certification signed by each applicable qualified professional, licensed engineer, or third-party certifying body shall be submitted to the city’s department of planning and urban development prior to the issuance of a certificate of occupancy.

4. Any request for an exception to the Better Roof Requirement under Section 6-175 below must be made at the time of application as specified in section 6-168 and approved by the director of planning and urban development. An exception to the Better Roof Requirement may be granted provided that an applicant submits certification or documentation signed by a qualified professional demonstrating all possible effort to comply with the Better Roof Requirements contained in Section 6-175, and the applicability of at least one of the following specific reasons for an exception:
(a) A new construction or renovation project other than single-family residential buildings may be granted an exception to the Better Roof Requirement if a solar PV system with a power rating of no less than 1 watt per square foot of roof area is permanently installed at the time of construction.

(b) A single-family residential building may be granted an exception to the Better Roof Requirement if a solar PV system rated at 1000 watts or greater is permanently installed at the time of construction.

(c) A new construction or renovation project may be granted an exception to the Better Roof Requirement if the roof is designed as a helicopter landing zone.

(d) A renovation project may be granted an exception to the Better Roof Requirement unless the total roof area is increased by at least 2,000 square feet over the total roof area of the existing building.

(e) A new construction or renovation project may be granted an exception to the Better Roof Requirement reducing the required total area of solar zone by up to 50 percent if the roof is shaded by objects that are not part of the building and are permanent. These objects shall only be adjacent buildings or trees evaluated as healthy by an arborist and documentation must be submitted by a qualified professional.

(f) If the building has a gross floor area of 2,000 square feet or more, and has 10 or fewer occupied floors, a new construction or renovation project may be granted an exception to the Better Roof Requirement to substitute some or all of the required total area of solar zone with area of living roof, such that each square foot of living roof shall count as 0.5 square foot towards the required total area of solar zone, provided that applicants submit such a living roof design for review and approval upon submission of an application for a building permit.

Any applicant granted an exception to the Better Roof Requirement as provided above shall be required to comply with the ordinance in all other respects. A copy of any and all papers or documents submitted to each applicable qualified professional, including any amendment made thereto, and a statement of final certification signed by each applicable qualified professional shall be submitted to the city’s department of planning and urban development prior to the issuance of a certificate of occupancy.

5. The director of planning and urban development shall annually, on or before July 1, submit a report to the City Council, containing at a minimum a list of each applicant and project granted a partial exemption or exception under this section during the previous twelve
months, and for each partial exemption or exception granted the reason(s) why it was so was granted.

... 

Sec. 6-173. Reserved

Conditional Expansion of Applicability.

Under the following limited circumstances, Sec. 6-167 and Sec. 6-168 shall apply to all new construction and renovation projects in the City of Portland, regardless of ownership, occupation, or sources of funding:

(a) The Maine Uniform Building and Energy Code, 10 M.R.S. § 9721 et seq., is repealed or amended such that a municipality may, through its municipal home rule authority, enact or enforce codes or standards separate from or exceeding those adopted by the Technical Building Codes and Standards Board pursuant to the Maine Uniform Building and Energy Code; or

(b) The rules, codes, and standards adopted by the Technical Building Codes and Standards Board pursuant the Maine Uniform Building and Energy Code, 10 M.R.S. § 9721 et seq., as the Maine Uniform Building and Energy Code, 16-642 C.M.R. ch. 1-6, are repealed or amended such that a municipality may, through its municipal home rule authority, enact or enforce codes or standards separate from or exceeding such rules, codes, or standards; or

(c) This ordinance, or substantially similar rules, codes, or standards are approved by the Technical Building Codes and Standards Board as amendments to the Maine Uniform Building and Energy Code, 16-642 C.M.R. ch. 1-6, or as amendments to the appendix to the Maine Uniform Building and Energy Code containing optional energy conservation and efficiency requirements, after submission of such proposed amendments under Sec. 174 below; or

(d) The application of this ordinance to all new construction and renovation projects in the city of Portland, through the city’s home rule authority is otherwise not prohibited or subject to preemption under state law.

Sec. 6-174. Reserved

Submission of Amendments to the MUBEC.

The Sustainability Office, Permitting and Inspections Department, or other appropriate Office or Department of the city of Portland, on behalf of the city of Portland and to address the health, safety, and welfare needs of the inhabitants of the city of Portland, until such amendments are approved and adopted must annually by May 30 submit
proposed amendments to the Maine Uniform Building and Energy Code, or to the appendix to the Maine Uniform Building and Energy Code containing optional energy conservation and efficiency requirements, as provided for under 16-642 C.M.R. ch. 1, § 13, and the amendment process created pursuant to that section, that would apply, or allow to be applied, the standards and requirements of this ordinance, or substantially similar rules, codes, or standards, to all new construction and renovation projects in the city of Portland.

Sec. 6-175. **Reserved Better Roof Requirements.**

Except as provided under Sec. 6-170 above, to be certified by a qualified professional as compliant with the Better Roof Requirements of this section, a new construction or renovation project must demonstrate all of the following:

(a) The project contains a total area of solar zone that is no less than 15 percent of the total roof area after subtracting any area of the roof that is covered by a skylight; and

(b) The total area of solar zone shall be free from any shading or obstruction such as vents, chimneys, architectural features, or roof-mounted equipment, not including any obstructions located north of all points of the solar zone; and

(c) If the solar zone is located on a roof that has ratio of rise to run of greater than 2:12, then the roof must be oriented between 110 degrees and 270 degrees of true north (not magnetic north), in order to ensure a reasonable solar exposure if a solar energy system is installed in the future; and

(d) The main electrical service shall be provided such that capacity is adequate for future solar electric and such reserved space shall be permanently marked in main electrical service panel “For Future Solar Electric”.

The total area of the solar zone may be composed of multiple subareas. No dimension of a subarea can be less than 5 feet. If the total roof area is equal to or less than 10,000 square feet, each subarea must be at least 80 square feet. If the total roof area is greater than 10,000 square feet, each subarea must be at least 160 square feet. The solar zone design must comply with other applicable codes and regulations.

Sec. 6-176. **Reserved Reporting on Fossil Fuel Infrastructure.**

The policy of the city of Portland shall be to endeavor by all reasonable and permissible means to reduce reliance upon fossil fuels, and to reduce and discourage the use of natural gas, heating oil, or other fossil fuel based infrastructure both in new construction and renovation projects, and in existing buildings, including but not limited to such projects and buildings to be owned, occupied, or
funded in whole or in part by the city of Portland. In furtherance of this policy, the city manager, or their designee, shall annually, on or before July 1st, publish and present to the city council a report concerning benefits of such policy, and such annual report will, at a minimum, include:

(a) The total number of new buildings built in Portland without fossil fuel-based infrastructure;

(b) A survey of the green building technologies that have been implemented as alternatives to oil or natural gas power, such as solar roofs, green roofs, or sustainable building design and construction consistent with certifications and guidelines such as LEED, PassiveHouse, Living Building or others;

(c) Assessment of the benefits to the City of Portland of the adoption of this policy, including the impact on carbon emissions and increased energy efficiency of public buildings;

(d) A survey of legislation enacted at the municipal and state level to develop a coordinated regional plan to stop the use of fossil fuels to power buildings;

(e) Proposals for any changes to the city code that might further achieve reduction in use of fossil fuels or fossil fuel-based infrastructure in the city of Portland.

Sec. 6-177. Reserved

Sec. 6-177. Reserved

Severability.

If any provision of this Article shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

...

3. That Chapter 14, Sections 14-485 and 14-487 of the Portland City Code are hereby amended to read as follows:

Sec. 14-485. Definitions

...
(c) The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale means a dwelling unit for which:

(a) The purchase price is affordable to a household earning 120% 80% or less of AMI; and

(b) The unit is sold to a household earning 120% 80% or less of AMI; and

(c) The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Sec. 14-487. Ensuring Workforce Housing.

(d) Workforce Housing Minimum. At least ten percent (10%) twenty five percent (25%) of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The project shall have the option of paying a partial fee-in-lieu as per (e)4 below for any fractional value or providing an additional unit on site.

(e) Standards

2. Workforce units must are encouraged to be integrated with the rest of the development, must should use a common entrance and must should provide no indications from common areas that these units are workforce housing units.

4. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be $106,000 $150,000 per unit, adjusted annually in the same way as the fee under Division 29 for Housing Replacement.

7. The term of affordability for the required 10–25 percent workforce units provided shall be defined as follows:

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<th>Percentage of Workforce Units Provided</th>
<th>Minimum Term of Affordability for Required Workforce Units</th>
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<th>10%</th>
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