Resolution No.: 16-395
Introduced: December 4, 2007
Adopted: December 4, 2007

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

By: County Council

SUBJECT: Approval of Executive Regulation 19-07AM, Buildings – Energy Efficiency and Environmental Design

Background

1. On July 24, 2007 the County Council received Executive Regulation 19-07, Buildings – Energy Efficiency and Environmental Design (ER 19-07).
2. On September 18, 2007 the Council adopted Resolution 16-293, which extended the deadline for Council action on ER 19-07 from September 24 to December 31.
3. On November 28, 2007 the County Council received Executive Regulation 19-07AM, Buildings – Energy Efficiency and Environmental Design (ER 19-07AM).
4. The Council reviewed ER 19-07 and ER 19-07AM under method (2) of County Code §2A-15.
5. Under method (2), if the Council does not approve or disapprove a regulation within 60 days after the Council receives the regulation, the regulation automatically takes effect.
6. At three worksessions on ER 19-07 on September 2, October 29, and November 1, the Transportation and Environment Committee recommended a number of amendments to ER 19-07 which are now reflected in ER 19-07AM.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The Council approves Executive Regulation 19-07AM, Buildings – Energy Efficiency and Environmental Design (ER 19-07AM).

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive . 101 Monroe Street . Rockville, Maryland 20850

Subject: Buildings – Energy Efficiency and Environmental Design	Number: 19-07AM
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date:

Montgomery County Regulation on:

BUILDINGS – ENERGY EFFICIENCY AND ENVIRONMENTAL DESIGN

DEPARTMENT OF PERMITTING SERVICES

Issued by: County Executive
Regulation No.

Authority: Code Sections 8-26, 8-49, and 8-51
Supersedes: Regulation Nos. None
Council Review: Method 2
Register Vol. Issue
Comment deadline:
Effective date:
Sunset date: None

SUMMARY: This regulation implements the Montgomery County Green Buildings Law codified in Chapter 8 (Buildings), Article VII Energy Efficiency and Environmental Design of the County Code.

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BACKGROUND INFORMATION: The Department of Permitting Services enforces Chapter 8

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(Buildings) of the Montgomery County Code. This regulation implements the Montgomery County Green Buildings Law, which is codified in Article VII (Energy Efficiency and Environmental Design) of Chapter 8.

I: PURPOSE

1.0 This regulation implements the Montgomery County Green Buildings Law by specifying the:

a) LEED Rating System and any equivalent energy and environmental design standard that applies to each type of covered building under Section 8-49 of the County Code;

b) process to verify that a covered building complies with the applicable standard, including types of persons who are qualified to verify compliance;

c) standards and procedures under which the Director may approve waivers or modifications of Section 8-49 of the County Code when compliance would be impracticable or unduly burdensome and the public interest would be served by the waiver or modification; and

d) standards and procedures for any enforcement mechanism that the Department finds necessary to accomplish the purposes of the Montgomery County Green Buildings Law.

II: APPLICABILITY

2.0 This regulation applies to any **newly constructed** or **extensively modified non-residential** or **multi-family residential building** that has or will have at least 10,000 square feet of gross floor area.

III: DEFINITIONS

3.0 For the purposes of this regulation, the following words and phrases have the meanings indicated. Words and phrases defined and used in Chapter 8 of the County Code have the meanings indicated in that Chapter.

Applicable rating system means:

(1) For a building that uses the USGBC certification process, the LEED rating system for which the building is registered at the USGBC;

(2) For a building that uses the County certification process, the LEED rating system that would apply to the building if it were registered with the USGBC on the date that the building is registered with the Department; or

(3) For a building that uses an equivalent rating certification process, the equivalent rating system for which the building is registered.

County building means any **covered building** for which the County government finances at least 30% of the cost of:

(1) construction, for a **newly constructed** building; or

(2) modification, for a building that is **extensively modified**.

County certification process means the process administered by the Department to verify that a covered building complies with the required standard.

Covered building means a **newly constructed** or **extensively modified non-residential** or **multi-family residential building** that has or will have at least 10,000 square feet of gross floor area.

Department means the Department of Permitting Services.

Director means the Director of the Department of Permitting Services.

Equivalent rating certification process means the process administered by an equivalent rating entity to verify that a covered building complies with the required standard.

Equivalent rating entity means a person or entity that the Director finds is qualified to certify that a building complies with the required standard under an equivalent rating system.

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Equivalent rating system means an energy efficiency and environmental design rating system that the Director finds is equivalent to the applicable LEED rating system.

Extensively modified refers to any structural modification which alters more than 50% of the building's gross floor area, as indicated on the application for a building permit. *Extensively modified* does not include any modification that is limited to one or more of the following building systems: mechanical; electrical; plumbing; heating, ventilation, and air conditioning (HVAC); and fire protection.

Green Building Concept Plan means a document that:

a) contains proof that a building has been registered with the USGBC, the Department, or an equivalent rating entity;
b) identifies the applicable rating system;
c) describes the building's scope, and
d) using a checklist provided by the Department, describes anticipated energy efficiency and environmental design features in the following areas: sustainable site, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process.

Green Buildings Law means the Montgomery County Green Buildings Law codified in Chapter 8 (Buildings), Article VII (Energy Efficiency and Environmental Design) of the County Code.

LEED refers to the series of Leadership in Energy and Environmental Design (LEED) rating systems developed by the USGBC (US Green Building Council).

LEED rating system means the particular LEED rating system that applies to a covered building.

Multi-family residential building means any multi-family residential or mixed-use building that is taller than 4 stories. ***Multi-family residential building*** does not include a residential care or assisted living building which can house no more than 16 occupants.

Newly constructed refers to a new stand-alone building or an addition to an existing building.

(1) Except as provided in paragraph (2), a ***newly constructed*** building includes any addition to or enlargement of an existing building, but does not include any change to an existing portion of a building.

(2) For any building for which an application for all necessary building permits was filed before September 1, 2008, any later addition to that building constitutes a **newly constructed** building only if the addition would increase the building's land coverage by at least 100% and gross square floor area by at least 10,000 square feet.

Non-residential building means a building not used as a dwelling.

Non-residential building does not include any:

(1) day care center for 5 or fewer persons;

(2) accessory building or structure;

(3) agricultural building, stable, barn, or greenhouse;

(4) parking garage that is not heated or cooled; or

(5) other building characterized as a miscellaneous building in the edition of the ICC International Building Code designated under Section 8-13.

Project plan means a project plan approved by the Planning Board under Chapter 59 of the County Code.

Preliminary plan means a preliminary plan of subdivision approved by the Planning Board under

Chapter 50 of the County Code.

Registered design professional means an architect, landscape architect, or engineer who is licensed by the State of Maryland.

Required standard means the energy efficiency and environmental design standard that applies to a covered building under Section 8-49 of the County Code.

Regulatory approval means an approved project plan, preliminary plan, site plan, or special exception.

Site plan means a site plan approved by the Planning Board under Chapter 59 of the County Code.

Special exception means a special exception approved by the Board of Appeals under Chapter 59 of the County Code.

Temporary Use and Occupancy Certificate means a certificate issued by the Department at the request of a building permit holder before the entire work covered by the building permit is completed which authorizes use and occupancy of the building for a specified period.

USGBC means the US Green Building Council, an organization that has developed and published the **LEED rating system** to measure the energy efficiency and environmental performance of a building.

USGBC certification process means the certification process administered by the USGBC to verify that a building complies with the required standard.

IV: POLICY

4.0 The Department of Permitting Services supports the General Services Administration (GSA) commissioned evaluation of nationally recognized green building rating systems titled *Sustainable Building Rating Systems Summary* dated July 2006. That report, researched by the Pacific Northwest National Laboratory, identified the USGBC LEED rating system as the "most appropriate and credible" rating system for green building design and construction standards. The Department hereby identifies the LEED rating system as the benchmark for evaluating proposed equivalent rating systems on a project by project basis.

4.1 The Department will accept building permit applications for covered buildings under three optional methods of certification.

4.2 The first and preferred method to demonstrate compliance with the required standard is the USGBC certification process. Projects formally registered, submitted for review, and certified by the USGBC will be accepted as certified by the Department. The Department may review and inspect certified credits approved by the USGBC as necessary to ensure compliance with the Green Buildings Law.

4.3 The second method to demonstrate compliance with the required standard is the County certification process. Projects not submitted to the USGBC for formal review will undergo a complete review and inspection process via the Department, using the LEED rating system to document design, construction, and post-construction phase compliance. Submission of credit documentation under the Green Buildings Law for projects using the LEED rating system must be certified by a registered design professional.

4.4 The third method to demonstrate compliance with the required standard is an equivalent rating certification process. Consideration of projects using any equivalent rating system will be made via the building code modification process administered by the Department under Section 8-15 of the County Code. Submission of sufficient information regarding the proposed alternative rating system is required to allow the Director to determine whether it is an equivalent rating system. Submission of credit documentation under the Green Buildings Law for projects using an equivalent rating system must be certified by a registered design professional.

V: PROCEDURES

5.0 Before a person applies to the Planning Board or Board of Appeals for the first regulatory approval relating to a project that includes a covered building, the person must register the building with the USGBC, the Department, or an equivalent rating entity.

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5.1 When a person applies to the Planning Board or Board of Appeals for the first regulatory approval for a project that includes a covered building, the person must submit a Green Building Concept Plan to the Department.

5.2 A Green Building Concept Plan submitted to the Department under Section 5.1 is a conceptual document that is intended to be a planning tool for the Department, is not legally binding, and can be modified anytime before a building permit is issued.

5.3 To obtain the Department's approval of design, construction, and post-construction phase credits under the County certification process, a building owner must submit to the Department any information relating to the building's design, construction methods and materials, and operation that the Department requires.

5.4 When a person submits an application for a building permit for a covered building to the Department, the person must also submit an application for green building certification which:

a) Contains proof of registration with the USGBC, Department, or equivalent rating entity;
b) Identifies the applicable rating system;
c) Identifies the registered design professional who is the point of contact for project information;
d) Identifies all approved or anticipated design, construction, and post-construction phase credits; and
e) Includes any documentation of approved or anticipated design, construction, or post-construction phase credits required by the Department.

5.5 Before construction begins on a covered building for which a building permit has been issued, the applicant and the project's registered design professional must attend a Green Building Construction Meeting with the Department and demonstrate that a process is in place to adequately implement and document construction phase credits.

5.6 The Department may conduct inspections of any covered building at any time as necessary to document construction and post-construction phase credits.

5.7 Before a Use and Occupancy Certificate for a covered building is issued to an applicant:

(a) The applicant and the project's registered design professional must attend a Green Building Credit Verification meeting with the Department and demonstrate that the required number of design and construction phase credits have been obtained; and
(b) The Department must inspect the covered building and verify that the design and construction phase credits have been obtained.

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5.8 If a covered building does not comply with the required standard, the Department must not issue a Use and Occupancy Certificate. The Department may issue a Temporary Use and Occupancy Certificate if the applicant demonstrates that a process is in place to adequately implement and document anticipated construction or post-construction phase credits and the building can be safely occupied. The Director may revoke a Temporary Use and Occupancy Certificate if the building does not comply with the Green Buildings Law or this regulation.

VI: MODIFICATIONS

6.0 Requests for Modification to the requirements of the Green Buildings Law or this regulation will be addressed via the Department's Building Code Modification process administered under Section 8-15 of the County Code. In addition to modifications for proposed use of an equivalent rating system, modifications may include requests for waivers when compliance is impracticable or unduly burdensome and the public interest would be served by a waiver or modification.

VII. SEVERABILITY

7.0 The provisions of this regulation are severable. If a court of competent jurisdiction holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

EFFECTIVE DATE: This regulation becomes effective _____.

Isiah Leggett, County Executive — Date: Nov 27, 2007

Approved as to form and legality
Montgomery County, Md. County Attorney's Office