ORDINANCE NO. 2009-14

AMENDING THE SAN MATEO MUNICIPAL CODE TO ADD ANEW CHAPTER 23.70 ENTITLED "GREEN BUILDING REQUIREMENTS"

WHEREAS, 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 a building's occupants over the life of the building.

WHEREAS, green building is a critical component of sustainable development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

WHEREAS, design, siting, and construction decisions made by the City in the construction and remodeling of City buildings can result in significant energy cost savings to the City over the life of the buildings and reduce the City's carbon footprint

WHEREAS, green building design, construction and operational techniques have become increasingly widespread in commercial and residential building construction. National and regional systems have been established to serve as guides and objective standards for green building practices. At the national level, the US Green Building Council has established the Leadership in Energy and Environmental Design (LEED) Green Building Rating System for new construction and major renovation of commercial projects. At the State level, the Building Standards Commission has adopted a Green Building Code. At the regional level, Build It Green, a non-profit organization headquartered in the Bay Area, has developed Home Remodeling, New Home Construction, & Multifamily Green Building Guidelines and a Green Points Rating System for single-family and multifamily residences.

WHEREAS, California Health and Safety Code Sections 18938 and 17958 provide that the California Building Standards Code establishes building standards for all occupancies throughout the State.

WHEREAS, Health and Safety Code Section 17958.5 provides that a city may establish more restrictive building standards if they are reasonably necessary due to local climatic, geological or topographical conditions and findings are made based on these criteria during adoption.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN MATEO ORDAINS AS FOLLOWS:

Section 1. **Findings.** To the extent the proposed Green Building Ordinance effects changes to the California Building Standards Code as adopted by the City, the City

Council finds the provisions herein to be reasonably necessary due to local climatic, geologic and topographic conditions, specifically:

- a. The City is located in a climatic zone with precipitation averaging approximately 20 inches per year. Most precipitation falls during the months of November through April, leaving a relatively dry period of approximately six months each year. Local prevailing winds come from the southwest with a mean speed of 1.7 miles per hour. City potable water, storm water collection, and wastewater collection and treatment systems are designed to accommodate and make use of historically consistent weather patterns and supplies. The Climate Change Section in the Sustainability Initiative Plan recognizes the emission of greenhouse gases may change weather patterns and recommends that the City address these effects through its policies. The adoption of a Green Building Ordinance would minimize the emission of greenhouse gases that may pose a threat to the City's potable water supplies, storm water collection, wastewater collection and treatment systems.
- b. The protection of water quality, the prevention of pollutant infiltration, and the reduction of construction area runoff are important concerns due to the topography of the City because the City is topographically diverse, with elevations ranging from sea level to over 500 feet. The area also has a number of waterways, including San Mateo Creek, Polhemus Creek, Laurel Creek, Beresford Creek, Leslie Creek and Borel Creek. The San Mateo Creek provides a natural outlet of Crystal Springs Reservoir through the Crystal Springs Dam. The Climate Change Section in the Sustainability Initiative Plan recognizes the emission of greenhouse gases may increase sea level rise and recommends that the City address these effects through its policies. The use of sustainable and energy efficient building practices, materials, and designs will reduce the runoff from these waterways.

Section 2. Green Building Requirements. A new chapter entitled "Green Building Requirements" is added to Title XXIII of the San Mateo Municipal code to read as follows:

Chapter 23.70 GREEN BUILDING REQUIREMENTS

Section 23.70.010 Purpose.
Section 23.70.020 Applicability.
Section 23.70.030 Definitions.
Section 23.70.040 Compliance Matrix.

Section 23.70.050 Administrative Procedures and Promulgation of Implementing

Regulations.

Section 23.70.060 Hardship or Infeasibility Exemption.

23.70.010 PURPOSE. The purpose of this Chapter is to enhance the public welfare and assure that further commercial, residential and civic development is consistent with the City's desire to create a more sustainable community by incorporating green building measures into the design, construction and maintenance of buildings. The green building provisions referenced in this chapter are designed to achieve the following goals:

- A. To conserve natural resources and reduce the emission of greenhouse gases;
- B. To reduce the waste generated by construction projects;
- C. To increase energy efficiency;
- D. To provide durable buildings that are efficient and economical to own and operate; and
- E. To promote the health and productivity of residents, workers, and visitors to the City.

23.70.020 APPLICABILITY. This chapter applies to all "Covered Projects," as defined below, except that the provisions of subsection 23.70.050(a)(1) shall not apply to any project for which a planning application has been deemed complete prior to January 1, 2010, and no part of this chapter shall apply to any Covered Projects for which a building permit application has been submitted prior to January 1, 2010.

23.70.030 DEFINITIONS. As used in this chapter, certain words and terms shall be defined as follows:

- A. Applicant means any entity that applies to the City for the applicable permits or approvals to undertake any covered project within the city.
- B. Build It Green means the nonprofit organization that publishes the Residential Green Building Guidelines and the Residential Green Points Checklists, and any successor nonprofit entity that assumes responsibility for the programs and operations of Build It Green.
- C. Compliance Official is the Community Development Department Director, or his designee, charged with the administration and enforcement of this code.
- 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 described in the Compliance Matrix in Section 23.70.040.
- E. Covered Projects means all private construction and development projects, unless otherwise exempt from these requirements by City Council resolution.

- F. Green Building means a whole system approach to the design, construction, and operation of buildings that helps mitigate 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.
- G. Green Building Project Checklist means a checklist or scorecard developed by one of the accepted Green Building Rating Systems for the purpose of calculating a green building rating score.
- H. Green Building Rating System means a system associated with specific green building criteria and used to determine the compliance thresholds. Examples of rating systems include, but are not limited to, the LEED and GPR systems.
- I. GPR means Green Point Rated.
- J. LEED[®] means Leadership in Energy and Environmental Design.
- K. Qualified Green Building Professional means an individual who has been 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 Building Official.
- L. USGBC means the United States Green Building Council.
- **23.70.040 COMPLIANCE MATRIX.** The City Council shall establish by resolution, and may periodically review and update as necessary, the Green Building Compliance Matrix. The Compliance Matrix shall include, but is not limited to, the following:
 - (a) The green building rating system to be applied to the various types of projects;
 - (b) Minimum thresholds of compliance for various types of projects

23.70.050 PROCEDURES FOR DETERMINING AND INSURING PROJECT COMPLIANCE.

- (a) The procedures for compliance documentation for any Covered Project shall be as follows:
 - (1) Planning Applications. Along with the submittal of an application for any required planning approval, including but not limited to,

Site Plan Architecture Review (SPAR), Site Development Review, Planned Development Review, Conditional Use or Variance request, the applicant shall submit the appropriate completed Green Building Project Checklist, as required by the Compliance Matrix described in Section 23.70.040, and any supporting documentation. All documentation shall be provided by a Qualified Green Building Professional. If the Compliance Official determines that the application satisfies the requirements as described in the Compliance Matrix, the Compliance Official shall inform the decision maker on the planning application of this finding. No planning application may be approved, unless, in addition to all other applicable requirements, the Compliance Official has determined the project satisfies the requirements as described in the Compliance Matrix.

- Building Permit Review. Along with the submittal of an (2) application for a building permit, building plans shall include the appropriate completed Green Building Project Checklist, as required by the Compliance Matrix described in Section 23.70.040. The Green Building Project Checklist shall be incorporated onto a separate plan sheet included with the building plans. All documentation shall be provided by a Qualified Green Building Professional. If the Compliance Official determines that the application satisfies the requirements as described in the Compliance Matrix, the Compliance Official shall inform the Building Official of this finding. No building permit application shall be approved, unless, in addition to all other applicable requirements, the Compliance Official has determined that the proposed construction satisfies the requirements as described in the Compliance Matrix.
- (3) Project Compliance during Construction. If, as a result of any inspection, the City determines that the covered project does not comply with the approved plans, a stop work order shall be issued if the Compliance Officer determines continuation of construction activities will jeopardize the project's ability to meet the required compliance threshold. The stop work order shall remain in effect until the Compliance Official determines that the covered project will be brought into compliance with the approved plans.
- (4) Final Determination of Compliance. Prior to the scheduling of a final building inspection, the applicant shall submit to the Compliance Official a completed Green Building Project Checklist demonstrating compliance with the Compliance Matrix described in Section 23.70.040 and a letter from a Qualified Green Building

Professional that verifies that the project has been constructed in accordance with the approved Green Building Project Checklist. The Compliance Official shall review the documentation submitted by the Qualified Green Building Professional, and determine whether the project has achieved the required Compliance Threshold as set forth in the Compliance Matrix described in Section 23.70.040. If the Compliance Official determines that the project has met the Compliance Threshold, the final building inspection may proceed, provided the project has received approval from all other inspections. If the Compliance Official determines that the project has not met the Compliance Threshold or if the Qualified Green Building Professional fails to submit the documentation required, then the project shall be determined to be non-compliant, and the final inspection for the project shall be withheld.

- (b) The Compliance Official shall have the responsibility to administer and monitor compliance with the requirements set forth in this chapter and with any procedures promulgated there under and to grant exemptions from the requirements, where so authorized.
- (c) Compliance with the provisions of this chapter shall be listed as a condition of approval on any planning application approval and on the building plans for building permit approval for any Covered Project.

23.70.060 UNDUE HARDSHIP EXEMPTION.

- (a) Exemption. If an applicant for a Covered Project believes that circumstances exist that make it an undue hardship to meet all of 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 undue hardship.
- (b) Application. If an applicant for a Covered Project believes such circumstances exist, the applicant may apply for an exemption at the time of the planning application and/or building permit submittal. The applicant shall indicate the maximum threshold of compliance he or she believes is feasible and the circumstances that he or she believes create an undue hardship to fully comply with this Chapter. For the purposes of this section, an undue hardship exists if:
 - (1) There is a lack of commercially available green building materials and technologies, or

- (2) the green building compliance standards do not include enough green building measures that are compatible with the scope of the covered project; or
- (3) the green building compliance standards conflict with other City goals, codes, or policies.
- (c) Granting of Exemption. If the Compliance Official determines that it is an undue hardship 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.
- (d) Denial of Exemption. If the Compliance Official determines compliance would not constitute an undue hardship, the request shall be denied and the Compliance Official shall so notify the applicant in writing.
- (e) All decisions of the Compliance Official under this section shall be final.
- **Section 3. SEVERABILITY**. If any section of this ordinance, or part thereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining section of this ordinance and shall in no way affect the validity of the remaining sections hereof.
- **Section 4. EFFECTIVE DATE.** This Ordinance shall become effective on January 1, 2010.
- **Section 5. PUBLICATION.** The City Clerk shall publish this Ordinance according to law.
- **Section 6. CEQA.** The adoption of the proposed ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15308 of the CEQA Guidelines. Section 15308, Actions by Regulatory Agencies for Protection of the Environment is designed to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment.

I hereby certify this to be a correct copy of Ordinance 2009-14 of the City of San Mateo, California, introduced on November 2, 2009 and adopted on November 16, 2009, by the following vote of the Council:

AYES: Council Members EPSTEIN, LEE, MATTHEWS, HANSSON and GROTTE

NOES: NONE ABSENT: NONE

(SEAL) /s/ NORMA GOMEZ, City Clerk