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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
AGENDA REPORT

2010 JUN 30 AM 10:50

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 6, 2010

RE: **Supplemental Report to the Public Hearing, Report And Ordinance Recommended By The Planning Commission, Adopting Oakland Municipal Code Title 18 - Sustainability, Chapter 18.02 Sustainable Green Building Requirements For Private Development To Establish Environmentally Sustainable Regulations For Building Construction, Remodeling, Landscaping And Demolition**

SUMMARY

Based on conversions and recommendations from the California Energy Commission (CEC) on June 24, 2010, staff has revised the ordinance with non-substantive changes. These non-substantive changes clarify language already in the ordinance and state that all buildings or projects must comply with all requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code; that no Unreasonable Hardship Exemption will be granted to any applicant for compliance requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code; and when certification is required.

KEY ISSUES AND IMPACTS

California Energy Commission (CEC)

As stated in the previous staff and supplemental reports, State Building Efficiency Standards (2005) Section 10-106 allows local jurisdictions to adopt energy standards more stringent than state standards. Local governments must submit documentation to the CEC supporting the jurisdiction's analysis for how the proposed standards will save more energy than the current statewide standards. The CEC verifies and approves the documentation. Staff must submit the information to the CEC between the City Council's 1st and 2nd reading of the Ordinance.

California Energy Commission staff reviewed the ordinance and provided Planning staff with comments on the Ordinance language. This new language clarifies the following:

1. Explicitly states that the 2008 Title 24 energy standards must be met in every respect for every building project regardless of the ordinance.
2. When a project must obtain certification.

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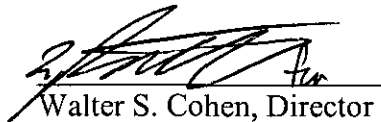
Staff has revised the green building Ordinance to include this language. *Attachment A* shows these changes.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt an Ordinance that:

1. Adds a new title, Title 18 –Sustainability to the Oakland Municipal Code; and
2. Adds Chapter 18.02 Sustainable Green Building Requirements For Private Development that requires minimum green building standards to private development projects.

Respectfully submitted,

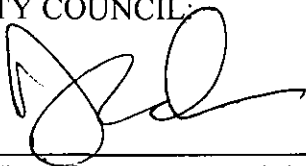


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Eric Angstadt, Deputy Director

Prepared by:
Heather Klein, Planner III
Planning and Zoning Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

Attachments:

- A. Changes made to Ordinance since the supplemental report was published on June 25, 2010

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City Council
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Clarifying changes made to Ordinance since first supplemental staff report

1. 18.02.090 Compliance Standards Table Effective until December 31, 2010

The criteria in the Compliance Standards Table, below, applies 30 days after adoption of this Chapter and ends December 31, 2010. Please note that where a "completed checklist" is required in this section 18.02.090, that there is no requirement to become certified by Build it Green, U.S. Green Building Council, StopWaste.Org or any other non-governmental agency. Furthermore, compliance with Section 18.02.090 in no way enables the applicant to declare compliance with the associated programs of GreenPoint Rated, LEED or Small Commercial Building. All buildings or projects must comply with all requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code.

2. Section 18.02.100 Compliance Standards Table Effective January 1, 2011

The following green building requirements shall **be effective January 1, 2011 and thereafter**. Please note that Section 18.02.100 requires certification by the non-governmental agencies Build it Green, U.S. Green Building Council and/or StopWaste.Org for full compliance (Section 18.02.130). Projects that fail to become certified by these non-governmental agencies will be deemed in violation of this section of the Municipal Code of the City of Oakland and shall be referred to the City's Code Enforcement Division for corrective action (Section 18.02.130(B)). All buildings or projects must comply with all requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code.

3. Section 18.02.110 Green Building Documentation Requirements

A. Green Building Documentation

Application submittals during the Entitlement Phase shall include:

- a) All required documentation for the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code compliance.

4. Section 18.02.0140 Appeal Procedures

A. Unreasonable Hardship Exemption

- a) If compliance with this Chapter presents an Unreasonable Hardship, the Applicant may apply for an exemption as set forth in this section. No Unreasonable Hardship Exemption under this section will be granted to any applicant for compliance requirements of the 2008 California Building

Clarifying changes made to Ordinance since first supplemental staff report

Energy Efficiency Standards (Title 24, Part 6) of the California Building Code. In applying for an exemption, the burden is on the applicant to demonstrate the Unreasonable Hardship. The City Planning and Zoning Division shall maintain the Unreasonable Hardship Exemption Application.

5. Section 18.02.150 Green Building Documentation Requirements

A. Green Building Documentation

Construction Phase -Permitting and Inspection submittals shall include:

- i. All required documentation for the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code compliance.

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INTRODUCED BY

2010 JUN 30 AM 10: 51

COUNCILMEMBER

APPROVED FOR FORM AND LEGALITY

K Jain
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

**ORDINANCE ADOPTING OAKLAND MUNICIPAL CODE TITLE 18
- SUSTAINABILITY, CHAPTER 18.02 SUSTAINABLE GREEN
BUILDING REQUIREMENTS FOR PRIVATE DEVELOPMENT TO
ESTABLISH ENVIRONMENTALLY SUSTAINABLE REGULATIONS
FOR BUILDING CONSTRUCTION, REMODELING, LANDSCAPING
AND DEMOLITION**

WHEREAS, the Oakland City Council adopted the Sustainable Community Development Initiative (SCDI) through Resolution No. 74678 on December 1, 1998; and

WHEREAS, one of the adopted goals of the Oakland City Council is to "Develop a Sustainable City" and to "maximize socially and environmentally sustainable economic growth, including conserving natural resources;" and

WHEREAS, in May 2005, the Oakland City Council unanimously adopted a Civic Green Building Ordinance, joining numerous other cities in requiring that City owned or occupied buildings to meet specific green building standards set by the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) rating system; and,

WHEREAS, in May 2006, the Oakland City Council adopted a Resolution establishing the Alameda County Residential Green Building Guidelines (for new home construction, home remodeling and multifamily residential development), U.S. Green Building Council's LEED™ rating systems (for new commercial construction and remodeling), and Bay-Friendly Landscape Guidelines as official city reference documents for private development projects; and

WHEREAS, the demolition, design, construction, and maintenance of buildings and structures 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; and

WHEREAS, green building is a whole systems approach to the location, siting, design, construction, operation, demolition, and landscaping of buildings and structures that reduces or eliminates the environmental, economic, and social impacts of associated with conventional building practices; and

WHEREAS, green building can have significant positive effect on energy, water, and resource efficiency, waste and pollution generation, wildlife habitat and the health and productivity of a property's occupants over the life of the building and landscape; and

WHEREAS, in recent years, green building construction and landscaping design have become increasingly widespread in California and in Oakland, with many homeowners, businesses, and building professionals voluntarily seeking to incorporate these techniques and operations into their projects; and

WHEREAS, at the national level, the U.S. Green Building Council has taken the lead in promoting and guiding green building by developing the Leadership in Energy and Environmental Design (LEED) Rating System and Reference Guide; and

WHEREAS, at the state level, Build It Green's GreenPoint Rated program has become the industry standard for residential new construction and remodels; and

WHEREAS, at the county level, Stopwaste.Org has developed the Small Commercial Building Checklist and the Bay Friendly Basic Landscape Checklist as a list of best management practices to promote green building and landscaping practices where other rating programs are not applicable; and

WHEREAS, many cities within California have adopted mandatory green building ordinances for both public and private development using the Build It Green, LEED, and StopWaste.Org rating systems; and

WHEREAS, as outlined in the Oakland City Council's approval of a draft Greenhouse Gas reduction target in July of 2009 which would include green building actions, it is critical to both the economic and environmental health of the City of Oakland that the City provide leadership to the public and private sectors in the area of green building and sustainable landscapes; and

WHEREAS, the most immediate and meaningful way to do so is to include green building and landscape requirements for both the public and private sectors that are stricter than current building standards, based on local climatic, geological, and topographical conditions and are shown to be cost effective over the life of the building and landscape; and

WHEREAS, the proposed ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) each as a separate and independent basis pursuant to, without limitation,: (1) CEQA Guidelines pursuant to, without limitation,: (1) CEQA Guidelines Section 15307 (actions by regulatory agencies for the protection of natural resources; (2) CEQA Guidelines Section 15308 (actions by regulatory agencies for the protection of the environment); (3) CEQA Guidelines Sections 15060(c)(2) and 15061 (b)(3), (it can be seen with certainty that there is no possibility that the activity in question may have a significant (negative) effect on the environment), and , which exempt changes in Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and

WHEREAS, the proposed ordinance, which requires changes and amendments to the Oakland Building Code, is necessary because of “local climatic, geological, and topographical conditions” per the California Health & Safety Code Sections 17958, 17958.5 and 17958.7 and the California Building Standards Code.

WHEREAS, the proposed standards in the Ordinance are cost effective and will require the diminution of energy consumption levels permitted by the 2008 Statewide energy efficiency standards.

WHEREAS, the City Planning Commission held several publicly noticed meetings to take public testimony and discuss the regulations, including a meeting on April 7, 2010 where they voted to recommend the proposal to the City Council; now, therefore,

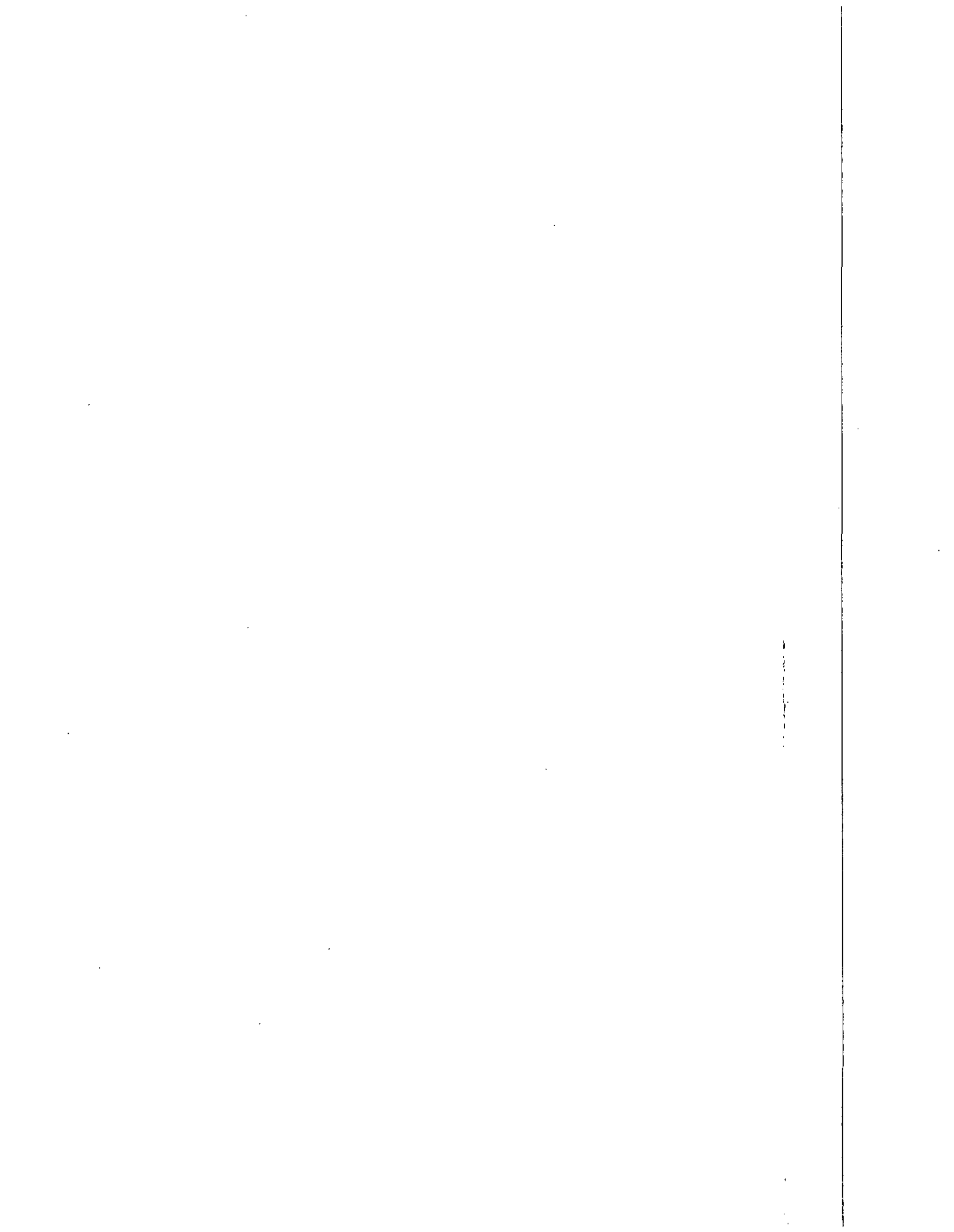
THE COUNCIL OF THE CITY OF THE OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the forgoing recitals to be true and correct and are an integral part of the Council’s decision, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The City Council hereby finds that the City is proposing to adopt various enumerated changes and modifications to the Oakland Building Code (Code). California Health and Safety Code Sections 17958, 17958.5 and 17958.7 and the California Building Standards Code permit cities to make such changes or modifications in the Code as they determine are reasonably necessary because of “local climatic, geological, and topographical conditions” provided that such modified standards and findings are filed with the California Building Standards Commission. Such findings detailed in Exhibit A-1 attached hereto are adopted by the Council and shall be filed with the California Building Standards Commission.

SECTION 3. The City Council hereby finds that the proposed building standards are cost effective and will require the diminution of energy consumption levels permitted by the 2008 Statewide energy efficiency standards, based on the findings in the January 21, 2009 study entitled “Energy Cost Effectiveness Case Studies using the 2008 Title 24 Building Energy Efficiency Standards,” adopted by the StopWaste.Org Board on April 22, 2009 and made a part hereof by this reference and detailed in Exhibit A-2.

SECTION 4. A new title, Title 18, Sustainability, Chapter 18.02 Sustainable Green Building Requirements for Private Development is hereby added to the Oakland Municipal Code as follows:



Title 18 – Sustainability
Chapter 18.02 Sustainable Green Building Requirements for Private Development

Sections:

Article 1 – Intent

18.02.010 Title

18.02.020 Purpose and Intent

Article II – Administrative

18.02.030 Definitions

18.02.040 Scope and Applicability

18.02.050 Authority

18.02.060 Conflict

18.02.070 Amendments

18.02.080 Payments

Article III – Green Building Compliance Standards

18.02.090 Compliance Standards Table Effective until December 31, 2010

18.02.100 Compliance Standards and Table Effective January 1, 2011

Article IV- Entitlement Phase

18.02.110 Green Building Documentation Requirements

18.02.120 Review and Consideration of Green Building Documentation

18.02.130 Compliance

18.02.140 Appeal Procedures

Article V – Construction Phase

18.02.150 Green Building Documentation Requirements

18.02.160 Review and Consideration of Green Building Documentation

18.02.170 Compliance

18.02.180 Appeal Procedures

Article I - Intent

Section 18.02.010 Title

This Chapter shall be known as the “Sustainable Green Building Requirements for Private Development” and is referred to herein as this Chapter.

Section 18.02.020 Purpose and Intent

This Chapter is intended to promote economic development and enhance the health, safety, and welfare of its residents, workers, and visitors through the integration of environmentally sustainable strategies in building construction and landscapes in the City. The minimum

standards, set forth herein, are intended to minimize the use of natural resources and the production of waste and maximize the healthfulness of enclosed environments.

Article II - Administrative

Section 18.02.030 Definitions

As used in this Chapter, the following terms shall have the meanings set forth hereto or as otherwise specified in the regulations referenced herein. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

ADDITION/ ALTERATION for the purposes of this Chapter only means any change, addition, or modification to an existing building or structure, including, but not limited to, remodeling, renovations, tenant improvements, and expansion in floor area.

ADDITION/ ALTERATION - MAJOR for the purposes of this Chapter only means *Addition/Alteration of non-residential buildings where (a) interior finishes are removed, (b) major upgrades to mechanical, electrical and/or plumbing systems are proposed, and (c) where such Addition/Alteration is 25,000 square feet or more.*

APPLICANT means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality (other than the City of Oakland), industry, public or private corporation, or any other entity that applies to the City for permits to undertake any construction within the City subject to this Chapter.

BUILDING is defined under Chapter 15.35.030.

CHECKLIST means the most recent green building methodology and rating system suitable for the type of construction proposed in evaluating the conformance with provisions of this Chapter, as determined by the City's Planning and Zoning Division.

CHECKLIST - BAY-FRIENDLY BASIC LANDSCAPE means the most recent version of the Checklist developed by StopWaste.Org for use in the professional design, construction and alterations of landscapes, and any subsequent Checklists associated with the green building methodology.

CHECKLIST - GREENPOINT RATED AND GREENPOINTS (GPR) means the most recent versions of the Checklists, associated with the green building rating system and certification methodology developed by Build It Green, including but not limited to, the Single-Family GreenPoint Rated Checklist, the Multifamily GreenPoint Rated Checklist, the GreenPoint Rated Checklist Existing Home (Elements Label), and any subsequent Checklists.

CHECKLIST - LEED™ means the most recent versions of the Checklists, associated with the green building rating system and certification methodology developed by the United States Green Building Council (USGBC), including but not limited to, LEED for New Construction, LEED for Existing Buildings, LEED for Commercial Interior, LEED for

Homes, LEED for Schools, LEED for Retail, LEED for Neighborhood Development and any subsequent Checklists.

CHECKLIST - SMALL COMMERCIAL means the most recent version of the Checklist, associated with the green building methodology developed by StopWaste.Org, for use in the professional design, construction, and additions and/or alterations of small commercial (non-residential) buildings and any subsequent Checklists.

COMPLIANCE STANDARDS TABLE means the tables located in Section 18.02.090 and Section 18.02.100 of this Chapter which outlines the applicable size thresholds, checklist(s), and minimum compliance requirements for each construction type.

CONSTRUCTION means work which is subject to the Oakland Building Construction Code.

CONSTRUCTION PHASE - PERMITTING means the engineering approval process for a permit, including but not limited to a demolition, grading, and building permit, issued pursuant to the Oakland Building Construction Code.

CONSTRUCTION PHASE - INSPECTIONS means the site inspection process for a permit including but not limited to a demolition, grading, and building permit, issued pursuant to the Oakland Building Construction Code.

DECONSTRUCTION for the purposes of this Chapter means the systematic dismantling of a Building to preserve the useful value of its component materials.

DEMOLITION for the purposes of this Chapter only means the full or partial razing, ruining, tearing down or wrecking of any Building's exterior structure not withstanding the provisions of Chapter 15.36 of the Oakland Municipal Code.

ENTITLEMENT PHASE means the land use approval process per the Oakland Planning Code for a planning permit such as, but not limited to, a conditional use permit, design review or variance permit, and the continued compliance with the Conditions of Approval under which such permit was approved.

GREEN BUILDING CERTIFICATION means the certification that the construction complies with the provisions of this Chapter by (a) Build It Green for GreenPoint Rated projects, (b) the Green Building Certification Institution (GBCI) or U.S. Green Building Council for LEED projects, (c) the City's Building Services Division for the Checklist - Small Commercial, the Checklist - Bay-Friendly Basic Landscape, or (d) the City's Environmental Services Division for deconstruction.

GREEN BUILDING CERTIFIER means an individual who (1) can certify that the Applicant is in compliance with this Chapter; (2) does not have financial interest in the project for which Green Building Certification is being sought; provided however, that compensation for providing such certification only shall not be deemed a financial interest, and (3) is (a) currently certified by the United States Green Building Council as a LEED™ Accredited Professional, or (b) currently certified by Build It Green as a GreenPoint Rater. However, if

the Green Building Compliance Officer is the Green Building Certifier than conditions 3(a) and 3(b) in this paragraph is not applicable. The Green Building Certifier must comply with the conflict of interest or code of conduct policies of the rating system, as may be applicable. The Green Building Compliance Officer acts as the Green Building Certifier for projects subject, but not limited to, LEED for Neighborhood Development, Checklist - Small Commercial, Checklist - Bay-Friendly Basic Landscape, and Deconstruction.

GREEN BUILDING COMPLIANCE OFFICER means the City Administrator or designee(s) who is/are responsible for enforcement of this Chapter during the entitlement phase and all phases of construction.

GREEN BUILDING DOCUMENTATION means the information required by the Green Building Compliance Officer sufficient to confirm compliance with the provisions of this Chapter.

HISTORIC PRESERVATION PLANNER for the purposes of this Chapter means a City of Oakland Planning and Zoning Division staff person or designee assigned to review the application submitted pursuant to this Chapter to ensure that the historic integrity of a Historic Resources is not adversely altered by implementation of this Chapter.

HISTORIC RESOURCE for the purposes of this Chapter only means a Historic Resource, including any Designated Historic Property, any Potentially Designated Historic Property that have an rating of A or B or are located within an Area of Primary Importance as these capitalized terms are defined in Oakland's Historic Preservation Element.

LEED™ means Leadership in Energy and Environmental Design.

MIXED-USE for the purposes of this Chapter means a Building or group of Buildings located on a single tract of land, or on two or more tracts of land which may be separated only by a street or other right-of-way, or in a single building and which contain both residential and non-residential occupancies.

OAKLAND BUILDING CONSTRUCTION CODE means Chapter 15.04 of the Oakland Municipal Code.

OAKLAND PLANNING CODE means Title 17 of the Oakland Municipal Code.

OCCUPANCY for the purposes of this Chapter only means the assigned use of a Building or a portion a Building unless otherwise indicated.

RATING SYSTEM means the green building methodology determined by the City Planning and Zoning Division for evaluating compliance with the provisions of this Chapter for the Entitlement Phase and Construction Phases – Permitting and Inspections.

RECORD TITLE HOLDER means the current owner(s) of the fee simple interest of a real property.

REMOVAL for the purposes of this Chapter only shall mean either demolition or deconstruction of a Building, but does not include relocation of a Building.

REQUEST FOR REVISION PLANCHECK PROCESS for the purposes of this Chapter is the process by which a project Applicant may formally request a revision to the Entitlement Phase and/or Construction Phase-Permitting or Construction Phase-Inspection permits.

RESIDENTIAL for the purposes of this Chapter only means a Building or group of Buildings containing a residential Group R occupancy and not do not contain a non-residential occupancy, which is used or designed or intended to be used for human habitation including living, sleeping, cooking or eating or any combination thereof, including residentially oriented live/work units and HBX live/work units as such classifications are defined under Section 17.09.040 of the Oakland Planning Code.

SHALL/ WILL means a determinative directive which includes the common meaning of the word *must*.

UNREASONABLE HARDSHIP for the purposes of this Chapter shall mean practical infeasibilities, difficulties, or results inconsistent with the general purposes of this Chapter that are only applicable during the Entitlement Phase.

Section 18.02.040 Scope and Applicability

This Chapter establishes the scope and applicability of construction, related to siting, designing, constructing, remodeling, demolishing, and landscaping that reduces the environmental and economic impacts of conventional construction practices.

A. Inclusions

This Chapter shall apply to the following:

- Residential New Construction
- One and Two-Family Additions /Alterations of more than 1,000 square feet of contiguous or non-contiguous gross floor area
- Multi-Family (3+units) Additions/Alterations
- Non-Residential New Construction of more than 5,000 square feet of contiguous or non-contiguous gross floor area
- Non-Residential Additions/Alterations of more than 5,000 square feet of contiguous or non-contiguous gross floor area
- Removal of a Historic Resource and construction of a new building
- Historic Residential Additions/Alterations
 - a) One and Two-Family Additions/Alterations of more than 1,000 square feet of contiguous or non-contiguous gross floor area

b) Multi-Family (3+ units) Additions/Alterations

- Historic Non-Residential Additions/Alterations of more than 5,000 square feet of contiguous or non-contiguous gross floor area
- Affordable housing new construction and rehabilitation which receives City/Redevelopment Agency funding and has restrictions on income and rent/sales price.
- Mixed-use construction
- Construction of more than 500 square feet of contiguous or non-contiguous gross floor area requiring a Design Review Permit and a landscape plan subject to the Bay Friendly Landscape Basic Landscape Guidelines.

B. Exclusions

This Chapter shall not apply to the following:

- Fences, decks, arbors, pergolas, retaining walls, and signs.
- Secondary dwelling units, as defined in the Oakland Planning Code Section 17.102.360.
- *Repair or replacement of roof covering, fenestration, and façade materials.*
- Group U detached accessory buildings which do not exceed 1,000 square feet of floor area.
- Construction, additions, and alterations which are exempted from the permitting requirements both of the Oakland Building Construction Code and the Oakland Planning Code.
- Factory-built buildings approved by the State of California and manufactured housing approved by the United States Department of Housing and Urban Development.
- City and Redevelopment Agency capital improvement construction, alterations, and additions which are subject to Chapter 15.68 of the Oakland Municipal Code or the Bay-Friendly Landscaping Guidelines.
- Seismic retrofits only.
- Fire repairs to buildings that are damaged less than 75% of the current replacement cost per Section 17.114.120 of the Oakland Planning Code.

C. 2008 Building Energy Efficiency Standards

Notwithstanding any additional requirements contained in this Chapter, all buildings submitted for permit by the City of Oakland shall meet all applicable portions of the 2008 Building Energy Efficiency Standards contained in the California Code of Regulations, Title 24, Part 6.

D. Ongoing Review

- a) The Community and Economic Development Agency shall review this Chapter biannually and provide a report to the Planning Commission to determine whether it needs to be updated because of, but not limited to, new legislation enacted by the State or new standards developed by applicable organizations, such as StopWaste.Org, Build It Green, and LEED or the development of another effective rating system.
- b) The Community and Economic Development Agency shall review this Chapter with the adoption of each future Title 24 standards.

Section 18.02.050 Authority

A. General

The Green Building Compliance Officer is hereby authorized to enforce the provisions of this Chapter. The Green Building Compliance Officer may also adopt rules and regulations to implement this Chapter.

B. Abatement of Violations

It shall be unlawful for any person, firm, or corporation to maintain any Building or portion thereof or real property or cause or allow the same to be done in violation of this Chapter. In addition to the civil penalties provided by pursuant to Oakland Municipal Code Chapter 15.08, a violator shall be liable for such costs, expenses, accruing interest, and disbursements paid or incurred by the City or any of its contractors in correcting, abating, and/or prosecuting such violation pursuant to Oakland Municipal Code Section 15.08.110.

C. Notification of Violations

A notice of violation under this Chapter shall be served in accordance with Oakland Municipal Code Section 15.08.110(B).

D. Fees, Costs, Penalties and Interest

The fees and costs incurred and the civil penalties assessed and the interest accrued in ascertaining violations or affecting abatement thereof and in collecting such fees, costs, penalties, accruing interest, and attorneys' fees shall be a charge against the real property and record title holder. Such fees, costs, penalties, and accruing interest shall be as established in

the Master Fee Schedule and may be recovered by all appropriate legal means, including nuisance abatement liens, prospective and priority liens, special assessments of the general tax levy, and civil and small claims court action brought by the City, and combinations of such actions.

E. Service and Collection

The methods of service for collection actions and the types and contents of the instruments of collection shall be as set forth in Chapter 15.08 of the Oakland Municipal Code, as may be amended.

Section 18.02.060 Conflict

Wherever the provisions of this Chapter conflict with each other or with the provisions of other associated codes, regulations, or ordinances, the more restrictive provision or standard shall control.

Section 18.02.070 Amendments

Where any section, subsection, sentence, clause, phrase, or other part of this Chapter and the referenced law recited herein are amended subsequently, all provisions of the original recitation not so specifically amended shall remain in full force and effect and all amended provisions shall be considered as added thereto.

Section 18.02.080 Payments

The Record Title Holder shall pay all fees as established in the Master Fee Schedule associated with this Chapter, including but not limited to, the submittal of Green Building Documentation, requests for determinations, unreasonable hardship, alternative methods, appeals, and administrative hearings to the City.

Article III - Green Building Compliance Standards

Section 18.02.090 Compliance Standards Table Effective until December 31, 2010

The criteria in the Compliance Standards Table, below, applies 30 days after adoption of this Chapter and ends December 31, 2010. Note that where a "completed checklist" is required in this section, 18.02.090, that there is no requirement to become certified by Build it Green, U.S. Green Building Council, StopWaste.Org or any other non-governmental agency. Furthermore, compliance with Section 18.02.090 in no way enables the applicant to declare compliance with the associated programs of GreenPoint Rated, LEED or Small Commercial Building. All buildings or projects must comply with all requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code.

1. Residential New Construction

A. One and Two Family Dwellings (Group R Occupancy)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Build It Green: Single Family GPR <i>Alternate</i> <ul style="list-style-type: none"> LEED for Homes 	Completed checklist
B. Multi-Family Dwellings (3+ units) (Group R Occupancy)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Build It Green: Multi-Family GPR <i>Alternates</i> <ul style="list-style-type: none"> Build It Green: Single Family GPR, or LEED New Construction 	Completed checklist

2. Residential Additions and Alterations

A. One and Two-Family Additions and Alterations that exceed 1,000 sq. ft. of floor area (Group R Occupancy)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Build It Green: Existing Home GPR 	<i>Required</i> <ul style="list-style-type: none"> Completed checklist (Elements Label) <i>Alternate</i> <ul style="list-style-type: none"> Completed checklist (Whole House Label)

3. Non-Residential New Construction

A. Non-Residential projects between 5,000 to 10,000 sq. ft. of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Small Commercial Checklist 	Completed checklist
B. Non-Residential projects between 10,000 to 25,000 sq. ft. of total floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> LEED New Construction, and Small Commercial Checklist <i>Alternate</i> <ul style="list-style-type: none"> Other appropriate LEED checklist, and Small Commercial Checklist 	Completed checklist (LEED and Small Commercial Checklist)
C. Non-Residential projects over 25,000 sq. ft. of total floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> LEED New Construction <i>Alternate</i> <ul style="list-style-type: none"> Other appropriate LEED checklist 	Completed checklist

4. Non-Residential Additions and Alterations	
A. Non-Residential Additions and Alterations between 5,000 - 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • Small Commercial Checklist 	Completed checklist
B. Non-Residential Additions and Alterations (see Major Alteration definition) over 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • LEED New Construction <i>Alternate</i> <ul style="list-style-type: none"> • Other appropriate LEED checklist 	Completed checklist
C. Non-Residential Additions and Alterations <u>not</u> meeting the Major Alteration definition and over 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • LEED New Construction, and • Small Commercial Checklist <i>Alternate</i> <ul style="list-style-type: none"> • Other appropriate LEED checklist, and • Small Commercial Checklist 	Completed checklist (LEED and Small Commercial Checklist)

5. Removal of a Historic Resource and New Construction	
A. New Construction projects resulting in removal of a Historic Resource	
Checklists	Minimum Requirements
<i>Required for Residential Construction - One and Two Family (Group R Occupancy)</i> <ul style="list-style-type: none"> • Build It Green: Single Family GPR <i>Required for Residential Construction - Multi-Family (3+ units) (Group R Occupancy)</i> <ul style="list-style-type: none"> • Build It Green: Multi-Family GPR <i>Alternate for Residential Construction</i> <ul style="list-style-type: none"> • LEED Homes <i>Required for Non-Residential Construction- (any square footage)</i> <ul style="list-style-type: none"> • LEED New Construction <i>Alternate for Non-Residential Construction (any square footage)</i> <ul style="list-style-type: none"> • Other applicable LEED checklist 	Completed checklist

6. Historic Residential Additions and Alterations	
A. One and Two-Family Additions and Alterations of Historic Resources that exceed 1,000 sq. ft of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • Build It Green: Existing Home GPR 	<i>Required</i> <ul style="list-style-type: none"> • Completed checklist (Elements Label) <i>Alternate</i> <ul style="list-style-type: none"> • Completed checklist (Whole House Label)

7. Historic Non-Residential Additions and Alterations	
A. Non-Residential Additions and Alterations of Historic Resources between 5,000 - 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • Small Commercial Checklist 	Completed checklist
B. Non-Residential Additions and Alterations of Historic Resources over 25,000 sq. ft. of floor area (see Major Alteration definition)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • LEED New Construction <i>Alternate</i> <ul style="list-style-type: none"> • Other appropriate LEED checklist 	Completed checklist
C. Alternate compliance: Non-Residential Additions and Alterations of Historic Resources not meeting the Major Alteration definition and over 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • LEED New Construction, and • Small Commercial Checklist <i>Alternate</i> <ul style="list-style-type: none"> • Other appropriate LEED checklist, and • Small Commercial Checklist 	Completed checklist (LEED and Small Commercial Checklist)

8: Affordable Housing Construction receiving City/Redevelopment Agency Funds

A. One, Two, and Multi-Family New Construction

Checklists	Minimum Requirements
<p><i>Required for Residential Construction - One and Two Family (Group R Occupancy)</i></p> <ul style="list-style-type: none"> • Build It Green: Single Family GPR <p><i>Required for Residential Construction – Multi-Family (3+ units) (Group R Occupancy)</i></p> <ul style="list-style-type: none"> • Build It Green: Multi-Family GPR <p><i>Alternates</i></p> <ul style="list-style-type: none"> • LEED Homes, or • LEED New Construction 	<ul style="list-style-type: none"> • Completed checklist • The minimum point requirement for certification • Green Building Certification

B. One and Two-Family Additions and Alterations that exceed 1,000 sq. ft. of floor area (Group R Occupancy)

Checklists	Minimum Requirements
<p><i>Required</i></p> <ul style="list-style-type: none"> • Build It Green: Existing Home GPR 	<p><i>Required</i></p> <ul style="list-style-type: none"> • Completed checklist (Elements Label) <p><i>Alternate</i></p> <ul style="list-style-type: none"> • Completed checklist (Whole House Label)

9: Mixed-Use Construction

A. Both residential and non-residential uses

Checklists	Minimum Requirements
<p><i>As determined by Planning Staff based on square footage of each use and which rating system and checklist is more appropriate</i></p>	<p>Completed checklist</p>

B. Alternate compliance path: Certify each portion of the building separately per the appropriate GreenPoint Rated, LEED or Stopwaste.Org checklist)

Checklists	Minimum Requirements
<p><i>As Determined by Planning Staff</i></p>	<p>Completed checklist</p>

10: Construction Requiring a Landscape Plan

A. Construction projects over 500 sq. ft. of total floor area requiring a Design Review permit and a Landscape Plan

Checklists	Minimum Requirements
<p><i>Required</i></p> <ul style="list-style-type: none"> • Bay Friendly Basic Landscape Checklist <p><i>Alternates</i></p> <ul style="list-style-type: none"> • Bay Friendly Scorecard for Home Landscapes, or • Bay Friendly Scorecard for Commercial and Civic Landscapes 	<p>Completed checklist</p>

Section 18.02.100 Compliance Standards Table Effective January 1, 2011

The following green building requirements shall be effective **January 1, 2011 and thereafter**. Note that Section 18.02.100 requires certification by the non-governmental agencies Build it Green, U.S. Green Building Council and/or StopWaste.Org for full compliance (Section 18.02.130). Projects that fail to become certified by these non-governmental agencies will be deemed in violation of this section of the Municipal Code of the City of Oakland and shall be referred to the City's Code Enforcement Division for corrective action (Section 18.02.130(B)). All buildings or projects must comply with all requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code.

1. Residential New Construction	
A. One and Two-Family Dwellings (Group R Occupancy)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Build It Green: Single Family GPR <i>Alternate</i> <ul style="list-style-type: none"> LEED for Homes 	<ul style="list-style-type: none"> Completed checklist Minimum point requirement for certification Green Building Certification
B. Multi-Family Dwellings (3+ units) (Group R Occupancy)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Build It Green: Multi-Family GPR <i>Alternates</i> <ul style="list-style-type: none"> Build It Green: Single Family GPR, or LEED New Construction 	<ul style="list-style-type: none"> Completed checklist Minimum point requirement for certification Green Building Certification
2. Residential Additions and Alterations	
A. One and Two-Family Additions and Alterations that exceed 1,000 sq. ft. of floor area (Group R Occupancy)	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> Build It Green: Existing Home GPR 	<i>Required</i> <ul style="list-style-type: none"> Completed checklist Minimum point requirement for certification (Elements Label) Green Building Certification (Elements Label) <i>Alternate</i> <ul style="list-style-type: none"> Completed checklist Minimum point requirement for certification (Whole House Label) Green Building Certification (Whole House Label)
B. Multi-Family Additions and Alterations (3+ units) (Group R Occupancy)	
Checklists	Minimum Requirements
Not available	When available: <ul style="list-style-type: none"> Completed checklist Minimum point requirement for certification Green Building Certification

3. Non-Residential New Construction

A. Non-Residential projects between 5,000 to 10,000 sq. ft. of floor area	
Checklists	Minimum Requirements
Required <ul style="list-style-type: none"> Small Commercial Checklist 	<ul style="list-style-type: none"> Completed checklist All applicable measures on the Small Commercial Checklist Green Building Certification
B. Non-Residential projects between 10,000 to 25,000 sq. ft. of total floor area	
Checklists	Minimum Requirements
Required <ul style="list-style-type: none"> LEED New Construction, and Small Commercial Checklist Alternate <ul style="list-style-type: none"> Other appropriate LEED checklist, and Small Commercial Checklist 	<ul style="list-style-type: none"> Completed checklist (LEED and Small Commercial Checklist) All applicable measures on the Small Commercial Checklist Green Building Certification
C. Non-Residential projects over 25,000 sq. ft. of total floor area	
Checklists	Minimum Requirements
Required <ul style="list-style-type: none"> LEED New Construction Alternate <ul style="list-style-type: none"> Other appropriate LEED checklist 	<ul style="list-style-type: none"> Completed checklist LEED Silver point requirement Green Building Certification

4. Non-Residential Additions and Alterations

A. Non-Residential Additions and Alterations between 5,000 - 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
Required <ul style="list-style-type: none"> Small Commercial Checklist 	<ul style="list-style-type: none"> Completed checklist All applicable measures on the Small Commercial Checklist Green Building Certification
B. Non-Residential Additions and Alterations (see Major Alteration definition) over 25,000 sq. ft. of floor area	
Checklists	Minimum Requirements
Required <ul style="list-style-type: none"> LEED New Construction Alternates <ul style="list-style-type: none"> Other appropriate LEED checklist 	<ul style="list-style-type: none"> Completed checklist LEED Silver point requirement Green Building Certification
C. Non-Residential Additions and Alterations <u>not</u> meeting the Major Alteration definition and over 25,000 sq. ft. of floor-area	
Checklists	Minimum Requirements
Required <ul style="list-style-type: none"> LEED New Construction, and Small Commercial Checklist Alternate <ul style="list-style-type: none"> Other appropriate LEED checklist, and Small Commercial Checklist 	<ul style="list-style-type: none"> Completed checklist (LEED and Small Commercial Checklist) All applicable measures on the Small Commercial Checklist Green Building Certification

5. Removal of a Historic Resource and New Construction

A. New Construction projects resulting in removal of a Historic Resource	
Checklists	Minimum Requirements
<p><i>Required for Residential Construction - One and Two Family (Group R Occupancy)</i></p> <ul style="list-style-type: none"> • Build It Green: Single Family GPR <p><i>Required for Residential Construction – Multi-Family (3+ units) (Group R Occupancy)</i></p> <ul style="list-style-type: none"> • Build It Green: Multi-Family GPR <p><i>Alternate for Residential Construction</i></p> <ul style="list-style-type: none"> • LEED Homes <p><i>Required for Non-Residential Construction- (any square footage)</i></p> <ul style="list-style-type: none"> • LEED New Construction <p><i>Alternate for Non-Residential Construction (any square footage)</i></p> <ul style="list-style-type: none"> • Other applicable LEED checklist 	<p><i>Required</i></p> <ul style="list-style-type: none"> • Completed checklist • Consultation with a Historic Preservation Planner • LEED Gold for non-residential construction or 75 GPR points for residential construction • Green Building Certification • Deconstruction of the Historic Resource <p><i>Alternate LEED for Homes</i></p> <ul style="list-style-type: none"> • Same as required above, except certification threshold is LEED Silver

6. Historic Residential Additions and Alterations

A. One and Two-Family Additions and Alterations of Historic Resources that exceed 1,000 sq. ft of floor area	
Checklists	Minimum Requirements
<p><i>Required</i></p> <ul style="list-style-type: none"> • Build It Green: Existing Home GPR 	<p><i>Required</i></p> <ul style="list-style-type: none"> • Completed Checklist • Consultation with a Historic Preservation Planner • Minimum point requirement for certification (Elements Label) • Green Building Certification <p><i>Alternate</i></p> <ul style="list-style-type: none"> • Completed checklist • Consultation with a Historic Preservation Planner • Minimum point requirement for certification (Whole House Label) • Green Building Certification (Whole House Label)
B. Multi-Family Additions and Alterations of Historic Resources	
Checklists	Minimum Requirements
<p>Not available</p>	<p>When available:</p> <ul style="list-style-type: none"> • Completed checklist • Consultation with a Historic Preservation Planner • Minimum point requirement for certification • Green Building Certification

7. Historic Non-Residential Additions and Alterations

A. Non-Residential Additions and Alterations of Historic Resources between 5,000 - 25,000 sq. ft. of floor area

Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • Small Commercial Checklist 	<ul style="list-style-type: none"> • Completed checklist • Consultation with a Historic Preservation Planner • All applicable measures on the Small Commercial Checklist • Green Building Certification

B. Non-Residential Additions and Alterations of a Historic Resource over 25,000 sq. ft. of floor area (see Major Alteration definition)

Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • LEED New Construction <i>Alternate</i> <ul style="list-style-type: none"> • Other appropriate LEED checklist 	<ul style="list-style-type: none"> • Completed checklist • Consultation with a Historic Preservation Planner • LEED "Certified" point requirement • Green Building Certification

C. Alternate compliance: Non-Residential Additions and Alterations not meeting the Major Alteration definition and over 25,000 sq. ft. of floor area

Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • LEED New Construction, and • Small Commercial Checklist <i>Alternate</i> <ul style="list-style-type: none"> • Other appropriate LEED checklist, and • Small Commercial Checklist 	<ul style="list-style-type: none"> • Completed checklist • Consultation with a Historic Preservation Planner • All applicable measures on the Small Commercial Checklist • Green Building Certification

8. Affordable Housing Construction receiving City/Redevelopment Agency Funds

A. One, Two, and Multi-Family New Construction	
Checklists	Minimum Requirements
<p><i>Required for Residential Construction - One and Two Family (Group R Occupancy)</i></p> <ul style="list-style-type: none"> • Build It Green: Single Family GPR <p><i>Required for Residential Construction – Multi-Family (3+ units) (Group R Occupancy)</i></p> <ul style="list-style-type: none"> • Build It Green: Multi-Family GPR <p><i>Alternates</i></p> <ul style="list-style-type: none"> • LEED Homes, or • LEED New Construction 	<ul style="list-style-type: none"> • Completed checklist • Minimum point requirement for certification • Green Building Certification
B. One and Two-Family Additions and Alterations that exceed 1,000 sq. ft. of floor area (Group R Occupancy)	
Checklists	Minimum Requirements
<p><i>Required</i></p> <ul style="list-style-type: none"> • Build It Green: Existing Home GPR 	<p><i>Required</i></p> <ul style="list-style-type: none"> • Completed Checklist • Minimum point requirement for certification (Elements Label) • Green Building Certification <p><i>Alternate</i></p> <ul style="list-style-type: none"> • Completed checklist • Minimum point requirement for certification (Whole House Label) • Green Building Certification (Whole House Label)
C. Multi-Family Additions and Alterations (3+ units) (Group R Occupancy)	
Checklists	Minimum Requirements
Not available	<p>When available:</p> <ul style="list-style-type: none"> • Completed checklist • Minimum point requirement for certification • Green Building Certification

9. Mixed-Use Construction

A. Both residential and non-residential uses	
Checklists	Minimum Requirements
<p><i>As determined by Planning Staff based on square footage of each use and which rating system and checklist is more appropriate</i></p>	<ul style="list-style-type: none"> • Completed checklist • Minimum point requirement for certification • Green Building Certification
B. Alternate compliance path: Certify each portion of the building separately per the appropriate GreenPoint Rated, LEED or Stopwaste.Org checklist)	
Checklists	Minimum Requirements
<p><i>As Determined by Planning Staff</i></p>	<ul style="list-style-type: none"> • Completed checklist • Minimum point requirement for certification • Green Building Certification

10. Construction Requiring a Landscape Plan	
A. Construction projects between 500 - 25,000 sq. ft. of total floor area requiring a Design Review permit and a Landscape Plan	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • Bay Friendly Basic Landscape Checklist <i>Alternates</i> <ul style="list-style-type: none"> • Bay Friendly Scorecard for Home Landscapes, or • Bay Friendly Scorecard for Commercial and Civic Landscapes 	Completed checklist
B. Construction projects greater than 25,000 sq. ft. of total floor area requiring a Design Review permit and a Landscape Plan	
Checklists	Minimum Requirements
<i>Required</i> <ul style="list-style-type: none"> • Bay Friendly Basic Landscape Checklist <i>Alternate</i> <ul style="list-style-type: none"> • Bay Friendly Scorecard for Home Landscapes, or • Bay Friendly Scorecard for Commercial and Civic Landscapes 	<ul style="list-style-type: none"> • Completed checklist • All applicable measures on the Bay Friendly Basic Landscape Checklist • Green Building Certification

A. National Appliance Energy Conservation Act

Nothing in this Chapter shall require the Applicant to use “covered products”, as defined in the federal Energy Policy and Conservation Act (42 U.S.C. Section 6201 et seq), that exceed any applicable federal energy conservation standards for such products.

Article IV- Entitlement Phase

Section 18.02.110 Green Building Documentation Requirements

B. Green Building Documentation

Application submittals during the Entitlement Phase shall include:

- a) A completed copy of the applicable Checklist(s) as determined by Planning and Zoning Division staff.
- b) Permit plans shall indicate, in general notes or individual drawings where appropriate, the green building measures used to achieve the minimum requirements. The Green Building Documentation shall indicate how many points the project will achieve in each category pursuant to the appropriate rating system.

- c) A signed statement by the Green Building Certifier that the project complies with the minimum requirements upon approval of the Entitlement Phase permit subject.
- d) Any other Green Building Documentation the Green Building Compliance Officer determines, in his/her discretion, to be necessary to determine compliance with this Chapter.

B. Peer Review of Green Building Documentation.

The Green Building Compliance Officer reserves the right to retain an independent, green building qualified peer review of the Green Building Documentation at the sole expense of the Applicant.

C. Completion

An application shall not be deemed complete until all required Green Building Documentation has been submitted by the Applicant and reviewed and approved by the Green Building Compliance Officer.

Section 18.02.120 Review and Consideration of Green Building Documentation

The Applicant is responsible for verifying with the Green Building Compliance Officer that the minimum requirements of this Chapter have been met based on the Green Building Documentation. The Green Building Compliance Officer shall approve or disapprove the Green Building Documentation subject to the conditions of approval based on conformance to this Chapter's minimum green building requirements, as applicable.

If during the Entitlement Phase, the Green Building Compliance Officer determines that the Green Building Documentation fails to achieve the minimum requirements of this Chapter, the Green Building Compliance Officer shall reject and return the Green Building Documentation to the Applicant. The Applicant may resubmit the Green Building Documentation to the Green Building Compliance Officer with such modifications and additions, as may be required for permit applications submitted during the Entitlement Phase.

Section 18.02.130 Compliance

A. Green Building Certification as a Condition of Approval

Compliance with the provisions of this Chapter shall be listed as a condition of approval on the Entitlement Phase permit application approvals for construction. Failure to comply with any of the terms of this Chapter shall subject the Applicant to the full range of enforcement mechanisms set forth in Section 18.02.050 and the Oakland Planning Code.

B. Noncompliance with Post Certificate of Occupancy Condition of Approval

If the Green Building Compliance Officer determines that the project is not in compliance with the minimum requirements of this Chapter, as verified by the Green Building Certification, the

project shall be referred to the City's Code Enforcement Division for further action. The Green Building Compliance Officer shall also require green building measures to mitigate the project's noncompliance or pursue other remedies available under this Chapter.

Section 18.02.0140 Appeal Procedures

A. Unreasonable Hardship Exemption

- a) If compliance with this Chapter presents an Unreasonable Hardship, the Applicant may apply for an exemption as set forth in this section. No Unreasonable Hardship Exemption under this section will be granted to any applicant for compliance requirements of the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code. In applying for an exemption, the burden is on the applicant to demonstrate the Unreasonable Hardship. The City Planning and Zoning Division shall maintain the *Unreasonable Hardship Exemption Application*.
- b) Acceptance or denial of an Unreasonable Hardship exemption is at the discretion of the Director of City Planning. Unreasonable hardship exemptions will only be granted in unusual circumstances based upon a showing of good cause and a determination that the public interest is not served by compliance or other compelling circumstances.
- c) Notice of application for an exemption shall be given by posting an enlarged notice on the premises of the subject property; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date of the decision on the application by the Director of City Planning.
- d) The determination of the Director of City Planning shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission in accordance with this Chapter and Section 17.134.060 of the Oakland Planning Code. For construction involving Historic Resources, the Director of City Planning may, at his or her discretion, refer the request for an unreasonable hardship exemption to the Landmarks Preservation Advisory Board for advisory decision to the Director of City Planning.
- e) The Director of City Planning or designee shall determine the maximum feasible number of credits reasonably achievable for the project and shall confirm the number of credits on the green building documentation, which shall be marked "Approved with Exemption". The construction shall be subject to the green building approval and compliance process in this Chapter, based on the confirmed number of credits.

B. Appeal

Any aggrieved individual may appeal the Green Building Compliance Officer's determination of the applicable rating system, checklist, or the Director of City Planning's unreasonable hardship determination under this Chapter to the City Planning Commission pursuant to Section 17.132 of the Oakland Planning Code during the Entitlement Phase only.

Article V - Construction Phase

Section 18.02.150 Green Building Documentation Requirements

A. Green Building Documentation

Construction Phase -Permitting and Inspection submittals shall include:

- a) *Construction Phase –Permitting.*
 - i. All required documentation for the 2008 California Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code compliance.
 - ii. A completed copy of the applicable Checklist(s) approved during the Entitlement Phase, unless modified under 18.02.150, Section C.
 - iii. Permit plans shall indicate in general notes, detailed design drawings and construction specifications as necessary, the green building measures used to achieve the required minimum requirements. The Green Building Documentation shall indicate how many points the project will achieve in each category pursuant to the appropriate rating system.
 - iv. A copy of the signed statement by the Green Building Certifier submitted during the Entitlement Phase and a new signed statement by the Green Building Certifier that the project complies with the minimum requirements of this Chapter.
 - v. Any other Green Building Documentation required by the Green Building Compliance Officer to determine compliance with this Chapter.
- b) *Construction Phase - Inspections.*
 - i. A completed copy of the applicable Checklist(s) submitted in subsection a) above, unless modified under 18.02.150, Section C.
 - ii. Any other Green Building Documentation required by the Green Building Compliance Officer to determine compliance with this Chapter.
 - iii. Signed statement or statements by the Green Building Certifier during all relevant phases of construction, as determined by the Green Building Compliance Officer, that the project complies with the minimum requirements of this Chapter.

B. Peer Review of Green Building Documentation

The Green Building Compliance Officer reserves the right during the Construction Phase, to retain an independent, green building qualified peer review of the Green Building Documentation at the sole expense of the Applicant.

C. Substitution of Credits

During the Construction Phases for Permitting and/or Inspections, flexibility may be exercised by the Applicant to substitute or eliminate points approved during the Entitlement Phase as applicable. Substitution and/or omission shall occur only at the request of the applicant. The applicant shall submit, per the Request for Revision Plancheck process, additional Green Building Documentation indicating the points to be substituted or omitted for review and approval. Substitution and/or omission of points shall only be permitted if it does not result in lowering the required minimum point threshold or eliminate points needed in each category pursuant to the appropriate rating system and as verified by the Green Building Certifier. In the case of construction involving Historic Resources, the new substituted points will require re-review and approval by the Historic Preservation Planner.

Section 18.02.160 Review and Consideration of Green Building of Documentation

A. Approval of Documents

The Green Building Compliance Officer or designees shall be responsible for verifying compliance with the minimum requirements for this Chapter based on the Green Building Documentation submitted during the following construction phases:

- a) Construction Phase - Permitting. The Green Building Documentation, provided under Section 18.02.150, unless modified by the Section 18.02.150(D), shall be reviewed during the permit review process and a permit shall be issued based on conformance to the applicable minimum requirements. Wherever the LEED or GreenPoint Rated systems include a minimum energy or other performance requirement, the Applicant may choose at permit submittal to meet the minimum performance requirements by demonstrating, using the 2008 Title 24 Building Energy Efficiency Standards, that the TDV energy of the Proposed Design is at least 15.0% less than the TDV energy of the Standard Design. In the Percent-Better-Than-Title 24 calculation, process and receptacle energy components may be excluded in nonresidential occupancies; and in high-rise residential occupancies, process, receptacle and lighting energy components may be excluded.
- b) Construction Phase - Inspections. The Green Building Compliance Officer or a designee shall verify that the green building measures and provisions indicated in the Green Building Documentation submitted during the Entitlement and Construction Phase - Permitting are implemented through inspections during the construction of the project. In lieu of or in addition to visual inspections by the Green Building Compliance Officer, the Applicant, through the Green Building Certifier, may submit Green Building

Documentation verifying that green building measures have been implemented in compliance with the minimum requirements of this Chapter.

B. Non-approval of Documents

- a) Construction Phase - Permitting. If during the Permitting stages, the Green Building Compliance Officer determines that the Green Building Documentation fails to achieve the minimum requirements, the Green Building Compliance Officer shall reject and return the Green Building Documentation to the Applicant, including a detailed explanation for rejection and measures required to conform to this Chapter. The Applicant may resubmit the Green Building Documentation with such modifications and additions as may be required for Permitting issuance.
- b) Construction Phase - Inspections. If the Green Building Compliance Officer determines that the project under construction does not comply with any portion of the approved Green Building Documentation showing compliance with the minimum requirements, a Stop Work order may be issued. At the discretion of the Green Building Compliance Officer, the Stop Work order may apply to the portion of the project that is not in compliance or to the entire project. The Stop Work order shall remain in effect until the Green Building Compliance Officer determines that the project is in compliance with the requirements and the provisions of this Chapter as shown on the approved Green Building Documentation.

Section 18.02.170 Compliance

A. Final Determination of Compliance and Building Occupancy

Prior to signing a building permit by the Building Official and issuing of a Temporary Certificate of Occupancy, the Applicant must also submit a signed statement by the Green Building Certifier that the project meets the minimum requirements of this Chapter. The Green Building Compliance Officer may also review the verification documentation submitted by the Green Building Certifier and determine whether the Applicant has achieved the minimum requirements as set forth in this Chapter.

Section 18.02.180 Appeal Procedures

A. General

In order to hear and decide appeals of orders, decisions or determinations made by the Green Building Compliance Officer during the Construction Phase Permitting and Inspections process, relative to the application and interpretation of the non-administrative sections of this Chapter, the Record Title Holder may request an administrative hearing with a Hearing Officer. The request shall be filed in writing with the Green Building Compliance Officer within twenty-one (21) calendar days following said rendering. The request for an administrative hearing shall contain a brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed that the protested order, decision, or determination should be modified or reversed or otherwise set aside.

B. Hearing

After receiving a written request and the required fee for an administrative hearing, the Green Building Compliance Officer shall fix a date, time and place for adjudication by a Hearing Officer during the Construction Phase Permitting and Inspections process. Only those technical matters or issues specifically raised by the appellant in the request shall be considered in the administrative hearing.

C. Hearing Officer

In cases of a Construction Phase Permitting and Inspections process appeal, the Hearing Officer shall not be an employee of the City and shall be qualified by experience and training to adjudicate matters pertaining to the provisions of this Chapter. The Hearing Officer shall have no authority relative to interpretations of the administrative (non-technical) provisions of this Chapter and shall not be empowered to waive or otherwise set aside the non-administrative (technical) provisions of this Chapter.

D. Effect of Hearing

Decisions of either the City Planning Commission or the Hearing Officer in all instances shall be final and conclusive. The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitions filed seeking judicial review of decisions by either the City Planning Commission or the Hearing Officer.

SECTION 5. Severability

The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 6. California Environmental Quality Act

Prior to adopting this Ordinance, the City Council independently finds and determines that this action is exempt from CEQA (California Environmental Quality Act), pursuant to CEQA Guidelines Section 15060(C)(2), 15061(B)(3) (General Rule; Section 150307 (Actions by Regulatory Agencies for Protection of Natural Resources); Section 150308 (Actions by Regulatory Agencies for Protection of the Environment); and Section 15183 (Projects

Consistent with a Community Plan, General Plan, or Zoning), each of which provides a separate and independent basis for an exemption.

SECTION 7. Annual Review

The Community and Economic Development Agency shall review this Chapter biannually and provide a report to the Planning Commission to determine whether it needs to be updated because of, but not limited to, new legislation enacted by the State or new standards developed by applicable organizations, such as StopWaste.Org, Build It Green, and LEED or the development of another effective rating system. The Chapter shall also be reviewed with the adoption of each future Title 24 standards which may require additional approval from the California Energy Commission.

SECTION 8. Effective Date

This Ordinance shall be effective on and after its adoption by sufficient affirmative votes of the Council of the City of Oakland, as provided in the Charter of the City of Oakland, Section 216. This Ordinance shall be implemented in phases. The first phase criteria applies to 30 days from the date of final passage by the City Council until December 31, 2010. The Ordinance becomes fully effective January 1, 2011 and thereafter, as amended from time to time. The Ordinance shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) to zoning applications approved by the City and not yet expired, or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

**AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER**

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

**LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California**

DATE OF ATTESTATION _____