



CITY COUNCIL OF THE CITY OF PLEASANTON

ALAMEDA COUNTY, ALAMEDA

ORDINANCE NO. 1873

**AN ORDINANCE ADDING CHAPTER 17.50 TO THE
PLEASANTON MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN
AS FOLLOWS:

Section 1: The Pleasanton Municipal Code is hereby amended to add Chapter 17.50 to
Title 17, Planning and Related Matters, which is to read as follows:

“Chapter 17.50 Commercial And Civic Green Building Ordinance

17.50.010 Purpose.

The purpose of this chapter is to enhance the public welfare and assure that further commercial 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 practices referenced in this Chapter are designed to achieve the following goals:

- a. To encourage resource conservation;
- b. To reduce the waste generated by construction projects;
- c. To increase energy efficiency; and
- d. To promote the health and productivity of residents, workers, and visitors to the city.

17.50.020 Findings.

The City finds that:

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

b. Green building benefits are spread throughout the systems and features of the building. Green buildings may use recycled-content building materials, consume less energy and water, have better indoor air quality, and use less wood fiber than conventional buildings. Construction waste is often recycled and remanufactured into other building products.

c. Design 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.

d. Based on studies by the Alameda County Waste Management Authority, construction and demolition debris comprises up to 21% of materials disposed in Alameda County landfills and opportunities exist for reducing the generation of this waste.

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

f. Requiring certain commercial and City-sponsored projects to incorporate LEED™ green building measures is necessary and appropriate to achieve the benefits of green building.

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

h. Many of the prerequisites and means of achieving credits under LEED™ do not impact areas where state law has established building standards. The City further finds that, for specific projects, the applicant may believe that achieving the LEED™ rating required by this Chapter could require him or her to use otherwise unauthorized building standards, and accordingly, the City finds that it is appropriate to provide for an exemption from this Chapter in such circumstances.

17.50.030 Definitions.

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

a. "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity that applies to the City for the applicable permits to undertake any construction or renovation project within the City.

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

c. "City" means the City of Pleasanton.

d. "City-Sponsored Project" means any construction project primarily funded and sponsored by the City or on City-owned land.

e. "Commercial Project" means any project, other than a City-sponsored project, which is not residential.

f. “Conditioned Space” means an enclosed space in a building that is provided with a mechanical heating system that has a capacity exceeding 10 Btu/(hr. x ft.²), or is provided with a mechanical cooling system that has a capacity exceeding 5 Btu/(hr. x ft.²), unless the space-conditioning system is designed and thermostatically controlled to maintain a process environment temperature less than 55°F or to maintain a process environment temperature greater than 90°F for the entire space the system serves.

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

h. “Covered Project” means all City-sponsored construction projects and all commercial construction projects within the City that include 20,000 gross square feet or more of conditioned space. For the purposes of this Chapter, covered project shall include renovation construction projects that incorporate 20,000 gross square feet or more of additional conditioned space. A renovation construction project that consists solely of interior improvements to an existing building shall not be considered a covered project.

i. “Green Building” means a whole systems 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 natural and built environments and seek to minimize the use of energy, water, and other natural resources and provide a healthy, productive indoor environment.

j. “Green Building Compliance Official” means the Director of Planning and Community Development or his or her designee.

k. “Green Building Project Checklist” means a checklist or scorecard developed by the U. S. Green Building Council, and as may be amended, for the purpose of calculating a score on the LEED™ Commercial Green Building Rating System. Covered projects shall utilize the Green Building Project Checklist that corresponds with the Green Building Rating System approved for use.

l. “Green Building Worksheet” means a worksheet or form developed by the Green Building Compliance Official, and as may be amended, which specifies

information to be submitted prior to any hearing for Design Review or Planned Unit Development Design Review approval for a covered project. The Green Building Worksheet shall specify the form and content of the required documentation.

m. "Historic Structures" means any building or structure listed on or eligible for listing on a national, state or local register or listing of historic resources.

n. "LEED™ Green Building Rating System" means the most recent version of the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building Rating System™, or other related LEED™ Rating System, approved by the U. S. Green Building Council. As new rating systems are developed by the U.S. Green Building Council, the Green Building Compliance Official shall have the authority to specify the applicable LEED™ Rating System for a covered project. For the first six months after the release of any new version of the Green Building Rating System, the applicant shall be given the choice at the time the project is formally submitted to the Planning Department for approval with the payment of appropriate fees of using the most current version or the version to be superseded. City staff shall maintain the most recent version of the applicable LEED™ Rating Systems at all times.

o. "LEED™ Green Building Reference Guide" means a supporting document published by the U.S. Green Building Council that provides detailed information, resources, and standards for the five environmental categories covered by the LEED™ Rating System, including information regarding the documentation required for LEED™ certification. City staff shall maintain the most recent version of the LEED™ Reference Guide at all times.

p. "Pre-Permitting Documentation" means the documentation required by Section 17.50.050.

q. "Renovation" means any change, addition, or modification to an existing building or structure.

r. "Residential" means any building or structure used for living, sleeping, eating and cooking. For the purposes of this Chapter, residential includes assisted living

facilities and senior housing. Residential does not include hotels, motels, inns or similar commercial enterprises wherein rooms or suites of rooms are rented for transient occupancy.

s. "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 Standards Code.

17.50.040 Standard for Compliance.

a. Covered Projects: All covered projects shall meet a minimum LEED™ “Certified” rating, except as modified by the provisions of Section 17.50.040(b).

b. Actions Not Required:

(1) LEED™ Registration and Certification: Applicants are encouraged to register covered projects with the U.S. Green Building Council. LEED™ certification through the U.S. Green Building Council is not required under this Chapter.

(2) Building Commissioning: Building commissioning, although specified as a prerequisite for all LEED™ ratings, is not required under this Chapter. Applicants are encouraged to verify that fundamental building systems are designed, installed, and calibrated to operate as intended.

c. Non-Covered Projects: Applicants for non-covered projects are encouraged to use their best efforts to incorporate as many green building measures as feasible from the LEED™ Commercial Rating System.

d. Historic Structures and Structures within the Downtown Specific Plan Area

(1) Historic Structures: All historic structures are exempt from the requirements of this Chapter. Applicants for historic structures are encouraged to use their best efforts to incorporate as many of the green building measures as feasible from the LEED™ Commercial Rating System without compromising the historical integrity of the structure.

(2) Downtown Specific Plan Area: All privately-owned structures within the boundaries of the Downtown Specific Plan (adopted March 5, 2002) are exempt from the requirements of this chapter. Applicants for new or remodeled structures within this area are encouraged to use their best efforts to incorporate as many of the green building measures as feasible from the LEED™ Commercial Rating System.

e. Residential Construction: All buildings or structures that are residential are exempt from the requirements of this Chapter.

f. Compliance as a Condition of Approval: Compliance with the provisions of this Chapter shall be listed as a condition of approval on any Design Review or Planned Unit Design Review approval issued for a covered project. Failure to comply with any of the terms of this Chapter shall subject the covered project to the full range of enforcement mechanisms set forth in Section 17.50.100, below.

17.50.050 Submission of Pre-Permitting Documentation.

a. Design Review Documentation: In conjunction with the application for Design Review or Planned Unit Development Design Review, whichever is applicable, the applicant shall submit documentation indicating the measures to be used to achieve the applicable LEED™ rating. The documentation, which shall be submitted to the Green Building Compliance Official for review, shall also indicate how many credits the covered project will achieve in each category and the level of LEED™ certification that will be met. This documentation shall include:

- (1) the Green Building Project Checklist;
- (2) the Green Building Worksheet with an analysis of each credit claimed; and,
- (3) any other documentation that may be necessary to show compliance with this Chapter.

b. Building Permit Documentation: For building permits, the applicant shall submit a completed Green Building Project Checklist with the first building permit plan

set submitted. All building plans shall indicate in the general notes or individual detail drawings, where feasible, the green building measures to be used to attain the applicable LEED™ rating.

c. Pre-Hearing Meeting: After submission of the documentation required by Section 17.50.050(a), but prior to the hearing on the Design Review or Planned Unit Development Design Review, the Green Building Compliance Official shall arrange a meeting with the applicant to discuss the proposed measures, as needed.

17.50.060 Review of Pre-Permitting Documentation.

a. Approval: Notwithstanding any other provision of this Municipal Code, no building permit shall be issued for any covered project unless and until the Green Building Compliance Official has approved the pre-permitting documentation submitted for the covered project. The Green Building Compliance Official shall only approve the pre-permitting documentation if it is determined that the pre-permitting documentation indicates that the covered project can achieve the applicable LEED™ rating, as set forth in Section 17.50.040. If the Green Building Compliance Official determines that these conditions have been met, the pre-permitting documentation shall be marked “Approved,” and returned to the applicant. The Green Building Compliance Official shall notify the Building Division that the pre-permitting documentation has been approved. No building permit shall be issued until the pre-permitting documentation has been approved under this section or an exemption has been granted under Section 17.50.080.

b. Nonapproval: If the Green Building Compliance Official determines that the pre-permitting documentation is incomplete or fails to indicate that the covered project will meet the required LEED™ rating for the covered project as set forth in Section 17.50.040, he or she shall either:

(1) Return the pre-permitting documentation to the applicant marked “Denied”, including a statement of reasons, and so notify the Building Division; or

(2) Return the pre-permitting documentation to the applicant marked “Further Explanation Required,” and detail the additional information needed.

c. Re-Submission: If the pre-permitting documentation is returned to the applicant, the applicant may re-submit the pre-permitting documentation with such additional information as may be required or may apply for an exemption under Section 17.50.080.

d. Timing of Review: The Green Building Compliance Official shall review the Green Building Project Checklist and all other pre-permitting documentation for compliance with this Chapter prior to the hearing on Design Review or Planned Unit Development Design Review, and again during plan check.

17.50.070 Compliance.

a. Compliance Review: Building Division staff shall verify that the green building measures and provisions indicated in the pre-permitting documentation are being implemented at foundation inspection, framing inspection, and prior to issuance of a final certificate of occupancy. The Green Building Compliance Official or the Building Division staff may also conduct other inspections as needed to ensure compliance with this Chapter. If, as a result of any such inspection, the Green Building Compliance Official or Building Division staff determine that the covered project does not comply with the pre-permitting documentation, a stop-work order may be issued. At the discretion of the Green Building Compliance Official such a stop-work order may apply to the portion of the project impacted by noncompliance or to the entire project. The stop-work order shall remain in effect until the Green Building Compliance Official determines that the project will be brought into compliance with the pre-permitting documentation and this Chapter.

b. Substitution of Credits: During compliance review for covered projects, flexibility may be exercised by the Green Building Compliance Official to substitute the

approved credits with other credits in the approved LEED™ Rating System. Substitution shall occur only at the request of the applicant and when it is determined that the originally approved credits are no longer feasible.

c. Compliance Documentation: Documentation shall occur in up to three stages: (1) prior to issuance of a final certificate of occupancy; (2) after one year of occupancy of any covered project; and (3) after five years of occupancy, if deemed necessary by the Green Building Compliance Official.

(1) Prior to issuance of an occupancy certificate: Prior to final building approval and/or issuance of a final certificate of occupancy, the applicant shall submit the following to the Green Building Compliance Official: (a) documentation that verifies incorporation of the design and construction related credits from the pre-permitting documentation for the covered project; and (b) a letter from the project architect or project contractor that certifies that the building has been constructed in accordance with the approved Green Building Project Checklist. The applicant may also provide: (a) any additional documentation that would be required by the LEED™ Reference Guide for LEED™ certification, and (b) any additional information the applicant believes is relevant to determining its good faith efforts to comply with this Chapter.

(2) After one year of occupancy of any Covered Project: After one year of occupancy of any covered project, the applicant, property owner, or building tenant shall submit to the Green Building Compliance Official documentation detailing conformance with the operation, efficiency, and conservation related credits from the pre-permitting documentation for the covered project. The applicant may also provide: (a) any additional documentation that would be required by the LEED™ Reference Guide for LEED™ certification, and (b) any additional information the applicant believes is relevant to determining its good faith efforts to comply with this Chapter.

(3) After five years of occupancy of any Covered Project: If required by the Green Building Compliance Official, after five years of occupancy of any covered project, the applicant, property owner, or building tenant shall submit to the Green

Building Compliance Official documentation that details conformance with the operation, efficiency, and conservation related credits approved with the pre-permitting documentation for the covered project. The applicant may also provide any additional information the applicant believes is relevant to determining its good faith efforts to comply with this Chapter.

d. Final Determination of Compliance: Prior to issuance of an occupancy permit, the Green Building Compliance Official shall review the information submitted by the applicant and determine whether the applicant has achieved the required LEED™ rating, as set forth in Section 17.50.040. If the Green Building Compliance Official determines that the applicant has not achieved the required LEED™ rating, the Green Building Compliance Official shall find as follows:

(1) Good Faith Effort to Comply: If the Green Building Compliance Official determines that the covered project has not met the requirements for the applicable LEED™ rating, as set forth in Section 17.50.040, he or she shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with this Chapter. In making this determination, the Green Building Compliance Official shall consider the availability of markets for materials to be recycled, the availability of green building materials and technologies, and the documented efforts of the applicant to comply with this Chapter. The Green Building Compliance Official may require additional reasonable green building measures as authorized in Section 17.50.070(d)(3) to be taken in the operation of the covered project to mitigate the failure to comply fully with this Chapter.

(2) Noncompliance: If the Green Building Compliance Official determines that the applicant has not made a good faith effort to comply with this Chapter, or if the applicant fails to submit the documentation required by Section 17.50.070(c)(1) within the required time period, then the final building approval and/or occupancy permit may be withheld. The Green Building Compliance Official may require additional reasonable green building measures as authorized in Section

17.50.070(d)(3) to be employed in the operation of the covered project to mitigate the applicant's failure to comply with this Chapter. Once the applicant has performed such additional reasonable green building measures, the Green Building Compliance Official shall approve the covered project for final building approval and/or issuance of an occupancy permit. If the documentation submitted by the applicant as required by Sections 17.50.070(c)(2) and 17.50.070(c)(3) reveals that the applicant has not made a good faith effort to maintain the originally approved conservation and energy related credits in the operation of the building, the Green Building Compliance Official may require additional reasonable green building measures as authorized in Section 17.50.070(d)(3).

(3) Mitigation: If the Green Building Compliance Official determines that the applicant has not complied with this Chapter, the Green Building Compliance Official may require further reasonable green building measures to be employed in the operation and maintenance of the covered project to mitigate the applicant's failure to comply fully with this Chapter. Such mitigation measures may include, but are not limited to, landscaping the covered project to decrease water and energy consumption, use of energy efficient fixtures, including the use of energy efficient light bulbs, and education of the building's occupants and owners regarding on-going energy and resource savings techniques.

e. LEED™ Certification: For covered projects that have voluntarily registered with the U.S. Green Building Council with the intent to certify the building at the "Certified" level or above, the Green Building Compliance Official may reduce the scope of the City's compliance review. Depending on the timing of certification, the documentation required by Sections 17.50.070(c)(1), 17.50.070(c)(2), and 17.50.070(c)(3) may be reduced or eliminated.

17.50.080 Hardship or Infeasibility Exemption.

a. Exemption: If an applicant for a covered project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Chapter, he or she may apply for an exemption as set forth below. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.

b. Application: If an applicant for a covered project believes such circumstances exist, the applicant may apply for an exemption at the time that he or she submits the pre-permitting documentation required under Section 17.50.050. The applicant shall indicate in the pre-permitting documentation the maximum number of credits he or she believes is practical or feasible for the covered project and the circumstances that he or she believes make it a hardship or infeasible to comply fully with this Chapter. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and compatibility of green building requirements with existing building standards.

c. Meeting with Green Building Compliance Official: The Green Building Compliance Official shall review the information supplied by the applicant, may request additional information from the applicant, and may meet with the applicant to discuss the request.

d. Granting of Exemption: If the Green Building Compliance Official determines that it is a hardship or infeasible for the applicant to meet fully the requirements of this Chapter based on the information provided, the Green Building Compliance Official shall determine the maximum feasible number of credits reasonably achievable for the covered project and shall indicate this number on the pre-permitting documentation submitted by the applicant. The Green Building Compliance Official shall return a copy of the pre-permitting documentation to the applicant marked “Approved with Exemption” and shall notify the Building Division that the pre-permitting

documentation has been approved. 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 number of credits determined to be achievable by the Green Building Compliance Official.

e. Denial of Exemption: If the Green Building Compliance Official determines that it is possible for the applicant fully meet the requirements of this Chapter, he or she shall so notify the applicant in writing. The applicant may resubmit the pre-permitting documentation in full compliance with Sections 17.50.050 and 17.50.060. If the applicant does not resubmit the pre-permitting documentation, or if the resubmitted pre-permitting documentation does not comply with Sections 17.50.050 and 17.50.060, the Green Building Compliance Official shall deny the pre-permitting documentation in accordance with Section 17.50.060(b).

17.50.090 Appeal.

a. Any aggrieved applicant or person may appeal the determination of the Green Building Compliance Official regarding: (i) the granting or denial of an exemption pursuant to Section 17.50.080; (ii) compliance with the ordinance pursuant to Section 17.50.070; or (iii) the type or scope of mitigation measures required for noncompliance pursuant to Section 17.50.070(d)(3).

b. Any appeal must be filed in writing with the City Manager within fifteen (15) days of the determination by the Green Building Compliance Official. The appeal shall state the alleged error or reason for the appeal. In reviewing the appeal, the City Manager may request additional written or oral information from the applicant or the Green Building Compliance Official. The City Manager shall issue a written determination within fifteen (15) days of the receipt of the appeal.

c. The determination by the City Manager may be appealed to the City Council by filing a written appeal with the City Clerk within fifteen (15) days of the

written determination by the City Manager. The City Council shall hold a public hearing regarding the appeal within forty (40) days of the date when the appeal was filed.

17.50.100 Enforcement.

a. Violation of any provision of this Chapter due to the applicant’s failure to build the covered project in accordance with the covered project’s plans, including the pre-permitting documentation and the conditions of approval in the applicable permit, shall be punishable as provided in Chapter 1.28 of the Pleasanton Municipal Code.

b. Where the applicant has violated any provision of this Chapter due to the applicant’s failure to build the covered project in accordance with the project’s plans, including the pre-permitting documentation and the conditions of approval in the applicable permit, the Green Building Compliance Official may require mitigation as set forth in Section 17.50.070(d)(3).

c. Enforcement pursuant to this section shall be undertaken by the City through its Director of Planning and Community Development or the City Attorney.

d. These remedies are cumulative and the choice of one by the City shall not preclude pursuing the others.”

Section 2: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, and phrase of this Chapter irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid, or effective. To this end, the provisions of this Chapter are declared to be severable.

Section 3: A summary of this ordinance shall be published once within fifteen (15) days after its adoption in “The Tri-Valley Herald,” a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk’s office within fifteen (15) days after its adoption.

Section 4: This ordinance shall be effective thirty (30) days after the date of its final passage and adoption.

INTRODUCED at a regular meeting of the City Council of City of Pleasanton on November 19, 2002.

ADOPTED at a regular meeting of the City Council of City of Pleasanton on December 3, 2002 by the following vote:

AYES: Councilmembers Ayala, Brozosky, Campbell, Hosterman, and Mayor Pico
NOES: None
ABSENT: None
ABSTAIN: None

(sgd) TOM PICO, MAYOR

ATTEST:

(sgd) Peggy L. Ezidro, City Clerk

APPROVED AS TO FORM:

(sgd) Michael H. Roush, City Attorney