

# Appendix K

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Green Building Ordinance

**ORDINANCE NO.**

**CITY OF MILLBRAE, COUNTY OF SAN MATEO  
STATE OF CALIFORNIA**

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**AN ORDINANCE OF THE CITY OF MILLBRAE ADDING CHAPTER 9.50 TO TITLE 9  
OF THE MILLBRAE MUNICIPAL CODE ADOPTING THE 2010 CALIFORNIA  
GREEN BUILDING STANDARDS CODE WITH AMENDMENTS**

Be it ordained by the City Council of the City of Millbrae as follows:

**SECTION 1: ADDING CHAPTER 9.50, GREEN BUILDING REGULATIONS, TO  
TITLE 9 OF THE MILLBRAE MUNICIPAL CODE.**

Chapter 9.50 of the Millbrae Municipal Code is hereby added and set forth in its entirety below:

Chapter 9.50

GREEN BUILDING REGULATIONS

Sections:

- 9.50.010 Findings
- 9.50.020 Title; Purpose
- 9.50.030 Definitions
- 9.50.040 Standards for Green Building Compliance
- 9.50.050 Final Green Building Approval
- 9.50.060 Public Education
- 9.50.070 Hardship or Infeasibility Exemption
- 9.50.080 Severability
- 9.50.090 Penalties and Enforcement
- 9.50.100 Appeal

**9.50.010 FINDINGS**

The city Council of the city of Millbrae hereby finds and declares as follows:

- a. The proposed new Chapter 9.50 of Title 9 of the Millbrae Municipal Code, “Green Building,” preserves and enhances the environment, in that it sets forth minimum green building requirements within the City of Millbrae for all construction projects requiring a building permit;
- b. The City of Millbrae’s General Plan sets forth goals for preserving and improving the natural and built environments of the City, protecting the health of its residents and visitors and fostering its economy;

- c. The demolition, design, construction, and maintenance of buildings and structures within the City has a significant impact on the City's environmental sustainability, resource usage and efficiency, greenhouse gas emissions, waste management, and the health and productivity of residents, workers, and visitors;
- d. Green building practices recognize the relationship between natural and built environments. Green building design, siting, construction, and operation can have a significant positive effect on energy and resource efficiency, reduction of waste and pollution generation, and the health and productivity of building's occupants over the life of the building;
- e. Green building benefits are spread throughout the systems and features of the building to foster healthy indoor air quality. Green buildings may use recycled content building materials, consume less natural resources and produce less waste than conventional buildings;
- f. Summer ambient temperatures, average load demand and peak load demand of energy are important factors concerning public health and safety in the San Francisco Bay Area. A reduction of total and peak energy use, as a result of incremental energy conservation measures required by this ordinance, will have local and regional benefits;
- g. It is critical to the economic and environmental health of the city of Millbrae that the City provide leadership to both the private and public sectors in the arena of energy efficiency, Smart Growth and "green" construction;
- h. The City Council of the City of Millbrae makes the findings of necessity that adoption of this ordinance, which includes modifications to Health and Safety Code Sections 17958. 17958.5 and 17958.7, is reasonably necessary, because of local climatic, geologic or topographical conditions. Specifically, the council finds that the following local conditions exist in Millbrae.
  - i. **Impacts on water:** Water quality and quantity are at risk as a result of changing temperatures. With warmer temperature, more precipitation will fall in the form of rain instead of snow, shortening the winter snowfall season and accelerating the rate at which the snowpack melts in the spring. Not only does such snow melt increase the threat of spring flooding, it will decrease the Sierra's capacity as a natural water tower, resulting in decreased water availability for agricultural irrigation, hydroelectric generation and the general needs of a growing population.
  - ii. **Natural disasters:** Climate models predict a 4°F temperature increase in the next 20 to 40 years, with an increase in the number of long dry spells, as well as a 20-30% increase in precipitation in the spring and fall. More frequent and heavier precipitation causes flooding and mudslides, which would incur considerable costs in damage to property, infrastructure and even human life. In addition, the increases of wildfires due to continued dry periods and higher temperatures is

another expected impact of continued climate change. In these conditions, fires burn hotter and spread faster.

- iii. **Public health impact:** Warming temperatures and increased precipitation can also encourage mosquito-breeding, thus engendering diseases that come with mosquitoes, such as West Nile Virus, a disease of growing concern in the San Francisco Bay Area region.
  
- i. This proposed Ordinance is intended to preserve and enhance the environment within the city of Millbrae and is not subject to the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines, because there is no possibility that the ordinance may have a significant negative impact on the environment and is exempt from the requirements of CEQA pursuant to Section 15308 of the CEQA Guidelines, which exempts actions taken by regulatory agencies for the enhancement and protection of the environment;
  
- j. Nothing in this Ordinance shall require the Applicant to use covered products, as defined in the federal Energy Policy and Conservation Act (42 U.S.C § 6201 et seq), that exceed any applicable federal energy conservation standards for such products; and
  
- k. This ordinance is intended to ensure that all buildings subject to it will consume no more than what is permitted by the 2010 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code.

#### **9.10.020 TITLE; PURPOSE**

This Ordinance shall be known as the City of Millbrae Green Building Regulations Ordinance. This ordinance incorporates all of the Mandatory Measures of the 2010 California Green Building Code and adds additional requirements for additions and remodel projects. The purpose of the Green Building Regulations is to enhance public health and welfare by encouraging green building measures in the design, construction, and maintenance of all buildings. The green building practices referenced in this chapter are intended to achieve the following goals:

- A. To encourage the conservation of natural resources;
- B. To reduce waste in landfills generated by construction projects;
- C. To increase energy efficiency and lower energy costs;
- D. To reduce the operating and maintenance costs for buildings;
- E. To promote a healthier indoor environment; and
- F. To promote the use of recycled materials.

### **9.50.030 DEFINITIONS**

For the purposes of the chapter, the following terms shall have the meanings set forth below:

50% Remodel or Renovation - means any addition, alteration, renovation or repairs within any 12 month period whose value of work exceeds 50% of the market value of the existing building or structure at the time of application.

Addition - means any new construction which adds square footage to an existing structure.

Board of Appeals - Means the Board of Appeals as outlined in MMC Section 9.10.050.

Build It Green - means the non-profit corporation that publishes the New Home Construction Green Building Guidelines, the Multi-Family Green Building Guidelines (Parts 1 and 2), Home Remodeling Green Building Guidelines, the Single Family Green Point Checklist, the Green Point (Existing Home Checklist and the Multi-Family Green Point Checklist), or any successor entity that assumes responsibility for the programs and operations of Build It Green.

Compliance Officer - means the Director of Community Development or his / her designee.

Project - means any planning entitlement application(s) or building permit application(s) for new construction, remodel or renovations on any commercial (nonresidential), multi-family, single family or two family residential projects.

Director - Means the Director of Community Development.

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 officer has found the project has met the good faith effort.

Green Building - means a whole systems approach to the design, construction, location and operation of buildings and structures that helps to mitigate the environmental, economic, and social impacts of construction, demolition, and renovation. Green Building practices recognizes the relationship between the natural and built environments and seeks to minimize the use of energy, water, and other natural resources and to promote a healthy, productive indoor environment.

Green Points - means credits assigned under the applicable Green Point Checklist for a covered project.

Green Point Rating - means the residential green building rating system developed and published by Build It Green.

Green Point Rated Verification - means verification of compliance by a certified Green Point Rater by Build It Green.

Green Point Rater - means a person certified by the Build It Green.

Hardship - means a verifiable level of project related difficulty or adversity, beyond the control of the applicant, as a result of which the applicant cannot reasonably comply with the requirements of this Chapter. Examples of hardship include, but are not limited to, situations where the cost of achieving compliance with this chapter is disproportionate to the overall cost of the project, where there is a lack of commercially available green building materials and technologies to comply with this chapter's requirements, where physical conditions associated with the project site make it impractical to comply with this chapter or where compliance would impair the historic integrity of a listed historic structure.

LEED - means the "Leadership in Energy and Environmental Design" green building rating system developed by the United States Green Building Council.

LEED - C - means LEED standards of compliance for "commercial" buildings.

LEED - EB - means LEED standards of compliance for "existing" buildings

LEED - H - means LEED standards of compliance for "1 or 2 family" buildings.

LEED - NC - means LEED standards of compliance for "non-commercial" buildings.

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. Minimum level of certification is: Certified.

Mixed Use - means the construction of a building or buildings that include both residential and non-residential uses.

Non-Residential Project - Means the construction of retail, office, industrial, warehouse, services, hotels, motels, or similar building(s) for non-residential use.

Other Nationally Recognized Energy Program - means energy programs other than LEED or Build It Green with equivalent or greater standards which may be developed after this Chapter is in effect. The Compliance Officer or his or her designee shall determine the acceptability of these programs and allow the use of these programs on a case by case basis until they have been incorporated into this Chapter.

Qualified Green Building Professional - means a person trained through the USGBC as a LEED-AP (accredited professional) or through Build It Green as a Green Point Rater or similar qualifications acceptable to the Compliance Officer. For projects requiring "Self-Verification" a Certified Green Building Professional, the project architect, designer, builder or building inspector is considered a qualified green building professional.

Residential Project - means the construction of R2 (Multi Family), R3 (Duplex), R3.1 (Residential Care Home) and R4 (Single Family) buildings, but does not include R1 (Hotels and Motels) occupancy groups.

Self Verification - means verification by the project architect, designer, building inspector, builder or a Qualified Green Building Professional certifying that the project has met the standards and has attained the compliance threshold as indicated for the project checklist submittal and included in approved building permit plans.

Staff Review Board (SRB) - means a board of staff members from each of the city departments and divisions who come together to review and comment on projects as they relate to their respective departments or divisions.

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 or commissioning agent) to certify compliance with each point on the checklist. Documentation of construction that is consistent with the building plans and calculated to achieve energy compliance is sufficient verification in lieu of post construction commissioning.

USGBC - means the United States Green Building Council.

Working Days - means Monday through Friday, excluding city holidays.

#### **9.50.040 STANDARDS FOR GREEN BUILDING COMPLIANCE**

The purpose of the following is to establish minimum compliance levels and minimum requirements for new construction projects and alterations and additions to existing buildings, with more intensive projects requiring a higher degree of green building measure implementation. In addition to the following requirements, all buildings within the jurisdiction of the City of Millbrae must demonstrate compliance with the 2010 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code.

- I. Standard of Green Building Compliance for Residential Projects  
Approval of any building permit for new construction or an Addition of 750 sq. ft. or more, a remodeling or renovation of an existing structure where 50% or more of the building is being remodeled or renovated, shall not be granted unless the applicant submits a checklist demonstrating that the projects complies with the following:
  - A. New Single Family and Two-Family Residential: Single Family Green Point, the minimum or higher Green Point Rating or LEED-H certification, or some other Nationally Recognized Energy Program Certification.
  - B. Additions to Single Family and Two-Family Residential: Existing Home Green Point Rating, the minimum or higher Green Point Rating or LEED-H or some Other Nationally Recognized Energy Program Certification.
  - C. Remodels / Reconfiguration affecting 50% or more of the Single Family or Two-Family Structure: Existing Home Green Point, the minimum or higher Green Point Rating or LEED-H or LEED-EB or some Other Nationally Recognized Energy Program.

- D. New Multi-Family Projects: The minimum or higher Green Point Rating, LEED-NC, LEED-H or some Other Nationally Recognized Energy Program Certification.
- E. Additions or Remodels of 50% or more to Multi-Family Projects: The minimum or higher Green Point Rating or LEED-NC or LEED-H or some Other Nationally Recognized Energy Program.
- F. Construction and Demolition Reuse and Recycling Requirements: All projects shall comply with the City's Public Works Reuse and Recycling Conditions of Approval requirements.

II. Standard of Green Building Compliance for Non-Residential Projects

Approval of any building permit for new construction or an Addition of 750 sq. ft. or more, a remodeling or renovation of an existing structure where 50% or more of the building is being remodeled or renovated, shall not be granted unless the applicant submits a checklist demonstrating that the projects complies with the following:

- A. LEED-C checklist prepared by a LEED-AP demonstrating that the project meets the minimum level or appropriate standards published by some Other Nationally Recognized Energy Program
- B. Construction and Demolition Reuse and Recycling Requirements: All projects shall comply with the City's Public Works Reuse and Recycling Conditions of Approval requirements.

**9.50.050 FINAL GREEN BUILDING APPROVAL**

Prior to final building inspection and occupancy for the above projects, a Qualified Green Building Professional shall provide adequate evidence of green building compliance or documentation to the Compliance Officer who will verify that the project satisfies the requirements of the Standards outlined above for Residential and Non-Residential Projects. This information shall include, but not be limited to the following:

- A. Build It Green: Residential Projects less than 3,000 sq. ft.: Self Verification is permitted in the form of a letter from the Qualified Green Building Professional who verifies that "the project" has been constructed in accordance with the approved green building project checklist.
- B. LEED: Residential and Non-Residential projects less than 3,000 sq. ft.: Self Verification is permitted in the form of a letter from the Qualified Green Building Professional who verifies that "the project" has been constructed in accordance with the approved green building project checklist.
- C. Build It Green: Residential Projects equal to or greater than 3,000 sq. ft.: Green Point Rated Verification is required in the form of a letter from the Green Point Rater who verifies that the project has been constructed in accordance with the approved green building project checklist. Green Point Rated verification required.

- D. LEED: Residential and Non-Residential equal to or greater than 3,000 sq. ft: Threshold Verification by a LEED-AP is required in the form of a letter from the LEED-AP who verifies that the project has been constructed in accordance with the approved green building project checklist.
- E. Other Nationally Recognized Energy Programs - Final requirements shall be determined by the Compliance Officer and explained to the Project Applicant when an alternative compliance program is approved but before the start of construction.
- F. Any additional information that the applicant believes is relevant to determining that a good faith effort has been made to comply with this Chapter.

#### **9.50.060 PUBLIC EDUCATION**

The City shall provide information to all applicants as it relates to green building compliance and associated rebates.

#### **9.50.070 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 of proof is on the applicant to show the 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 submittal of the project application. The applicant shall indicate the maximum threshold of compliance he or she believes is feasible for the 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 between the compatibility of the green building rating system and other City goals, such as those requiring historic preservation;
  - 2. There is conflict between the compatibility of the green building rating system and the California Building Standards Code;
  - 3. There is conflict between the compatibility of the green building rating system and the City's Zoning Ordinance;
  - 4. The green building compliance standards do not include enough green building measures that are compatible with the scope of the project; or

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

- C. Review by Staff Review Board (SRB). For any covered project for which an exemption is requested and review is required by the SRB, the SRB shall provide a recommendation to the Director regarding whether the exemption shall be granted or denied, along with its recommendation on the project.

For Historic Buildings or sites, the SRB shall provide a recommendation to the Director 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 and / or the requirements of the California Historic Building Code.

- D. Granting of Exemption. If the Director 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 Director shall determine the maximum feasible threshold of compliance reasonably achievable for the project. The decision of the Director shall be in writing and provided to the applicant. 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 Director.
- E. Denial of Exemption. If the Director determines that it is reasonably possible for the applicant to fully meet the requirements of this Chapter, the request shall be denied and the Director 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.

#### **9.50.080 SEVERABILITY**

If any section, subsection, provision or part of this ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this ordinance, and the application of such provision to other persons or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

#### **9.50.090 PENALTIES AND ENFORCEMENT**

It is unlawful for any person, firm, partnership, association, or corporation subject to the requirements of this ordinance to fail to comply with the Green Building regulations required by this Chapter. Whenever the City determines that a violation of this Chapter has occurred, the City may serve a notice of correction on the owner(s) of the

property on which the violation is situated. The Owner(s) of record shall have a maximum of ninety (90) days to take corrective action. Failure to take corrective action can lead to administrative, infraction or misdemeanor actions being taken by the City.

**9. 50.100 APPEAL**

Any decision or determination by the Compliance Officer that the material or type of construction is not deemed to be in compliance with this chapter, may be appealed by the applicant or any interested person to the Board of Appeals. Notice of such appeal must be filed with the Compliance Officer not more than ten working days after the date on which the final decision or determination by the Compliance Officer is rendered. The notice shall identify the decision or determination that is the subject of the appeal and shall state the alleged error or reason for the appeal. Such appeal process shall follow the appeal process as outlined in the Abatement of Dangerous Building Code as adopted under MMC 9.75.010.

**SECTION 2: EFFECTIVE DATE; PUBLICATION; POSTING.**

This ordinance shall be in full force and effect thirty (30) days from and after its passage. At least five (5) days prior to its adoption and within fifteen (15) days after its adoption, a summary of this ordinance, the latter summary to include the names of those City Council members voting for and against the ordinance, shall be published once in a newspaper of general circulation printed and published in the County of San Mateo and circulated in the City of Millbrae. At the time of the publication of each summary, the City Clerk shall post in the Office of the City Clerk a copy of the full text of this ordinance in compliance with Section 36933(c)(1) of the Government Code.

**INTRODUCED** at a regular meeting of the City Council of the City of Millbrae held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Millbrae held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011 by the following roll call vote:

\_\_\_\_\_  
MAYOR

ATTEST:  
\_\_\_\_\_  
CITY CLERK