

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING CHAPTER 12.44 OF THE SAN RAFAEL MUNICIPAL CODE (“GREEN BUILDING REQUIREMENTS”), AS ADOPTED BY CITY COUNCIL ORDINANCE NO. 1879, TO INCORPORATE PROVISIONS REQUIRED BY THE CALIFORNIA ENERGY COMMISSION REGARDING ENFORCEMENT OF TITLE 24, PART 6 OF THE CALIFORNIA BUILDING CODE AS THE MINIMUM ENERGY EFFICIENCY STANDARD

WHEREAS, on February 1, 2010, the City Council passed and adopted Ordinance No. 1879 establishing comprehensive new green building requirements for residential and nonresidential buildings in the City; and

WHEREAS, Ordinance No. 1879 provided by its terms that it would become effective thirty (30) days after its final passage, or upon approval by both the California Energy Commission and the California Building Standards Commission, whichever date is later; and

WHEREAS, on March 23, 2010, the California Energy Commission advised the City that it would be willing to approve Ordinance No. 1879 after the City adopts certain specified amendments to the provisions of San Rafael Municipal Code Chapter 12.44 adopted by said Ordinance, to clarify that the provisions of the California Building Code contained in Title 24, Part 6 of the California Code of Regulations will be enforced as the minimum energy efficiency standard; and

WHEREAS, the California Building Standards Commission’s approval of Ordinance No. 1879 will be ministerial once the California Energy Commission has issued its approval; and

WHEREAS, for the foregoing reasons, the California Energy Commission and the California Building Standards Commission will not approve Ordinance No. 1879, and that ordinance cannot go into effect, until the City Council adopts the amendments to San Rafael Municipal Code Chapter 12.44 as set forth in this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1: FINDINGS. The City Council finds as follows:

- A. The City Council hereby affirms and adopts herein by reference all the findings set forth in Ordinance No. 1879.
- B. The adoption of this ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines (14 Cal. Code §15308) because it is an action taken by a regulatory agency for the protection of the environment and no exceptions to this categorical exemption apply.

DIVISION 2: AMENDMENT. Chapter 12.44 of the San Rafael Municipal Code ("Green Building Requirements"), as adopted by Ordinance No. 1879, is hereby amended to read in its entirety as follows:

Chapter 12.44 Green Building Requirements.

Sections:

12.44.010	Purpose
12.44.020	Applicability
12.44.030	Definitions
12.44.040	Standards for Compliance
12.44.050	Incentives for Compliance
12.44.060	Administrative Procedures
12.44.070	Exemptions
12.44.080	Appeal

12.44.010 Purpose.

The purpose of this Chapter is to enhance the long-term public health and welfare by contributing to the overall reduction of greenhouse gas production and emissions and improving the environmental and economic health of the City through the efficient design, construction, operation, maintenance and deconstruction of buildings and site development by incorporating green building practices and materials. The green building provisions referenced in this Chapter are designed to achieve the following objectives:

- a. Increase energy efficiency in buildings;
- b. Encourage water and resource conservation;
- c. Reduce waste generated by construction projects;
- d. Reduce long-term building operating and maintenance costs; and
- e. Improve indoor air quality and occupant health; and
- f. Contribute to meeting the state and local commitments to reduce greenhouse gas production and emissions.

12.44.020 Applicability.

The provisions of this Chapter shall apply to all construction or development projects defined below as a "Covered Project."

12.44.030 Definitions.

For the purposes of interpreting this Chapter and the associated Standards for Compliance, the following terms are defined as follows. When the definitions below differ from those contained elsewhere in this Title, the provisions of this Chapter shall apply.

- a. "Addition" means the addition of building square footage to an existing structure.

- b. "BIG" means Build It Green, a non-profit organization which established and maintains the Green Point Rated system for evaluating and certifying residential green buildings and green building professionals.
- c. "BPI" means the Building Performance Institute, a non-profit organization which provides training and certification of green building professionals.
- d. "Building envelope" means the ensemble of exterior and demising partitions of a building and roof structure that enclose conditioned space.
- e. "Compliance threshold" means the minimum number of points or rating level required to be achieved by a particular Covered Project as set forth by the Standards for Compliance outlined in Section 12.44.040.
- f. "Conditioned space" means any area within a building or structure that is heated or cooled by any equipment.
- g. "Covered project" means a development project for new construction or renovations for which one or more building permits are required and which is also designated as a "Covered Project" by resolution of the City Council as described in Section 12.44.040.
- h. "GBCI" means the Green Building Certification Institute, a non-profit organization which certifies green buildings and green building professionals under the LEED[®] rating system.
- i. "Green building" means a comprehensive process of design and construction that employs techniques to increase the efficiency of resource use, including energy, water and building materials, while minimizing adverse impacts on human health and the natural environment.
- j. "Green building checklist" means a checklist or rating sheet used for calculating a green building rating.
- k. "Green building rating system" means a standardized rating system providing specific criteria to determine the level of compliance of building projects as set forth by the Standards for Compliance outlined in Section 12.44.040.
- l. "GreenPoint Rated" means a residential building certified as complying with the green building rating systems developed by the Build It Green organization.
- m. "GreenPoint Rater" means an individual certified by Build It Green as capable of evaluating and rating residential construction projects for compliance with the GreenPoint Rated green building rating systems.
- n. "HERS" means the Home Energy Rating System adopted by the California Energy Commission.
- o. "LEED[®]" means the "Leadership in Energy and Environmental Design" green building rating system developed by the U.S. Green Building Council.
- p. "LEED[®] AP" means an individual who has been certified a LEED[®] Accredited Professional by the U.S. Green Building Council or the Green Building Certification Institute as capable of evaluating and rating construction projects for compliance with the LEED[®] green building rating systems.

- q. "Net Zero Energy" means a building that has a net annual Time Dependent Valued (TDV) Energy Consumption, as defined by Title 24 of the California Code of Regulations, of zero, accounting for both energy consumption and the use of on-site renewable energy production.
- r. "New construction" means the construction of a new or replacement residential dwelling unit or a new or expanded non-residential building.
- s. "Qualified green building rater" means an individual who has been trained and certified as a LEED® AP, GreenPoint Rater or has similar qualifications and certifications if acceptable to the Chief Building Official.
- t. "Renovation" means any remodeling, modification or tenant improvement to an existing building that includes replacement or alteration of at least two of the following: heating/ventilating/air conditioning system, building envelope, hot water system or lighting system, but excluding improvements and project valuation related to seismic or disabled access, building replacement due to catastrophic loss due to flood or earthquake damage or installation of renewable energy systems. Renovation shall include any addition of conditioned space to an existing dwelling unit.
- u. "USGBC" means the U.S. Green Building Council, a non-profit organization which established and maintains the LEED® rating systems for evaluating and certifying residential green buildings and green building professionals.

12.44.040 Covered Projects - Standards for Compliance.

The City Council shall adopt a resolution defining which projects shall be deemed to be "Covered Projects" within the meaning of this Chapter, and establishing "Standards for Compliance" applicable to those Covered Projects, which standards shall include, but not be limited to the green building rating system(s) applicable to various types and sizes of Covered Projects; minimum compliance thresholds for various types and sizes of Covered Projects; and methods for verification of compliance with the adopted standards. In applying Standards for Compliance under this Chapter:

- a. Cumulative new construction or renovations over any one-year period shall be considered as a single Covered Project, and subject to the highest compliance threshold based on the cumulative project size or valuation.
- b. The Chief Building Official shall determine the appropriate project valuation based on the cost of similar improvements, and may request substantiating documentation from the applicant. Where Compliance Thresholds contain project size ranges expressed as both building square footage and project valuation, the intent is to base project requirements upon the project valuation range. However the Chief Building Official shall have the authority to determine whether the building square footage or valuation range most accurately reflects the scope of the proposed project for purposes of determining the required minimum Compliance Threshold.
- c. The Chief Building Official may determine that an alternative green building rating system may be used to determine project compliance, where it can be demonstrated that the alternative rating system is as stringent as or greater in terms of reduced energy and

resource use and improved interior air quality than that normally required by the Standards for Compliance.

- d. Mixed use (residential and non-residential) projects must comply either with the applicable Covered Project requirements for the respective residential and non-residential portions of the project, or may propose to utilize a mixed use rating system, subject to approval by the Chief Building Official.
- e. The cost of reviewing any proposals requesting the use of alternate green building rating systems or requests for exemptions including, but not limited to, the cost to the City of hiring a consultant to review the proposal, shall be borne by the applicant.
- f. All buildings submitted for permit must meet all applicable requirements of the 2008 Building Energy Efficiency Standards, California Code of Regulations ("C.C.R."), Title 24, Part 6, ~~or subsequently adopted state energy standards.~~
- g. The applicable green building rating system shall be that which is most recently adopted by Build It Green or the U.S. Green Building Council. The green building rating system in effect at the time of building permit submittal shall be that which is applicable to the development project throughout the project construction.

12.44.050 Incentives for Compliance.

In addition to the required Standards for Compliance, the City Council may establish by resolution financial or application processing incentives and/or award or recognition programs to encourage higher levels of green building compliance for a project.

12.44.060 Administrative Procedures.

The procedures for compliance with the provisions of this Chapter shall include, but not be limited to, the following:

- a. Project design. Applicants for a Covered Project are strongly encouraged to involve a qualified green building rater in the initial design phases of the project in advance of submittal of an application to determine applicable green building compliance thresholds and the most cost effective and appropriate means of achieving compliance.
- b. Planning applications. If a discretionary planning application is required for a Covered Project, applicants should be prepared to identify expected green building measures to be included in the project to achieve the compliance thresholds. Applicants should identify any anticipated difficulties in achieving compliance and any exemptions from the requirements of this Chapter that may be requested.
- c. Building plan check review. Upon submittal of an application for a building permit, building plans for any Covered Project shall include a green building program description and completed checklist. The checklist shall be incorporated onto a separate full-sized plan sheet included with the building plans. A qualified green building rater shall provide evidence that the project, as indicated by the project plans and green building program description, will achieve the Standards for Compliance established in or pursuant to Section 12.44.040 prior to issuance of a building permit.

- d. Changes during construction. During the construction process, alternate green building measures may be substituted, provided that the qualified green building rater provides documentation of the proposed change and the project's continued ability to achieve the Standards for Compliance to the Chief Building Official.
- e. Final building inspection. Prior to final building inspection and occupancy for any Covered Project, a qualified green building rater shall provide evidence that project construction has achieved the required compliance set forth in the Standards for Compliance established in or pursuant to Section 12.44.040. The Chief Building Official shall review the documentation submitted by the applicant, and determine whether the project has achieved the compliance threshold as set forth in the Standards for Compliance established in or pursuant to Section 12.44.040. Where subsequent certification of the building is required by the Standards for Compliance, the Chief Building Official shall also determine whether the applicant has demonstrated that such certification is in process and will be achieved not later than one year after approval of final building inspection. If the Chief Building Official determines that the applicant has met these requirements, the final building inspection may proceed.
- f. Post final inspection requirement. Where certification of the building is required by the Standards for Compliance, and such certification is only available subsequent to occupancy of the completed building, the applicant shall provide documentation of such certification within one year of the date of the final building inspection for the project. Failure to provide evidence of this certification within this timeframe, or within an alternate timeframe as determined by the Chief Building Official, will result in a determination that the Covered Project is not in compliance with the requirements of this Chapter.
- g. Conflict with other laws. The provisions of this Chapter are intended to be in addition to and not in conflict with other laws, regulations and ordinances relating to building construction and site development. If any provision of this Chapter conflicts with any duly adopted and valid statutes or regulations of the federal government or the State of California, the federal or state statutes or regulations shall take precedence.

12.44.070 Exemptions.

- a. The provisions of this Chapter shall not apply to the following exemptions; however, none of the exemptions listed shall provide the applicant with relief from the compliance requirements of the 2008 California Building Energy Efficiency Standards of the California Building Code (C.C.R. Title 24, Part 6):
 - 1. Buildings which are temporary (such as construction trailers).
 - 2. Building area which is not or is not intended to be conditioned space.
 - 3. Any requirements of this Chapter which would impair the historic integrity of any building listed on a local, state or federal register of historic structures, as determined by the Chief Building Official and as regulated by the California Historic Building Code (C.C.R. Title 24, Part 8). In making such a determination, the Chief Building Official may require the submittal of an evaluation by an architectural historian or similar expert.

- b. Hardship or Infeasibility 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 shall be on the applicant to show hardship or infeasibility, and to demonstrate clearly the applicant's continued compliance with all requirements of the 2008 California Building Energy Efficiency Standards of the California Building Code (C.C.R. Title 24, Part 6).
1. Application. The applicant shall identify in writing the specific requirements of the Standards for Compliance that the project is unable to achieve and the circumstances that make it a hardship or infeasible for the project to comply with this Chapter. Circumstances that constitute hardship or infeasibility shall include, but are not limited to, the following:
 - i. There is a conflict between the provisions of the applicable green building rating system and the California Building Standards Code, other State code provisions, other requirements of this Title or conditions imposed on the project through a previously approved planning application;
 - ii. There is a lack of commercially available green building materials and technologies to comply with the green building rating system;
 - iii. That the cost of achieving compliance is disproportionate to the overall cost of the project;
 - iv. That physical conditions of the project site make it impractical to incorporate necessary green building measures or achieve the Standards for Compliance;
 - v. That compliance with certain requirements would impair the historic integrity of buildings listed on a local, state or federal list or register of historic structures;
 2. Granting of exemption. If the Chief Building Official determines that the granting of the exemption will not cause the building to violate the compliance requirements of the 2008 California Building Energy Efficiency Standards of the California Building Code (C.C.R. Title 24, Part 6), and that it is a hardship or infeasible for the applicant to fully meet the requirements of this Chapter, the Chief Building Official shall determine the maximum feasible threshold of compliance reasonably achievable for the project. In making this determination, the Chief Building Official shall consider whether alternate, practical means of achieving the objectives of this Chapter can be satisfied, such as reducing comparable energy use at an offsite location within the City. 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 the threshold of compliance determined to be achievable by the Chief Building Official.
 3. Denial of exemption. If the Chief Building Official determines that the granting of the exemption will potentially cause the building to violate the compliance requirements of the 2008 California Building Energy Efficiency Standards of the California Building Code (C.C.R. Title 24, Part 6), or that it is reasonably possible for the applicant to fully meet the requirements of this Chapter, the request shall be denied and the applicant shall be notified of the decision in writing. The project and

compliance documentation shall be modified to comply with the Standards for Compliance.

12.4644.080 Appeal.

Any aggrieved applicant or person may appeal a Chief Building Official's determination under this Chapter, including a determination regarding compliance with the provisions of this Chapter and a determination on the approval or denial of an exemption under Section 12.4644.070, to the City Council by filing a written appeal with the City Clerk and paying the necessary filing fee within ten (10) days of the determination.

DIVISION 3: EFFECTIVE DATE AND AMENDMENT OF EFFECTIVE DATE OF ORDINANCE NO. 1879. The original effective date of Ordinance No. 1879 is hereby vacated, and Ordinance No. 1879 and this Ordinance shall both become effective thirty (30) days after the final passage of this Ordinance.

DIVISION 4: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 5: PUBLICATION. A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

ALBERT J. BORO, Mayor

ATTEST:

ESTHER BEIRNE, City Clerk

The foregoing Ordinance No. _____ was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, California, held on the _____ day of _____, 2010 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the _____ day of _____, 2010.

ESTHER BEIRNE, City Clerk