ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILL VALLEY AMENDING TITLE 20 (ZONING) OF THE MILL VALLEY MUNICIPAL CODE TO ADD CHAPTER 20.95 ESTABLISHING GREEN BUILDING REQUIREMENTS

SECTION 1: FINDINGS

WHEREAS, the design, construction and operation 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; and

WHEREAS, the design, construction and operation of buildings and structures have far-reaching effects on the region and globally through production of greenhouse gases resulting in global climate change and the consumption of resources that result in damage to and loss of wildlife habitat; and

WHEREAS, 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 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; and

WHEREAS, in recent years, green building design, construction and operational techniques have become increasingly widespread. Many homeowners, businesses, and building professionals have voluntarily sought to incorporate green building techniques into their projects. A number of local and national systems have been developed to serve as guides and rating systems for green building practices. The U.S. Green Building Council, developer of the Leadership in Energy and Environmental Design (LEED®) Green Building Rating Systems, has become a leader in promoting and guiding green building, particularly for non-residential structures. For residential development, Build it Green has taken the lead in defining and promoting green building for residential development and renovations by developing the GreenPoint Rated System which has been adopted in several Bay Area jurisdictions; and

WHEREAS, according to recent studies published by the United States Green Building Council and the U.S. Environmental Protection Agency, the construction, demolition and operation of buildings in the United States collectively consume up to 37% of the total energy used, 12% of all fresh water supplies, 40% of all raw materials used, and generate 46% of all sulfur dioxide emissions, 19% of nitrogen oxide emissions, 10% of fine particulate emissions, and 36% of total emissions of anthropogenic carbon dioxide, the primary greenhouse gas associated with global climate change; and

WHEREAS, by requiring buildings within the City of Mill Valley to be constructed in an environmentally responsible manner, the City is participating in global endeavors to reduce waste generation, habitat loss and emissions of carbon dioxide, sulfur dioxide, and nitrogen dioxide; and

WHEREAS, the City of Mill Valley Planning Commission already requests, as a matter of course, that larger residential and commercial projects subject to design review meet certain levels of compliance with the Build it Green Construction Guidelines; and

WHEREAS, the City of Mill Valley has made a commitment to protect the environment through numerous initiatives including energy and water efficiency improvements at City facilities, promoting waste reduction, and protecting wildlife habitat. Enacting a Green Building ordinance is consistent with and complements all of these environmental initiatives in that the proposed green building requirements

would result in greater energy efficiency and water conservation, use of recycled and sustainably produced building materials, and recycling and reuse of construction debris; and

WHEREAS, the proposed amendments will promote the public health, safety and general welfare by reducing impacts on respiratory health and chemical sensitivity of residents and visitors, reducing production of greenhouse gases, reducing impacts on wildlife and vegetative habitats and reducing generation and land filling of waste products; and

WHEREAS, it has been determined that these amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines which exempt changes in land use regulations intended for the protection of the environment. The proposed regulations would reduce local, regional and global impacts on air and water quality, resource consumption, waste generation and habitat change; and

WHEREAS, On July 28, 2008, the Mill Valley Planning Commission held a public hearing and heard testimony regarding the proposed Green Building ordinance and resolution and recommended the Green Building ordinance for adoption and approval by the City Council.

SECTION 2:

Chapter 20.95 is hereby added to the Mill Valley Municipal Code as follows:

Chapter 20.95

Green Building

Sections:

20.95.010	**Purpose**
20.095.020	**Definitions**
20.95.030	**Covered Projects**
20.95.040	**Standards for Compliance**
20.95.050	**Documentation and Verification**
20.95.060	**Exemptions**
20.95.070	**Appeal**

20.95.010 Purpose. The purpose of this Chapter is to enhance the public health and welfare and assure that residential and commercial 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 objectives:

A. Encourage resource conservation;

B. Reduce waste generated by construction projects;

C. Increase energy and water efficiency; and

D. Promote the health of residents.

20.95.020 Definitions. The following definitions apply to Section 20.95, "Green Building," in addition to those definitions described in Chapter 20.08:

A. "Addition" means construction of a new structure or the modification of the existing footprint that increases the "conditioned floor area" of a building and/or dwelling unit.

1. **"Major Addition"** means the expansion of conditioned floor area by 50% or more.
2. "**Minor Addition"** means the expansion of conditioned floor area by less than 50%.

B. "Build it Green" means a non-profit membership organization located in Berkeley, California whose mission is to promote healthy, energy and resource efficient building practices in California.

C. "Certified Green Building Rater" means a person or organization certified or designated by a green building rating organization associated with a specific green building rating system adopted by City Council resolution for performing inspections and providing documentation to assure compliance with green building requirements.

D. "Conditioned floor area" has the meaning set forth in Section 101(b) of the 2005 California Building Energy Efficiency Standards. Conditioned floor areas are those areas that have heating and/or cooling and do not include non-habitable portions of the premises.

E. "Green Building Guidelines" means any Green Building guidelines associated with a Green Building rating system adopted by City Council resolution as well as:

1. **"Green Building Checklist"** means the checklists established by separate resolution that tracks the green building points and measures to incorporate into the development and are used to demonstrate compliance with green building requirements.
2. **"Green Building Compliance Form"** means the document indicating the level and/or number of points that applicable projects must satisfy to comply with the City's Green Building requirements.

F. "New Construction" means the production of a new or replacement building(s).

G. " Renovation" means any rehabilitation, alteration, change, modification, remodel or upgrade to an existing building which does not increase the conditioned floor area.

20.095.030 Covered Projects. This Chapter shall apply to all projects defined as "covered projects" as defined below, except for those projects exempted by section 20.095.060.

A. Non-Residential Projects. . Green building requirements for new non-residential building projects (privately developed and those owned or occupied by the City) are established by square footage and as adopted by City Council resolution. Green building requirements for non-residential renovation projects (privately developed and those owned or occupied by the City) are established by construction costs and as adopted by City Council resolution. Construction costs are adjusted annually to the Building Cost Index published in the Engineering News-Record magazine, excluding all costs associated with seismic improvement. The annual adjustment will be calculated at the time the City adjusts its general fee schedule .

1. **City Facilities – New.**
2. **City Facilities – Renovations/Remodels.**
3. **Private Non-Residential – New.**
4. **Private Non-Residential – Renovations/Remodels.**

B. Residential Projects. Green building requirements for new residential building projects are established by square footage of conditioned floor area and as adopted by City Council resolution. Green building requirements for residential and mixed use additions are established by the percent increase in conditioned floor area and as adopted by City Council resolution.

1. **Residential Single Family and Duplex Dwellings – New.**
2. **Residential Second Units – New (attached and detached units).**

3. **Multi-Family Residential Dwellings – New.**
4. **Mixed Use Projects - New.**
5. **All Residential and Mixed Use Additions.**

20.95.040 Standards for Compliance. All covered projects shall demonstrate compliance with the rating system, minimum point requirements and any other applicable requirements established by resolution of the City Council, as amended from time to time.

20.95.050 Documentation and Verification. All covered projects shall comply with the required documentation and verification provisions established by resolution of the City Council, as may be amended from time to time..

A. Costs of Documentation and Verification. All costs for inspections, documentation and verification of compliance with green building requirements, including the hiring of a Certified Green Building Rater, a certified commissioner, or certified home performance contractors, shall be borne by the applicant for a building permit.

20.95.060 Exemptions.

A. This section shall not apply to:

Any project that received and maintains a valid planning approval or a building permit or which has submitted a complete planning application or building permit application prior to the effective date of this Chapter unless otherwise required as a condition of approval of a discretionary land use or zoning permit.

B. Hardship or Infeasibility. An exemption from the Standards for Compliance may be granted by the Community Development Director under special circumstances. Such circumstances may include, but are not limited to the following:

1. Availability. Lack of green building materials and/or technology to comply with green building requirements;

2. Scope of Project. The scope of the covered project is insufficient to attain the minimum number of points to meet Standards of Compliance. Examples include, but are not limited to, installation of a single appliance such as a new hot water heater or new windows.

3. Conflict with other Provisions. There is conflict between green building requirements and other building or zoning standards or other City goals, such as those requiring historic preservation;

4. Innovation. Provision of alternate methods that provide greater resource conservation, energy conservation or resident health than adopted green building measures; or

5. Historic Preservation. Those projects requesting an exemption based on the historic character of a building, site or historic overlay zoning designation shall provide a written request to the Community Development Director regarding the exemption, and describe how the project is consistent with the Secretary of the Interior's Standards for Historic Rehabilitation and/or Historic Overlay zoning requirements.

C. Process. A covered project must qualify as exempt from the requirements in this Chapter by applying for an exemption at the time a planning or building permit application is submitted, whichever occurs first. The applicant shall indicate the maximum threshold of compliance he or she believes is feasible for the covered project and the circumstances that he or she believes create a hardship or make it infeasible to fully comply with this Chapter. The exemption determination by the Community Development Director shall be provided in writing to the applicant, with a revised Green Building Checklist. The project and compliance documentation shall be modified to comply with this Chapter prior to further review of any pending planning or building application.

20.95.070. Appeal.

Any aggrieved applicant may appeal the determination of the Community Development Director regarding (1) the granting or denial of an exemption pursuant to Section 20.095.060 or (2) compliance with any

other provision of this Chapter. Any appeal must be filed in writing with the Community Development Director no later than fourteen (14) days after the date of the exemption determination. The appeal shall state the alleged error or reason for the appeal. A timely filed appeal shall be processed and considered by the Planning Commission in accordance with the provisions of Section 20.100 of the Mill Valley Municipal Code

SECTION 3:

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4:

The Community Development Director will provide an annual report documenting the number and types of projects subject to the Ordinance, identification of any problems arising from implementation, the costs of enforcement and any recommendations for revisions to the Ordinance or related resolution and Standards for Compliance tables.

SECTION 5:

This Ordinance shall be published once in full before its final passage in a newspaper of general circulation, published and circulated in the City of Mill Valley and shall be in full force and effect thirty (30) days after its final passage.

SECTION 6:

The City Council herby finds this Ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308 if the CEQA guidelines which exempt changes in land use regulations intended for the protection of the environment. The proposed regulations would reduce local, regional and global impacts on air and water quality, resource consumption, waste generation and habitat change.

_____
Shawn Marshall, Mayor

ATTEST:

_____
Deputy Clerk Kimberly Wilson

The foregoing Ordinance No. _____ was read and introduced at a Regular Meeting of the City Council of the City of Mill Valley, California, held on the _____ day of _____, 2008 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of Mill Valley at a Regular Meeting of the Council to be held on the _____ day of _____, 2008.