CITY OF SAN JOSÉ, CALIFORNIA

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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 28622",** the original copy of which is attached hereto, was passed for publication of title on the **23rd day of June, 2009,** was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **4th day of August, 2009,** by the following vote:

AYES:	CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.
VACANT:	NONE.

Said ordinance is effective as of **September 4, 2009.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **14th day of August, 2009.**

(SEAL) _____
LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28622

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AMENDING TITLE 17 OF THE SAN JOSÉ MUNICIPAL CODE TO ADD A NEW CHAPTER 17.84 TO ESTABLISH GREEN BUILDING REGULATIONS FOR PRIVATE DEVELOPMENT

WHEREAS, in 2001, the City Council of the City of San José first adopted a Green Building Policy (Policy No. 8-13), and in March 2007, City Council amended the Green Building Policy to mandate that City and Agency facilities over 10,000 square feet attain a LEED Silver certification through the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) program, and to encourage green building in the private sector; and

WHEREAS, on October 30, 2007, City Council adopted San José's Green Vision, establishing 10 bold goals for the City that serve as a roadmap for reducing the carbon footprint of the City of San José by more than half. Green Vision Goal No. 4 specifically states that over the next 15 years, 50 million square feet of buildings built or retrofitted in the City shall be "green". The City estimates that approximately 2 million square feet of municipal buildings will be certified green buildings by 2022; and

WHEREAS, in April 2008, City Council adopted recommendations from the Santa Clara County Cities Association to recognize Build It Green's (BIG) GreenPoint Rated (GPR) and USGBC's LEED green building rating systems as reference standards for new residential and non-residential construction, and to incorporate the use of a green building checklist for planning applications. City Council adopted these recommendations in order to promote regional consistency, raise awareness of green building practices, and to make progress on Green Vision Goal No. 4; and

WHEREAS, the provisions of California Assembly Bill 32 (Global Warming Solutions Act) require actions on the part of State and local governments to significantly reduce greenhouse gas (GHG) emissions such that statewide GHG emissions in 2020 are lowered to 1990 levels; and

WHEREAS, in recent years, green building design, construction and operational techniques have become increasingly widespread. Many homeowners, businesses and building professionals have voluntarily sought to incorporate green building techniques into their projects. A number of local and national systems have been developed to serve as guides to green building practices. The U.S. Green Building Council, developer of the Leadership in Energy and Environmental Design (LEED™) Green Building Rating Systems and LEED™ Reference Guide, has become a leader in promoting and guiding green building. Also, the New Homes Green Points Calculator and the Multifamily Green Points Project Tool published by Build It Green are useful documents in evaluating residential green building projects; and

WHEREAS, on September 10, 2008, the Planning Commission held a duly noticed public hearing and heard testimony regarding a green building ordinance, and recommended adoption of the green building ordinance to the City Council; and

WHEREAS, on October 7, 2008, the City Council adopted Resolution No. 74624 establishing Council Policy No. 6-32, *Private Sector Green Building Policy*, and directed staff to draft an ordinance amending the San Jose Municipal Code to establish mandatory green building standards for private development; and

WHEREAS, on June 23, 2009, the City Council held a duly noticed public hearing and heard testimony regarding the proposed green building ordinance

WHEREAS, nothing in this ordinance is intended to duplicate, contradict, or enter a field which has been fully occupied by state law, including the California Building Standards Code; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

A new Chapter 17.84 (Green Building Regulations for Private Development) of Title 17 (Building and Construction) of the San José Municipal Code is hereby added to read as follows:

Chapter 17.84
GREEN BUILDING REGULATIONS FOR PRIVATE DEVELOPMENT

Part 1
Findings and Purpose

17.84.010 Purpose

This Chapter is intended to enhance the public health, safety and welfare of San José residents, workers, and visitors by fostering practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water and other resources in the City of San Jose. The green building standards required by this Chapter are intended to advance greenhouse gas reduction and other sustainability strategies outlined in the City's Green Vision. Green building reduces per capita energy use, provides energy from renewable sources, diverts waste from landfills, uses less water and encourages the use of recycled wastewater. Green building also encourages buildings to be located close to public transportation and services and provide amenities that encourage walking and bicycling and therefore offer further potential to achieve a healthy, environmentally sustainable city.

17.84.020 Findings

The City Council finds that:

a. According to the U.S. Department of Energy's Center for Sustainable Development, buildings consume 40% of the world's total energy, 25% of its wood harvest and 16% of its water. The building industry is the nation's largest manufacturing activity, representing more than 50% of the nation's wealth and 13% of its Gross Domestic Product. Energy and material consumption in buildings can contribute significantly to global climate change.

b. Green building design, construction, and operation can have a significant positive effect on energy and resource efficiency, waste and pollution generation, and the health of a building's occupants over the life of the building. Green building benefits are spread throughout the systems and features of the building. Green buildings may use recycled-content building materials, consume less energy and water, have better indoor air quality, and use less wood fiber than conventional buildings. Construction waste is often recycled and remanufactured into other building products.

c. The City Environmental Services Department estimates that construction and demolition debris comprises up to 15% of materials from San José disposed in Santa Clara County landfills, and opportunities exist for reducing the generation of this waste.

d. In recent years, green building design, construction and operational techniques have become increasingly widespread. Many homeowners, businesses, and building professionals have voluntarily sought to incorporate green building techniques into their projects. A number of local and national systems have been developed to serve as guides to green building practices. At the national level, the U.S. Green Building Council, developer of the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building Rating System and LEED™ Reference Guide, has become a leader in promoting and guiding green building. Build It Green, developer of the GreenPoint Rated program, serves a similar function in California.

e. Requiring certain commercial, residential and City-sponsored projects to incorporate LEED™ green building measures or meet GreenPoint Rating thresholds is necessary and appropriate to achieve the benefits of green building.

f. California Health and Safety Code Sections 18938 and 17958 provide that the California Building Standards Code establish building standards for all occupancies throughout the state.

g. California Health and Safety Code Section 18941.5 provide that the City may establish more restrictive building standards if they are reasonably necessary due to local climatic, geological or topographical conditions.

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

i. The provisions of California Assembly Bill 32 (Global Warming Solutions Act) require actions on the part of State and local governments to significantly reduce greenhouse gas (GHG) emissions such that statewide GHG emissions are lowered to 1990 levels in 2020 and 80% below 1990 levels in 2050.

j. Local government, by itself, cannot fully address all of the challenges posed by climate change and comply with the mandates of AB 32.

k. Energy efficiency is a key component in reducing GHG emissions, and construction of more energy efficient buildings can help San Jose reduce its share of the GHG emissions that contribute to climate change.

l. On October 7, 2008, the City Council adopted a policy establishing minimum green building standards for new construction in private residential and nonresidential development projects, Policy No. 6-32.

m. In February 2009 the City hired Gabel Associates, LLC, an expert in the field of building analysis and Energy Code compliance, to assist the City in preparing a study and proposal for local amendments to the 2008 California Energy Code, and said study demonstrated the cost effectiveness of these local amendments.

n. The study conducted by Gabel Associates, LLC has concluded that the energy efficiency measures contained in this Ordinance are cost-effective. The City Council hereby adopts the conclusions of the study and authorizes its inclusion in an application for consideration by the California Energy Commission in compliance with Public Resources Code 25402.1(h) (2).

o. The City will include the Gabel Associates study in an application for consideration by the California Energy Commission in compliance with Public Resources Code 25402.1(h) (2).

p. Reduction of total and peak energy use as a result of incremental energy efficiency measures required by this Ordinance will have local and regional benefits in the cost-effective reduction of energy costs for building owners, additional available system energy capacity, and a reduction in greenhouse gas emissions.

Part 2
Definitions

17.84.100 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

17.84.101 Application

Application means any application to the Planning Division of the City's Department of Planning, Building and Code Enforcement for a Development Permit.

17.84.102 Building

Building means any structure used for support or shelter of any use or occupancy, as defined in the California Building Standards Code.

17.84.103 City

City means the City of San José.

17.84.104 Commercial/Industrial Building

Commercial/Industrial Building means all non-residential construction including construction of retail space, office space, and other commercial uses, regardless of the zoning scheme at the project's location.

17.84.105 Development Permit

Development Permit has the same meaning as the definition in Section 20.200.270 of Title 20 of this Code.

17.84.106 Director

Director means the Director of Planning or his or her designee.

17.84.107 GreenPoint Rated Rating System, GreenPoint Rated and GreenPoint Rated Checklist

GreenPoint Rated Rating System, GreenPoint Rated and GreenPoint Rated Checklist refers to the third-party verification system for the green building measures established by the non-profit organization Build It Green that are referenced in their Green Building Guidelines.

17.84.108 Gross Floor Area

Gross Floor Area means the total enclosed area of all floors of a building measured to the inside face of the exterior walls including halls, stairways, elevator shafts at each floor level, service and mechanical equipment and mechanical equipment rooms and basement or attic areas having a height of more than seven feet, but excluding area used exclusively for vehicle parking or loading.

17.84.109 High Rise Building

High-Rise Building means a building that is a minimum of 75 feet in height.

17.84.110 High Rise Residential Project

High-Rise Residential Project means a High Rise building used primarily for residential purposes.

17.84.111 Housing Department In-lieu Guarantee

Housing Department In-Lieu Guarantee means a certificate issued by the Director of Housing guaranteeing that the Housing Department will pay the Green Building Deposit Fee on the square footage of the building constructed as affordable housing uses in the event the Project does not achieve the minimum Green Building Compliance Requirements

17.84.112 Large Commercial/Industrial Building

Large Commercial Building means a non-residential building having a gross floor area of twenty-five thousand (25,000) square feet or more and is not a high-rise building.

17.84.113 Large Residential Project

Large Residential Project means a residential project that has ten (10) or more single family or multi-family dwelling units and is not a high-rise building.

17.84.114 LEED™ Rating System and LEED™ Checklist

LEED™ and LEED™ Checklist mean the Leadership in Energy and Environment Design Rating Systems, certification methodology, and checklists of the United States Green Building Council (USGBC), the nationally accepted benchmark for the design, construction and operation of high performance green buildings.

17.84.115 Mixed-Use Project

Mixed-Use Project means a development that contains uses from two or more of the three major land use categories; residential, commercial, and industrial as defined in Section 20.200.760 of the San José Municipal Code.

17.84.116 New Construction Project

New Construction Project means a project of any size that creates one or multiple new structures. The addition of square footage to an existing structure does not constitute a new construction project.

17.84.117 Single-Family Detached Residence

Single-Family Detached Residence has the same definition as used in Title 20 of this Code.

17.84.118 Small Commercial/Industrial Building

Small Commercial Project means a project involving construction of a new structure of less than twenty-five thousand (25,000) square feet for non-residential uses, and is not a high-rise building.

17.84.119 Small Residential Project

Small Residential Project means a Residential Project that has from two (2) to nine (9) single family or multi-family dwelling units and is not a high-rise building and is not one single-family detached residence.

17.84.120 Tier One Project

Tier One Project means a Small Commercial Industrial Building or a Small Residential Project or a Single Family Detached Residence.

17.84.121 Tier Two Project

Tier Two Project means a Large Commercial Industrial Building or a Large Residential Project.

Part 3
Compliance and Enforcement

17.84.200 Applicability

A. The provisions of this Chapter shall apply to all projects for which a building permit is applied for on or after September 8, 2009, with the following exceptions:

1. The provisions of this Chapter shall not apply to any Project for which a development permit application was first submitted before January 1, 2009.

2. Projects exempted or modified based on unique circumstances pursuant to the provisions of Section 17.84.210.

B. Nothing in this section is intended to create any vested right in any project.

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

17.84.300 Green Building Refundable Deposit

No Building Permit shall be issued for a Tier Two Project or High Rise Residential Project unless the permit applicant pays the Green Building Refundable Deposit fees in an amount set by resolution of the City Council or submits a Housing Department In-Lieu Guarantee in order to warrant that the Project will meet the Green Building Certification Requirements as specified in this Chapter.

17.84.305 Green Building Deposit Refund Administration

A. In order to obtain a refund of the Green Building Deposit the original building permit applicant or applicant's authorized representative must file a written request for refund and provides documentation satisfactory to the Director in support of the request.

B. The Director may authorize the refund of any green building deposit under the following circumstances:
   1. when the Director determines that the deposit was erroneously paid or collected;
   2. when the building permit application is withdrawn or cancelled; or
   3. when the Director determines that the green building certification standards contained in section 17.84.220 have been achieved.

C. The Green Building Deposit shall be considered forfeited if the City does not receive a request for refund together with green building certification evidence demonstrating the compliance provisions of section 17.84.220 within a year after the building permit expires or becomes final.

D. An extension to the time set forth in subsection C above may be requested to the Director before the time has expired. The extension request shall include documentation satisfactory to the Director that the extension is required solely due to the delays resulting from the LEED or GreenPoint Rated certification bodies.

17.84.310 Appeal

Determinations of the Director on requests for exemption (as specified in Section 17.84.210) to this Chapter are appealable to the Planning Commission pursuant to the procedures set forth in Sections Section 20.100.240 and 20.100.270 of the San Jose Municipal Code..

17.84.320 Regulations

The Director is hereby authorized 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.

PASSED FOR PUBLICATION of title this 23rd day of June, 2009, by the following vote:

AYES:	CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.
NOES:	NONE.
ABSENT:	CHIRCO.
DISQUALIFIED:	NONE.

Chuck Reed

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk