

**TO:** PBCE Staff

**FROM:** Joseph Horwedel

**SUBJECT: Title 24 Compliance for Private  
Sector Green Building  
Ordinance**

**DATE:** September 10, 2009

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On August 4, 2009, the City Council adopted the Green Building Ordinance for Private Sector New Construction (SJMC Chapter 17.84) which creates the following requirements: (1) the receipt of green building checklists for all Tier 1 projects and applicable Mixed Use projects prior to the issuance of a prerequisite for Building Permit, and (2) the achievement of green building certification levels through LEED and/or GreenPoint Rated for all Tier 2, High Rise Residential, or applicable Mixed Use projects, as indicated in Sections 17.84.220 B, C, & D of the subject ordinance. The provisions of the Ordinance became effective September 8, 2009.

Section 17.84.320 of the Ordinance authorizes the Director of Planning is “to promulgate forms, policies and regulations for the implementation of the provisions of this Chapter, including but not limited to the requirements for applications for exemptions, modifications of, or equivalency to the requirements of this Chapter.”

Pursuant the foregoing authority I hereby promulgate the following **Regulation No. 1:**

No provision of Chapter 17.84 of the San Jose Municipal Code shall alleviate any requirement to meet the State of California’s Title 24 Energy Code requirements. Specifically, no building permit shall be issued to any project subject to the San Jose Green Building Ordinance unless the application can demonstrate continued compliance with the California Building Energy Efficiency Standards of the California Building Code which is in effect at the time of permit issuance (Title 24, Part 6).

The Green Building Ordinance for Private Sector New Construction also has a provision to allow the Director to exempt a project from the green building compliance requirements for reasons specified in Sections 17.84.210 A, B, C. This exemption from compliance applies to the green building requirements solely. Any project determined by the Director to be exempt from the green building requirements must still demonstrate compliance to Title 24, Part 6. Specifically, in implementing sections 17.84.210 and 17.84.220, all applicants must submit all necessary documentation which shall clearly demonstrate that the project will fully comply with the Title 24, Part 6

## **Applicable Municipal Code Sections**

### **17.84.210 Exemption Based on Unique Circumstances**

A. If an applicant for a New Construction Project believes that circumstances regarding the type of project or physical site conditions make it a hardship or infeasible to meet the requirements of this Chapter, then the applicant may request an exemption or modification from the Director. The burden shall be on the applicant to demonstrate the grounds for hardship or infeasibility.

B. In making a determination in response to an application under subsection A above, if the Director determines that the facts offered in support of an application under subsection A demonstrate that the purposes of this Chapter will have been achieved to the maximum extent reasonably allowed by the circumstances, then the Director may issue a decision requiring compliance with less than the full extent of the requirements of this Chapter but to the fullest extent reasonably achievable given the circumstances.

C. The Director's decision shall contain a statement of the facts upon which the decision was based, as well as the reduced compliance level requirements that must be achieved. The Director's decision shall become a condition of the Development Permit issued for the project.

### **17.84.220 Green Building Compliance Requirements**

A. No Building Permit shall be issued for a Tier One Project unless the application for building permit contains a completed Green Point Rated Checklist or LEED Checklist.

B. All Tier 2 Commercial Industrial Projects for which this Chapter is applicable must receive the minimum green building certification of LEED Silver and Tier Two Residential Projects shall receive the minimum green building certification of LEED Certified or GreenPoint Rated.

C. High-Rise Residential Projects for which this Chapter is applicable shall receive certification as the minimum Green Building Performance Requirement of USGBC LEED™ Certified .

D. Mixed Use New Construction Projects, for which this Chapter is applicable, must submit a checklist and receive the minimum green building new construction certification designation for the portion of the building under the requirements of the applicable subsections of this Section above.