

15.10.040 Standards for Compliance.

The town council shall establish by resolution, and shall periodically review and update as necessary, green building standards for compliance. The standards for compliance shall include, but are not limited to, the following:

- (a) The types of projects subject to regulation (covered projects);
- (b) The green building rating system to be applied to the various types of projects;
- (c) Minimum thresholds of compliance for various types of projects; and
- (d) Timing and methods of verification of compliance with these regulations.

The standards for compliance shall be approved after recommendation from the town planner, who shall refer the standards for recommendation by the architectural and site control commission, prior to council action.

15.10.050 Incentives for Compliance.

(a) In addition to the required standards for compliance, the town council may, through ordinance or resolution, enact financial, permit review process, or zoning incentives and/or award or recognition programs to further encourage higher levels of green building compliance for a project.

(b) For residential projects, the number of GreenPoint checklist points required shall be reduced by:

(1) Five points for maintaining a minimum of 75% of existing walls, floors, and roof of a structure;

(2) Five points (in addition to (1) above) for maintaining a minimum of 95% of existing walls, floors, and roof of a structure; and/or

(3) Ten points (in addition to (1) and/or (2) above) when applied to a structure that is designated on the town's historic inventory or any contributing structure located within a designated historic district, subject to determination by the architectural and site control commission that such additions and/or renovations are consistent with the Secretary of the Interior's Standards for Rehabilitation.

15.10.060 Administrative Procedures and Implementing Regulations.

(a) The town planner 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

ii. 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;

iii. 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

iv. 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 the scheduling of a final building inspection for a covered project, the compliance official shall review the documentation submitted by the applicant, and determine whether the applicant has achieved the required compliance threshold as set forth in the standards for compliance outlined in Section 15.10.040 and/or demonstrate that measures are in place to assure compliance not later than one year after approval of final building inspection. If the compliance official determines that the applicant has met the requirements of Section 15.10.040 for the project, the final building inspection may proceed, provided the covered project has received approval of all other inspections required by the chief building 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:

i. 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 a) the cost for providing green building documentation or assuring compliance is disproportionate to the overall cost of the project, or b) the green building materials and technologies on the green building checklist are no longer available or not yet commercially available, or c) at least 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.

ii. 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) Post final inspection requirement. Not later than one year after approval of the final building inspection, the applicant or current owner shall submit to the compliance official documentation detailing compliance with the operation, efficiency, and conservation related credits from the approved checklist documentation for any covered project, if required by the compliance official. The applicant may also provide any additional information the applicant believes is relevant to determining its good faith efforts to comply with this chapter.

(7) Non-compliance. If, as a result of any inspection, the town determines that the covered project does not or is unlikely to comply with the approved plans or green building checklist, a stop 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.

(8) Interim compliance effort. For residential projects initiating construction not later than two years after the effective date of this chapter, a good faith effort shall be deemed to have been made when at least 75% of the required minimum green points have been achieved prior to final building inspection, and adequate remaining checklist points are outlined to demonstrate that at least 90% of the minimum points and GreenPoint certification will be achieved not later than one year after final inspection. For purposes of this subsection "initiating construction" shall mean the date when a building permit is issued. If 75% of the required minimum green points are not achieved prior to the request for final building inspection, the final inspection shall be withheld unless an exemption is granted by the compliance official. Residential projects initiating construction more than two years after the effective date of this chapter shall comply in full with the requirements of this chapter.

(9) Lack of inspectors. If the compliance official determines that there is a lack of third party or town inspectors available to perform green building inspections within a timely manner, the compliance official may allow self-verification of the project and determine that green building requirements have been met.

(c) 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.

(d) Compliance with the provisions of this chapter shall be listed as a condition of approval on any architectural and site control review or other discretionary permit approval, and on the building plans for building permit approval, for any covered project.

15.10.070 Hardship or Infeasibility Exemption.

(a) 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 chapter, the applicant may request an exemption as set forth below. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.

(b) Application. If an applicant for a covered project believes such circumstances exist, the applicant may apply for an exemption at the time of application submittal. The applicant shall indicate the maximum threshold of compliance he or she believes is feasible for the covered project and the circumstances that he or she believes create a hardship or make it infeasible to fully comply with this chapter. Circumstances that constitute hardship or infeasibility include, but are not limited to the following:

(1) There is conflict with the compatibility of the green building rating system with other town goals, such as those requiring historic preservation;

(2) There is conflict with the compatibility of the green building rating system and the California Building Standards Code;

(3) There is conflict with the compatibility of the green building rating system and the town's zoning ordinance and/or architectural review criteria;

(4) The green building compliance standards do not include enough green building measures that are compatible with the scope of the covered project; and/or

(5) There is a lack of commercially available green building materials and technologies to comply with the green building rating system.

(c) Review by Architectural & Site Control Commission (ASCC). For any covered project for which an exemption is requested and architectural and site control review is required by the ASCC, the ASCC shall provide a recommendation to the compliance official regarding whether the exemption shall be granted or denied, along with its recommendation on the project. For any project for which an exemption is requested based on the historic character of the building or site, the town historian shall provide a recommendation to the compliance official regarding whether the exemption shall be

granted or denied and shall determine whether the project is consistent with the Secretary of the Interior's Standards for Historic Rehabilitation.

(d) **Granting of Exemption.** If the compliance official determines that it is a hardship or is infeasible for the applicant to fully meet the requirements of this chapter based on the information provided, the compliance official shall determine the maximum feasible threshold of compliance reasonably achievable for the project. The decision of the compliance official shall be provided to the applicant in writing. If an exemption is granted, the applicant shall be required to comply with this chapter in all other respects and shall be required to achieve, in accordance with this chapter, the threshold of compliance determined to be achievable by the compliance official.

(e) **Denial of Exemption.** If the compliance official determines that it is reasonably possible for the applicant to fully meet the requirements of this chapter, the request shall be denied and the compliance official shall so notify the applicant in writing. The project and compliance documentation shall be modified to comply with this chapter prior to further review of any pending planning or building application.

(f) **Council Review of Exemption.** For any covered project that requires review and action by the town council, the council shall act to grant or deny the exemption, based on the criteria outlined above, after recommendation by the manager.

15.10.080 Appeal.

(a) Any aggrieved applicant may appeal the determination of the compliance official regarding: (1) the granting or denial of an exemption pursuant to section 15.10.070; or (2) compliance with any other provision of this chapter.

(b) Any appeal must be filed in writing with the planning manager not later than fourteen days after the date of the determination by the compliance official. The appeal shall state the alleged error or reason for the appeal.

(c) The appeal shall be processed and considered by the town council.

3. **Environmental Review.** This ordinance is exempt from the California Environmental Quality Act pursuant to Section 15309 because it is an action taken by a regulatory agency for the protection of the environment.

4. **Effective Date; Posting.** This ordinance shall become effective thirty (30) days after the date of its adoption and shall be posted within the Town of Portola Valley in three (3) public places.