

ORDINANCE NO. 2010- 386

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA VALLEY ADDING CHAPTER 15.10 [GREEN BUILDING] TO TITLE 15 [BUILDINGS AND CONSTRUCTION] OF THE PORTOLA VALLEY MUNICIPAL CODE**

**WHEREAS**, the Town of Portola Valley desires to add Chapter 15.10 [Green Building] to Title 15 [Buildings and Construction] of the Portola Valley Municipal Code to implement goals and objectives set forth in the "Sustainability Element" of the Portola Valley General Plan for reducing greenhouse gas ("GHG") emissions, conserving water and energy, encouraging green building, protecting the natural environment, and protecting the health of residents and visitors;

**WHEREAS**, green building design, construction, restoration, operation and maintenance can have a significant positive effect on energy, water and resource conservation, waste management and pollution generation, and the health and productivity of a property's residents, workers and visitors over the life of a building and/or site;

**WHEREAS**, the provisions of California Assembly Bill 32 (Global Warming Solutions Act) require action on the part of state and local governments to significantly reduce GHG emissions within prescribed time periods and the Town Council has taken actions to commit the town to pursue the requirements of AB 32;

**WHEREAS**, the Town Climate Protection Task Force, at the request of the Town Council, considered how best to achieve AB 32 objectives, and the Building, Energy and Efficiency and Transportation ("BEET") Committee of the Task Force concluded that a building evaluation and rating system was appropriate for new buildings and major additions and remodeling of existing buildings to ensure these projects would make necessary contributions to the overall local program for meeting AB 32 objectives;

**WHEREAS**, based on the findings of the BEET committee, the Town Council appointed a Planning Commission and Architectural and Site Control Commission subgroup to study, test and inform the community of appropriate green building regulations and this subgroup completed its work, including public workshops, and forwarded its recommendations to the Town Council in the March 4, 2010 report to Town Council from the Deputy Town Planner;

**WHEREAS**, green building regulations comprise a significant component of a whole systems approach to the Town's sustainability program related to building and land use, other components of which include, but are not limited to, requirements for: recycling of construction and demolition debris, storm water quality and flood protection,

water conservation, protection against unstable slopes and earthquake faults, preservation of trees and natural landforms on building sites and open space conservation; and,

**WHEREAS**, the 2008 California Green Building Standards Code adopted by the California Building Standards Commission has set minimum Green Building Standards and, within the code, has expressly stated that the standards are viewed as "minimal" and that local government entities retain discretion, pursuant to Health and Safety Code Section 17958.5, to exceed the standards established by the code based on express findings relative to local climate, topographical or geological conditions.

**NOW, THEREFORE**, the Town Council of the Town of Portola Valley does **ORDAIN** as follows:

1. Findings. The Town Council of the Town of Portola Valley hereby finds and declares as follows:

A. To the extent the proposed Green Building Ordinance effects changes to the California Building Standards Code as adopted by the Town, the Town Council finds the provisions herein to be reasonably necessary due to local climatic, geologic and topographic conditions.

B. The Town is located within the southern hillside portions of San Mateo County with elevations ranging from just below 300 feet to over 1,800 feet above sea level. The Town occupies approximately 5,785 acres consisting largely of a natural valley containing steep, rugged tree-covered slopes and open mountains on the west and lower more gently rolling hills on the east. The San Andreas Rift Zone, an area of past and probably future earth movement, follows the floor of the valley. Much of the land southwest of the San Andreas Rift Zone consists of active or geologically recent landslides. The Town has mapped the complex geology of the area and adopted land use regulations based on this mapping to reduce risk to residents and private and public improvements.

C. Due to its hillside location, the Town is in a climate zone that has precipitation averaging approximately 30 inches per year. Most precipitation falls during the months of November through April, with a relatively dry period extending over six months of the year. The rainfall and local storm water management system are essential to maintaining the natural vegetation of the planning area and ensuring against impacts associated with erosion, sedimentation and ground pollution. The Sustainability Element of the general plan recognizes that emission of GHG may impact weather patterns and sets forth goals, including those for green building, to minimize

impacts on the storm water management system and ensure against loss of natural vegetation, both essential to minimizing erosion and protection against unstable slopes.

D. Pursuant to the government partnership program of Pacific Gas and Electric Company, Gabel Associates, LLC, prepared the December 31, 2009, San Mateo County Green Building Ordinance Cost-Effectiveness Study ("Study") for jurisdictions in San Mateo County. The Study used the California 2008 Building Energy Efficiency Standards, effective January 1, 2010, to calculate the cost effectiveness of local green building regulations exceeding the 2008 Building Energy Efficiency Standards and identified the low incremental costs associated with exceeding the state standards as provided for in this proposed Green Building Ordinance for the Town.

E. Green building and landscape design, construction, operations, and maintenance techniques are increasingly widespread in residential, commercial and institutional building construction, and green building benefits can be spread throughout the systems and features of a building such that green building can include: use of certified sustainable wood products and high-recycled content products; reuse of existing facilities and recycling and salvage; reduced demands on heating and cooling systems; increased energy efficiency; enhancement of indoor air quality; reduced per capita demand on water resources and infrastructure; and installation of alternative and renewal energy systems.

F. At the national and state levels, the U.S. Green Building Council has taken the lead in promoting and defining commercial and institutional green building by developing the Leadership in Energy and Environmental Design ("LEED") Rating System™. LEED rating systems are also now available as an alternative for rating of single-family and other residential projects.

G. At the state level, Build It Green has taken the lead in promoting and defining residential green building by developing and continuing to refine the GreenPoint Rated Rating System™.

H. The Town pursued and in 2009 completed a new Town Center that has demonstrated green building can be accomplished in the local climate zone in a cost effective manner. This Town center has received the highest LEED rating of Platinum.

I. Nothing in this Ordinance is intended to duplicate, contradict, or infringe upon the provisions of state law, including the California Building Standards Code. The Ordinance and associated checklists provide many opportunities to achieve required points and credits that do not impact areas where the state has established building standards.

J. Since April of 2009, the Town has made voluntary use of the Build It Green GreenPoint Rated rating system for new residential projects and projects proposing substantial changes to existing residences. This voluntary use has demonstrated that exceeding State Building Energy Efficiency Standards as mandated by GreenPoint Rated checklist is achievable in a cost effective manner.

K. On March 10, 2010, at a publicly noticed meeting, the Town Council accepted the recommendations of the Planning Commission and Architectural and Site Control Commission subgroup for implementation of local Green Building Regulations as set forth in the March 4, 2010 report from the Deputy Town Planner.

L. On May 12, 2010, the Town Council held a duly noticed public hearing and heard testimony regarding the proposed Green Building Ordinance.

M. Because the design, restoration, construction and maintenance of buildings and structures within the Town can have a significant impact on the Town's environment, greenhouse gas emissions, resource usage, energy efficiency, waste management, and health and productivity of residents, workers, and visitors over the life of the building, requiring commercial, institutional and residential projects to incorporate green building measures is necessary and appropriate to achieve the public health and welfare benefits of green building.

2. Addition of Code. Chapter 15.10 [Green Building] is hereby added to Title 15 [Buildings and Construction] of the Portola Valley Municipal Code to read as follows:

**CHAPTER 15.10  
GREEN BUILDING**

- 15.10.010 Purpose**
- 15.10.020 Applicability**
- 15.10.030 Definitions**
- 15.10.040 Standards for Compliance**
- 15.10.050 Incentives for Compliance**
- 15.10.060 Administrative Procedures and Implementing Regulations**
- 15.10.070 Hardship or Infeasibility Exemption**
- 15.10.080 Appeal**

**15.10.010 Purpose.**

The purpose of this chapter is to enhance the public health and welfare by promoting the environmental health of the town through the incorporation of green building practices in the design, construction, maintenance, operation and deconstruction of

buildings and other site development. The green building provisions in this chapter are designed to achieve the following goals:

- (a) Encourage the conservation of natural resources and reduction of greenhouse gas emissions;
- (b) Increase energy efficiency and lower energy usage;
- (c) Reduce waste generated by construction projects;
- (d) Provide durable buildings that are efficient and economical to own and operate;
- (e) Recognize and conserve the energy embodied in existing buildings; and
- (e) Promote the health of residents, workers, and visitors to the town.

#### **15.10.020 Applicability**

This chapter applies to all projects defined as "covered projects," as defined in Section 15.10.030, except that it shall not apply to any project for which a planning entitlement application (except for a preliminary architectural review application) or building permit application has been submitted prior to the effective date of this chapter.

#### **15.10.030 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.
- (b) "Applicant" means anyone that applies to the town for the applicable permits or approvals to undertake any covered project within the town, or any subsequent owner of the site.
- (c) "Compliance official" means the town planner or his/her designee.
- (d) "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, as outlined in the standards for compliance in Section 15.10.040.
- (e) "Covered project" means any planning entitlement application(s) or building permit application(s) for commercial new construction or renovations, or for any residential new construction or renovation subject to the standards for compliance outlined in Section 15.10.040.

(f) "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 of Section 15.10.060.

(g) "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.

(h) "Green building project checklist" means a checklist or scorecard developed for the purpose of calculating a green building rating.

(i) "Green building rating system" means the rating system associated with specific green building criteria and used to determine compliance thresholds, as outlined in the standards of compliance adopted by town council resolution. Examples of rating systems include, but are not limited to, the LEED and GreenPoint Rated systems.

(j) "GreenPoint Rated" means a residential green building rating system developed by the Build It Green organization.

(k) "GreenPoint Rated Verification" means verification of compliance by a certified GreenPoint Rater, resulting in green building certification by Build It Green.

(l) "LEED®" means the "Leadership in Energy and Environmental Design" green building rating system developed by the U.S. Green Building Council.

(m) "LEED®/USGBC Verification" means verification to meet the standards of the U.S. Green Building Council ("USGBC") and resulting in LEED certification of the project by the USGBC.

(n) "Multi-family residential" means a building containing three or more attached dwelling units.

(o) "New building" means a new structure or a substantial addition/remodel to an existing structure where the remodel combined with any additions to the structure affects 50% or more of the exterior wall plane surface or affects 50% or more of the floor area as more particularly defined in section 15.04.010 of this code.

(p) "New construction, commercial" means the construction of a new or replacement retail, office, institutional, semi-institutional or similar building(s), or additions to such building(s).

(q) "New construction, residential" means the construction of a new or replacement single-family or two-family dwelling unit or of new or replacement multi-family residential building(s), or additions to such building(s).

(r) "Qualified green building professional" means a person 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. For projects requiring "self-verification," the project architect or designer is considered a qualified green building professional.

(s) "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. The valuation of renovation improvements shall be determined by the town planner, upon recommendation of the chief building official. The chief building official may exclude from such valuation the cost of (a) seismic upgrades, (b) accessibility upgrades, or (c) photovoltaic panels or other solar energy or similar devices exterior to the building. Renovation valuation thresholds identified in the standards for compliance shall be adjusted annually to reflect changes in the town's valuation per square foot for new construction in town, using valuations in effect as of July 1, 2008, as the base index.

(t) "Self verification" means verification by the project architect, designer or a qualified green building professional certifying that the project has met the standards and has attained the compliance threshold as indicated for the covered project type as set forth in the standards for compliance outlined in Section 15.10.040.

(u) "Single-family or two-family residential" means a single detached dwelling unit or two units in a single building or two separate buildings on a single parcel, such as a main residence and second unit.

(v) "Square footage" means all new and replacement square footage, including basement areas (seven feet or greater in height) and garages, except that unconditioned garage space shall only count as 50% of that square footage. Areas demolished shall not be deducted from the total new construction square footage.

(w) "Threshold verification by LEED AP" means verification by a LEED accredited professional certifying that each LEED checklist point listed was verified to meet the requirements to achieve that point. The LEED AP shall provide supporting information from qualified professionals (e.g. civil engineer, electrical engineer, Title 24 consultant, commissioning agent, etc.) to certify compliance with each point on the checklist. Documentation of construction consistent with building plans calculated to achieve energy compliance is sufficient verification in lieu of post-construction commissioning.

#### **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

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.

(b) 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/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, architectural review, site development permit, conditional use permit, or variance requests, application materials shall include the appropriate completed checklists, as required by the standards for compliance specified in Section 15.10.040, accompanied by a text description of the proposed green building program and expected measures and milestones for compliance. The compliance official may allow the use of alternative checklists for historic buildings or for buildings that retain or re-use substantial portions of the existing structure.

(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 the standards for compliance outlined in Section 15.10.040, prior to issuance of a building permit.

(4) Final building inspection, verification, and occupancy. Prior to final building inspection and occupancy for any covered project, a qualified building professional shall provide evidence of adequate green building compliance or documentation to the compliance official to satisfy the requirements of the standards for compliance outlined in Section 15.10.040. This information shall include, but is not limited to:

i. Documentation that verifies incorporation of the design and construction related credits specified in the project approval for the covered project;

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.

INTRODUCED: May 12, 2010

PASSED: May 26, 2010

AYES: Councilmembers Wengert, Derwin and Richards, Vice Mayor Driscoll and Mayor Toben

NOES: None

ABSTENTIONS: None

ABSENT: None

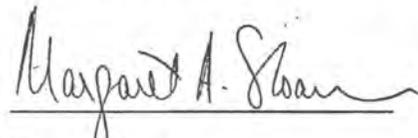
ATTEST:

By: 

Mayor

 ATTEST  
  
Town Clerk

APPROVED AS TO FORM:

  
Town Attorney