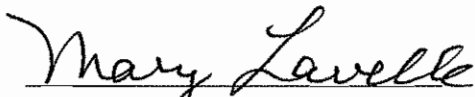


**CERTIFICATION OF CITY CLERK**

**ORDINANCE NO. 65.138**

I, Mary Lavelle, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. **65.138** of the City of Milpitas, that said Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of the City Council held on the 16<sup>TH</sup> day of June 2009, and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 22<sup>ND</sup> day of June 2009.



Mary Lavelle  
City Clerk

**REGULAR**

**NUMBER:** 65.138

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING A NEW CHAPTER 20 TO TITLE II OF THE MILPITAS MUNICIPAL CODE RELATING TO GREEN BUILDING REGULATIONS

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of June 2, 2009, upon motion by Vice Mayor McHugh and was adopted (second reading) by the City Council at its meeting of June 16, 2009 upon motion by Councilmember Polanski. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

**AYES:** (4) Vice Mayor McHugh, Councilmembers Giordano, Gomez and Polanski

**NOES:** (0) None

**ABSENT:** (1) Mayor Livengood

**ABSTAIN:** (0) None

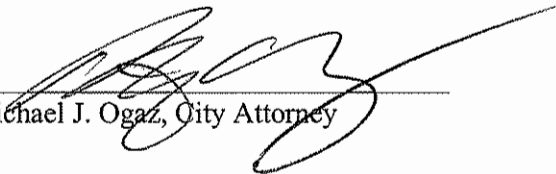
**ATTEST:**

  
\_\_\_\_\_  
Mary Lavelle, City Clerk

**APPROVED:**

  
\_\_\_\_\_  
Pete McHugh, Vice Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, in January 2009, the City Council expressed interest in enacting a Green Building Ordinance; and

**WHEREAS**, on April 6, 2009, staff presented an outline of the Green Building Ordinance to the Council's Land Use and Transportation Subcommittee; and

**WHEREAS**, building in an environmentally friendly and sustainable manner is one of the best strategies for meeting the challenge of reducing greenhouse gases because of the availability of materials, technology, designs and equipment that can make substantial reductions in energy and C02 emissions in occupied structures; and

**WHEREAS**, the average LEED certified building uses 32% less electricity and saves 350 metric tons of C02 emissions annually; and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA); and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on May 13, 2009 and heard evidence presented by staff and comments by the public; and

**WHEREAS**, the City Council determines that this project is categorically exempt per Section 15308 of the CEQA Guidelines, "actions by regulatory agencies for protection of the environment," since the amendments of the Municipal Code provided for herein promotes and conserves the environment; and

**WHEREAS**, the City Council finds that the proposed amendments are consistent with the General Plan in that the changes ensure consistent and clear implementation of the stated goals and policies of the General Plan; and

**WHEREAS**, the proposed amendments will not adversely affect the public health, safety and welfare in that the project promotes the environmental and economic health of the City through the design, construction, maintenance, operation and deconstruction of buildings and other site development by incorporating green building practices into all development; and

**WHEREAS**, California Health and Safety Code Sections 18938 and 17958 provide that the California Building Standards Code establishes building standards for all occupancies throughout the State; and

**WHEREAS**, Health and Safety Code Section 17958.5 provides that a city may establish more restrictive building standards if they are reasonably necessary due to local climatic, geological or topographical conditions; and

**WHEREAS**, to the extent the proposed Green Building Ordinance effects changes to the California Building Standards Code as adopted by the City, the City Council finds the provisions herein to be reasonably necessary due to local climatic, geologic and topographic conditions, specifically:

- a. The City is located in a climatic zone with precipitation averaging approximately 15 inches per year. Most precipitation falls during the months of November through April, leaving a relatively dry period of approximately six months each year. Local prevailing winds come from the northwest with a mean speed of 6.5 miles per hour. There are indications that such conditions may be changing. City potable water, storm water collection, and wastewater collection and treatment systems are designed to accommodate and make use of historically consistent weather patterns and supplies. The adoption of a Green Building Ordinance would

minimize the emission of greenhouse gases that may pose a threat to such services and potable water supplies.

- b. The City is topographically diverse, with elevations ranging from sea level to about 2,600 feet. The area also has numerous small waterways, including Berryessa Creek, Calera Creek, Coyote Creek, and Lower Pentencia Creek. The protection of water quality, the prevention of pollutant infiltration, and the reduction of construction area runoff are important concerns due to the topography of the City, which could be addressed by the use of sustainable and energy efficient building practices, materials, and designs.

**WHEREAS**, the proposed amendments are internally consistent with the remainder of the Municipal Code.

**NOW THEREFORE**, the City Council of the City Of Milpitas does ordain as follows:

## **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

## **SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II**

Title II of the Milpitas Municipal Code “Building Regulations” is hereby amended to include a new Chapter 20 “Green Building Regulations” to read as follows:

### **Chapter 20 Green Building Regulations**

#### **II-20-1 Purpose and Intent**

#### **II-20-2 Definitions**

#### **II-20-3 Standards for Compliance**

#### **II-20-4 Incentives for Compliance**

#### **II-20-5 Administrative Procedures and Implementation of Regulations**

#### **II-20-6 Hardship or Infeasibility Exemption**

#### **II-20-7 Appeal**

#### **II-20-8 Effective Date**

### **Section 1 Purpose and Intent**

#### **II-20-1.01 Purpose and Intent**

The purpose and intent of this Chapter is to enhance the public health and welfare by promoting the environmental and economic health of the City through the design, construction, maintenance, operation and deconstruction of buildings and other site development by incorporating green building practices into all development. The green building provisions referred to in this Chapter are designed to achieve the following goals:

1. Increase energy efficiency;
2. Encourage water and resource conservation;
3. Reduce waste generated by construction projects; and
4. Promote the health of residents, workers and visitors to the City.

### **Section 2 Definitions**

## **II-20-2.01 Purpose.**

The purpose of this Section is to ensure precision in interpretation of this Chapter. This Section provides definitions of terms and phrases used that are technical or specialized, or may not reflect common usage. If any of the definitions in this Chapter conflict with definitions in other provisions of the Municipal Code, these definitions shall control for the purposes of these Green Building Regulations. If a word is not defined in this Chapter, or other provisions of the Municipal Code, the most common dictionary definition is presumed to be correct.

## **II-20-2.02 Definitions.**

The following terms shall have the ascribed definition for the purposes of applying the criteria of this Chapter.

### **A**

**“Addition”** means new construction square footage added to an existing structure.

**“Applicant”** means any entity that applies to the City for the applicable permits to undertake any covered project within the City, or any subsequent owner of the site.

### **C**

**“Compliance Official”** means the Chief Building Official or designee.

**“Compliance Threshold”** means the minimum number of points or rating level of a green building rating system that must be attained for a particular Covered Project.

**“Covered Project”** means any planning entitlement application(s) or building permit application(s) for commercial (non-residential) new construction or renovations, for any single-family, two-family or multi-family new construction or renovation, or for city-sponsored construction projects subject to the Standards for Compliance Section of this Ordinance.

### **G**

**“Good Faith Effort”** means a project that has not met the required compliance threshold, but for extenuating reasons or reasons beyond the control of the applicant, the Compliance Official has found the project meets the good faith effort provisions.

**“Green Building”** means a whole systems approach to the design, construction and operation of buildings that substantially mitigates the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between the natural and built environments and seek to minimize the use of energy, water and other natural resources and provide a healthy, productive indoor environment.

**“Green Building Project Checklist”** means a checklist or scorecard developed for the purpose of calculating a green building rating.

**“Green Building Rating System”** means the rating system associated with specific green building criteria and used to determine compliance thresholds. Examples of rating systems include, but are not limited to, the LEED and GreenPoint Rated systems.

**“GreenPoint Rated”** means a residential green building rating system developed by the Build It Green organization.

**“GreenPoint Rated Verification”** means verification of compliance by a certified GreenPoint Rater, resulting in green building certification by Build It Green including green points allocation across all of the resource categories.

## L

**“LEED®”** means the “Leadership in Energy and Environmental Design” green building rating system developed by the U.S. Green Building Council.

## M

**“Mixed Use”** means the construction of a building or buildings that include both commercial and residential uses.

**“Multi-Family Residential”** means a building containing three or more attached dwelling units.

## N

**New Construction, Commercial (Nonresidential).** “Commercial (Nonresidential) New Construction” means the construction of a new retail, office, industrial, warehouse, service, or similar building(s), or additions to such building(s).

**New Construction, Residential.** “Residential New Construction” means the construction of a new single-family or two-family dwelling unit or of new or replacement multi-family residential building(s), or additions to such building(s).

## P

**“Priority Plan Review”** means a covered project meeting the Incentives for Compliance will receive building permit plan review comments from all City Departments on the first plan review within fifty percent (50%) less time than what would normally be scheduled for the scale and size of the project. The plan review would be performed during regular working hours and would be scheduled ahead of other plan reviews for which off-hour fees were not already paid.

## Q

**“Qualified Green Building Professional”** means a person including but not limited to an employee of the City, trained through the USGBC as a LEED accredited professional or through Build It Green as a certified green building professional or similar qualifications if acceptable to the Compliance Official.

## R

**“Renovation”** means any rehabilitation, repair, remodeling, change, or modification to an existing building, where changes to floor area and the footprint of the building are negligible.

## S

**“Single-Family or Two-Family Residential”** means a single detached dwelling unit or two units in a single building.

**“Square Footage,”** for the purposes of calculating commercial, multi-family residential, and single-family and two-family new construction square footage, means all new and replacement square footage, including basement areas [seven (7) feet or greater in height] and garages, except that unconditioned garage space shall only count as fifty percent (50%) of that square footage. Areas demolished shall not be deducted from the total new construction square footage.

## Section 3 Standards for Compliance

### II-20-3.01 Covered Projects.

Standards for Compliance for covered projects are identified in Table 3.01-1, Green Building Standards for Compliance, of this Chapter.

**Table 3.01-1  
Green Building Standards for Compliance<sup>1</sup>**

Type of Project	Building Improvements		
	Checklist Required	Minimum Threshold	Verification Required
<b>Residential</b>			
New Construction: < five (5) units	Build it Green or LEED	Not Applicable	No
New Construction: ≥five (5) units	Build it Green or LEED	50 Green Points (Build it Green)	Yes
<b>Nonresidential</b>			
New Construction: 500 - 25,000 s.f.	LEED	Not Applicable	No
New Construction: Between 25,000 and 49,999 s.f.	LEED	LEED Certified	Yes
New Construction or renovations: ≥50,000 s.f.	LEED	LEED Silver	Yes
<b>City Buildings</b>			
New construction or renovations over 25,000. s.f.	LEED	LEED Silver	Yes
<b>Mixed Use</b>	Residential and Commercial criteria as applicable to each residential and commercial component of the project.		

All square footage is gross.

<sup>1</sup> Per these green building regulations, a rating system other than LEED or Build It Green may be used with equivalent thresholds at the discretion of the Compliance Officer.

### II-20-3.02 Exempted projects.

The following projects are exempted from the provisions of this Chapter:

1. Buildings designated as a local Cultural Resource or listed on California Register of Historic Resources or the National Registry of Historic Places.
2. Remodels or renovations to residential buildings that do not add more than five (5) new dwelling units.

## Section 4 Incentives for Compliance

### II-20-4.01 Purpose.

To further encourage higher levels of green building compliance for a project, incentives are offered for Residential and Commercial (Nonresidential) projects.

#### **II-20-4.02 Residential.**

Projects meeting the following threshold shall be eligible for Priority Plan Review:

1. Projects earning seventy-five (75) Green Points or equivalent in LEED.

#### **II-20-4.03 Commercial (Nonresidential).**

Projects meeting the following threshold shall be eligible for Priority Plan Review:

1. Projects meeting LEED Gold and above.

### **Section 5 Administrative Procedures and Implementation of Regulations**

#### **II-20-5.01 Administration.**

**A. Responsibility of the Compliance Official.** The responsibility of the Compliance Official shall be as follows:

1. The Compliance Official shall promulgate any rules and regulations necessary or appropriate to achieve compliance with the requirements of this Chapter. The rules and regulations shall provide, at a minimum, for the incorporation of green building requirements of this Chapter into checklist submittals with planning entitlement and building permit applications, and supporting design, construction, or development documents to demonstrate compliance with this Chapter.
2. The Compliance Official shall have the responsibility to administer and monitor compliance with the green building requirements set forth in this Chapter and with any rules and regulations promulgated thereunder, and to grant exemptions from the requirements, where so authorized.

#### **II-20-5.02 Implementation of Regulations.**

Compliance with the provisions of this Chapter shall be listed as a condition of approval on any discretionary permit approval, and on the building plans for building permit approval, for any Covered Project.

**A. Compliance Procedures.** The procedures for compliance documentation shall include, but not be limited to, the following:

1. Preliminary Documentation. Applicants for a Covered Project are encouraged, but not required, to meet with the Compliance Official or his or her designated staff, in advance of submittal of an application, to determine required green building thresholds for compliance and to review the proposed green building program and details to achieve compliance.
2. Discretionary Planning Entitlements. Upon submittal of an application for any discretionary planning entitlement for any Covered Project, including but not limited to Site Development Permits, Conditional Use Permit, Planned Unit Development or Variance requests, application materials shall include the appropriate completed checklists, as required by Section 3, Standards for Compliance, of this Chapter, accompanied by a text description of the proposed green building program and expected measures and milestones for compliance.
3. Building Plan Check Review. Upon submittal of an application for a building permit, building plans for any Covered Project shall include a checklist and green building program description, reflecting any changes proposed since the planning entitlement phase (if a planning entitlement was required). The checklist shall be incorporated onto a separate plan sheet included with the building plans. A qualified green building professional shall provide evidence of adequate green



building compliance or documentation to the Compliance Official to satisfy the requirements of Section 3, Standards for Compliance, of this Chapter, prior to issuance of a building permit.

4. Documentation for Final Building Inspection, Verification, and Occupancy. Prior to scheduling of final building inspection and occupancy for any Covered Project, a Qualified Green Building Professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the requirements of Section 3, Standards for Compliance, of this Chapter. This information shall include, but is not limited to:
  - a. Documentation that verifies incorporation of the design and construction-related credits specified in the project approval for the Covered Project. This documentation can be in the form of inspection records when a City Building Inspector serves as the Qualified Green Building Professional;
  - b. A letter from the Qualified Green Building Professional that certifies that the Covered Project has been constructed in accordance with the approved green building project checklist;
  - c. Any additional documentation that would be required by the LEED reference guide for LEED certification (if required), or by the GreenPoint Rated manuals for GreenPoint Rated certification (if required); and
  - d. Any additional information that the applicant believes is relevant to determining that a good faith effort has been made to comply with this Chapter.
5. Final Determination of Compliance and Good Faith Effort to Comply. Prior to final building inspection for a Covered Project, the Compliance Official shall review the documentation submitted by the applicant in Section 5.02 (A)(4) above, and determine whether the applicant has achieved the required compliance threshold as set forth in Section 3, Standards for Compliance, of this Chapter, and/or demonstrated that measures are in place to assure that compliance shall take place no later than one year after approval of final building inspection.

If the Compliance Official determines that the applicant has met the requirements of Section 3 of this Chapter, for the project, the final building inspection may proceed, provided the Covered Project has received approval of all other inspections required by the Compliance Official.

If the Compliance Official determines that the required green building rating has not been achieved, the Compliance Official shall find one of the following:

- a. Good Faith Effort to Comply: When an applicant submits a request in writing to the Compliance Official for approval of a good faith effort to comply, the Compliance Official shall determine that the applicant has made a good faith effort to comply with this Chapter when finding that either:
  - i. The cost for assuring compliance is disproportionate to the overall cost of the project, or
  - ii. The green building materials and technologies on the green building checklist are no longer available or not yet commercially available, or
  - iii. At least eighty percent (80%) of the required green point credits have been achieved, and measures are in place to assure full compliance not later than one year after approval of the final building inspection.

Determination of a good faith effort to comply shall be made separately for each item on the green building project checklist. Granting of a good faith effort to comply for one item does

not preclude the need for the applicant to comply with the other items on the green building checklist.

- b. **Non-Compliant Project.** If the Compliance Official determines that the applicant has not made a good faith effort to comply with this Chapter, or if the applicant fails to submit the documentation required within the required time period, then the project shall be determined to be non-compliant, and the final inspection and approval for the project shall be withheld. A final inspection shall not take place until the applicant has implemented equivalent alternate measures approved by the Compliance Official or unless an exemption is granted for the project.
6. **Non-Compliance.** If, as a result of any inspection, the City determines that the Covered Project does not or is unlikely to comply with the approved plans or green building checklist, a full stop work order shall be issued if the Compliance Official determines that continuation of construction activities will jeopardize the project's ability to meet the required compliance threshold. The stop order shall remain in effect until the Compliance Official determines that the project will be brought into compliance with the approved plans and/or checklist.
7. **Lack of Inspectors.** If the Compliance Official determines that there is a lack of Qualified Green Building Professionals available to perform green building inspections within a timely manner, the Compliance Official may allow the architect or designer of the project to determine that green building requirements have been met.

## **Section 6 Hardship or Infeasibility Exemption**

### **II-20-6.01 Exemption.**

If an applicant for a covered project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Ordinance, the applicant may request an exemption. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.

The applicant shall indicate in the pre-permitting documentation the maximum number of credits he or she believes is practical or feasible for the covered project and the circumstances that he or she believes make it a hardship or infeasible to comply fully with this Chapter. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and compatibility of green building requirements with existing building standards.

1. **Granting of Exemption:** If the City Manager or designee determines that it is a hardship or infeasible for the applicant to meet fully the requirements of this Chapter based on the information provided, the City Manager or designee shall determine the maximum feasible number of credits reasonably achievable for the covered project and shall indicate this number on the pre-permitting documentation submitted by the applicant.
2. **Denial of Exemption:** If the City Manager or designee determines that it is possible for the applicant to fully meet the requirements of this Chapter, he or she shall so notify the applicant in writing.

## **Section 7 Appeal**

### **II-20-7.01 Appeals**

1. Any aggrieved applicant or person may appeal the determination of the Compliance Official regarding: (a) the granting or denial of an exemption; or (b) compliance with any other provision of this ordinance.

2. Any appeal must be submitted in accordance with Title I, Section 5, Appeals to Council, of the Milpitas Municipal Code.
3. The appeal process shall follow the procedures set forth in Title I, Section 5, Appeals to Council, of the Milpitas Municipal Code.

### **Section 8 Effective Date**

#### **II-20-8.01 Effective Date of Ordinance.**

This Green Building Ordinance becomes effective on August 1, 2009 and applies to Covered Projects for which planning application(s) are submitted after the effective date or Covered Projects, not requiring planning entitlements, for which building permit applications are submitted after the effective date.

### **SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect on August 1, 2009, which is more than thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.