

Chapter 15.76

COMMERCIAL AND RESIDENTIAL GREEN BUILDINGS

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15.76.010 Purpose

The purpose of this chapter is to enhance the public health and welfare and assure that commercial and residential 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 and appurtenant development. The green building practices referenced in this chapter are designed to achieve the following:

- A. Encourage resource conservation;
- B. Reduce waste generated by construction projects;
- C. Increase energy efficiency; and
- D. Promote the health and productivity of residents, workers, and visitors of the city.

15.76.020 Findings

The city council of the city of Livermore finds that:

A. The design, construction, and maintenance of buildings and structures within the city can have a significant impact on the city's environmental sustainability, resource usage, energy efficiency, waste management, and the health and productivity of residents, workers, and visitors.

B. Green building design, construction, and operation can have a significant, positive effect on resource conservation, energy efficiency, waste and pollution generation, and the health and productivity of a building's occupants over the life of the building.

C. Green building benefits are spread throughout the systems and features of the building. Green buildings can include, among other things, the use of certified sustainable wood products; extensive use of high-recycled-content products; recycling of waste that occurs during deconstruction, demolition, and construction; orientation and design of a building to reduce the demand on the heating, ventilating, and air conditioning systems; the use of heating, ventilating, and air conditioning systems that provide energy efficiency and improved indoor air quality; enhancement of indoor air quality by

selection and use of construction materials that do not emit chemicals that are toxic or irritating to building occupants; the use of water conserving methods and equipment; and installation of alternative energy methods for supplemental energy production.

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. 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. The New Homes Green Points Calculator and the Multifamily Green Points Project Tool approved by the Alameda County Waste Management Authority are useful documents in evaluating residential green building projects.

E. 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.

15.76.030 Definitions

For the purposes of this chapter, certain words and terms are defined as follows:

A. “Applicant” means any individual, firm or any other entity that applies to the city for the applicable permits to undertake any construction or development project within the city.

B. “Building” means any structure used or intended for supporting or sheltering any use or occupancy as defined in the California Building Code.

C. “City” means the city of Livermore.

D. “Commercial Project” means any construction project that is not a city project, as defined in LMC 15.74.020, or intended as a dwelling, as defined in LPZC 1-10.

E. “Green building compliance official” means the city’s community development director or his/her designee who is responsible for enforcing this chapter.

F. “Construction” means the building of any building or structure or any portion thereof.

G. “Green building” means a whole systems approach to the design, construction, and operation of buildings and structures that helps mitigate the environmental, economic, and social impacts of construction, demolition and renovation. Green building practices recognize the relationship between natural and built environments and seek to minimize the use of energy, water, and other natural resources and provide a healthy, productive indoor environment.

H. “GreenPoint Rating System” means the most recent version of the New Homes GreenPoints Checklist or the Multifamily Residential GreenPoint Checklist approved by the Alameda County Waste Management Authority and/or Build It Green, as modified by the City.

I. “LEED™ rating system” means the most recent version of the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building System™, or other related LEED™ rating system, approved by the U.S. Green Building Council.

J. “Residential Project” means any construction project that is not a city project, as defined in LMC 15.74.020, and is intended as a dwelling, as defined in LPZC 1-10.

K. “Structure” means that which is built or constructed, an edifice or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner and permanently attached to the ground, as defined in the California Building Code.

15.76.040 Applicability

A. This chapter shall apply to the construction of new buildings and reconstruction of buildings in which more than 50 percent of the existing building is demolished that require one or more of the following permits:

1. Site plan approval or a conditional use permit under the provisions of the planning and zoning code.
2. Design review under the provisions of the downtown specific plan.
3. Building permit for construction of one or more new dwelling units, as defined in the planning and zoning code, except secondary dwelling units.

B. This chapter does not apply to city projects, which are subject to the Civic Green Building Ordinance (LMC 15.74).

15.76.050 Documentation

A. Applications for site plan approval or conditional use permit for the construction of a new building or a building permit involving the construction of one or more new dwelling units shall include required City documentation indicating the measures to be used to achieve the required LEED™ rating for commercial projects or GreenPoint rating for residential projects. The documentation shall indicate how many credits the project will achieve in each category and the level of LEED™ certification that will be achieved or the number of points the project will obtain in the New Homes GreenPoint or the Multifamily GreenPoint rating system. An application for site plan approval or conditional use permit for the construction of a new building shall not be deemed complete until all required green building documentation has been submitted. The required documentation shall include:

1. A completed copy of the LEED™ Checklist for commercial buildings, the New Homes GreenPoint Checklist for single-family residential buildings, or the Multifamily GreenPoint Checklist for multifamily residential buildings.
2. Any other documentation required by the compliance official to determine compliance with this chapter.

B. Applications for commercial building permits shall include the LEED™ Checklist with the first building permit plan set submitted. Building plans shall indicate in the general notes or individual detail drawings, where appropriate, the green building measures to be used to attain the required LEED™ rating.

C. Applications for residential building permits shall include the New Homes GreenPoint Checklist or the Multifamily GreenPoint Checklist, whichever applies, with the first building permit plan set submitted. Building plans shall indicate in the general notes or individual detail drawings, where appropriate, the green building measures to be used to attain the required minimum GreenPoint rating.

D. Applications for mixed-use building permits shall include the LEED™ Checklist for the commercial portion of the project and the GreenPoint checklist for the residential portion.

15.76.060 Review of Documentation

A. Approval. For commercial buildings, the green building compliance official shall only approve a project if the green building documentation indicates that the project will achieve a minimum of twenty (20) credits on the LEED™ rating system. For residential buildings, the green building compliance official shall only approve a project if the green building documentation indicates that the project will achieve a minimum of fifty (50) points on the GreenPoint rating system. The green building compliance official shall be responsible for verifying the appropriate green building rating.

1. Planning Entitlement. The green building documentation shall be reviewed during the planning entitlement review and shall be approved or approved subject to conditions based on conforming to the minimum requirements stated herein.

2. Building Permits. The green building documentation shall be reviewed during the building permit review and shall be approved based on conformance to the minimum requirements stated herein.

B. Nonapproval. If the green building compliance official determines that the green building documentation fails to indicate that the project will conform to the required LEED™ rating or GreenPoint rating for the project, either one or both of the following actions shall be taken:

1. Deny the documentation and return the documentation, including a statement of reasons for denial and measures required to conform to the ordinance, to the applicant.

2. Require the applicant to submit performance security in accordance with LMC 15.76.080.

C. Resubmittal. If the documentation is returned to the applicant as not approved, the applicant may resubmit the documentation with such modifications and additions as may be required for approval.

15.76.070 Verification

A. Verification Plan. Upon approval of the green building documentation, the compliance official shall establish a verification plan noting how each green building measure or provision will be verified through visual inspections, documentation, or other means during construction.

B. Inspections. The green building compliance official or a designee shall verify that the green building measures and provisions indicated in the approved green building documentation are being implemented through inspections during the construction of the project. In lieu of or in addition to visual inspections, the applicant may submit documents, such as purchase receipts, verifying that green building measures and provisions have been implemented. If the compliance official determines that the project as built does not comply with any portion of the approved green building documentation, a stop-work order may be issued. At the discretion of the compliance official, 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 compliance official determines that the project is in compliance with the approved green building documentation and the provisions of this chapter.

C. Substitution of Credits. During the verification process for the project, flexibility may be exercised by the compliance official to substitute the approved credits or points of

the green building documentation for the project with other credits in the LEED™ Rating System or other points in the GreenPoint Rating System, as applicable. Substitution shall occur only at the request of the applicant and when the compliance official determines that the originally approved credits are no longer feasible and/or the substitute credits are an equivalent or a superior alternative to the original credits. Substitution of credits shall only be permitted if it does not result in lowering the required LEED™ rating of twenty (20) points for commercial building or does not result in a rating of fewer than fifty (50) points on the GreenPoint Rating System for residential buildings.

D. Final Determination of Compliance. Prior to issuance of an occupancy permit, the compliance official shall review the verification documentation submitted by the applicant and determine whether the applicant has achieved the required LEED™ rating or GreenPoint rating, as set forth in this chapter.

E. Noncompliance. If the compliance official determines that the project is not in compliance with the approved green building documentation, the compliance official may require additional green building measures to mitigate the project's noncompliance and the deposit of performance security in accordance with LMC 15.76.080. Mitigation measures may include, but are not limited to, landscaping the project to decrease water and energy consumption, use of energy-efficient fixtures and equipment, and education of the building's occupants and owners regarding on-going energy and resource savings techniques. If the mitigation measures are or will be implemented to the satisfaction of the compliance official, then an occupancy permit shall be issued and the performance security returned. If mitigation measures are not implemented to the satisfaction of the compliance official and the project remains in noncompliance, then an occupancy permit shall be issued only after the forfeiture of the performance security.

F. LEED™ Certification. For projects that have been voluntarily registered with the U.S. Green Building Council for LEED™ Certification at the same or higher rating than required by this ordinance, the compliance official may reduce the scope of the verification process and applicable fees, as appropriate.

G. Certified GreenPoint Rating. For projects that have been voluntarily submitted to Build It Green for a GreenPoint rating, receiving a rating by a Certified GreenPoint Rater at the same or higher rating than required by this ordinance, the compliance official may reduce the scope of the verification process and applicable fees, as appropriate.

15.76.080 Performance Security

A. Requirement. If during the review process the submitted documentation or early inspections indicate that the project will not comply with this ordinance, the green building compliance official may require the applicant to submit performance security.

B. Amount of Security.

1. Residential Projects. The applicant for a residential project shall submit performance security in the amount of \$2.00 per square foot of the gross floor area of the construction project, with a minimum security of \$3,000 per dwelling unit and a maximum security of \$10,000 per dwelling unit.

2. Commercial Projects. The applicant for a commercial project shall submit performance security in the amount of \$2.00 per square foot of the gross floor area of the construction project, with a minimum security of \$10,000 and a maximum security of \$100,000 for the project.

C. Form of Security. The performance security may be a performance bond, surety bond, money order, letter of credit, certificate of deposit, cash, or alternate security approved by the city attorney.

D. Use of Forfeited Security. Forfeited performance securities shall be deposited into a special account and used for the purposes of green building education and other activities promoting green building in the city.

15.76.090 Exemptions

A. Commercial and residential additions and renovations, including new secondary dwelling units, which are not covered under LMC 15.76.030 are encouraged to incorporate as many green building measures as feasible.

B. Infeasibility exemption. An exemption from the minimum required LEED™ or GreenPoint rating may be granted by the green building compliance official under special circumstances. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technology, and compatibility of green building requirements with other building standards.

1. The green building compliance official may meet with the applicant to discuss possible ways of complying with the required LEED™ rating or GreenPoint rating. The green building compliance official may approve the exemption if he or she determines achieving the minimum required rating is infeasible for the project based on the application and information provided.

2. Approval of exemption. The exemption shall be granted if the compliance official determines that special circumstances exist that make it infeasible for the project to comply with the required LEED™ rating or GreenPoint rating. The compliance official 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 project shall be subject to the green building verification process of LMC 15.76.070, based on the confirmed number of credits.

15.76.100 Appeal

A. Any aggrieved applicant may appeal a determination made under this chapter to the city manager. An appeal is limited to the following issues: (1) compliance with the ordinance pursuant to LMC 15.76.060 and 15.76.070; and (2) the type or scope of mitigation measures required for noncomplying project pursuant to LMC 15.76.070.E.

B. Any appeal must be filed in writing with the city manager within ten (10) days of the determination of the compliance official, stating the reasons for appeal. The appeal shall state the alleged error or the reason for the appeal. In reviewing the appeal, the city manager or designee may request additional written or oral information from the applicant or the compliance official. The city manager or designee shall issue a written determination within fifteen (15) days after the time period (10 days) to file an appeal has expired.

C. The determination by the city manager may be appealed to the city council by filing a written appeal with the city clerk within ten (10) days of the written determination of the city manager. The city council shall hear the appeal within 45

calendar days after receipt of the written request, and shall give 10 days' prior written notice of the hearing to the applicant. The 45-day period may be extended with the consent of city and applicant.

15.76.110 Enforcement

A. Civil action. Violation of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the city shall be entitled to recover its attorney's fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

B. Infraction. A violation of this chapter constitutes an infraction punishable as set forth in LMC Chapter 1.16.

C. Public nuisance. A violation of this chapter is a public nuisance under LMC 1.16.030.

D. Authority to enforce. The community development director and the city attorney are authorized to enforce this chapter.