

ORDINANCE NO. 7,397–N.S.

ADDING A NEW CHAPTER 19.81 OF THE BERKELEY MUNICIPAL CODE REQUIRING ENERGY INFORMATION AND DISCLOSURE TO REDUCE ENERGY AND WATER USE IN BERKELEY BUILDINGS, REPEALING CHAPTERS 19.16 AND 19.72 EFFECTIVE DECEMBER 1, 2015, AND REPEALING SECTIONS 19.16.080.A.3 AND 19.72.120.B EFFECTIVE OCTOBER 9, 2015

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 19.16.080.A.3 of the Berkeley Municipal Code is repealed effective October 9, 2015.

Section 2. That Section 19.72.120.B of the Berkeley Municipal Code is repealed effective October 9, 2015.

Section 3. That Chapter 19.16 of the Berkeley Municipal Code is repealed in its entirety effective December 1, 2015.

Section 4. That Chapter 19.72 of the Berkeley Municipal Code is repealed in its entirety effective December 1, 2015.

Section 5. That Chapter 19.81 of the Berkeley Municipal Code is added to read as follows:

Chapter 19.81

BUILDING ENERGY SAVING

Sections:

- 19.81.010 Purpose.**
- 19.81.020 Applicability.**
- 19.81.030 Definitions.**
- 19.81.040 Large Buildings.**
- 19.81.050 Medium and Small Buildings.**
- 19.81.060 Single Family Buildings.**
- 19.81.070 Early Compliance.**
- 19.81.080 Incentives.**
- 19.81.090 Exceptions, Deferrals and Extensions.**
- 19.81.100 Responsibilities.**
- 19.81.110 Administration and Enforcement.**
- 19.81.120 Fees.**
- 19.81.130 Enforcement.**
- 19.81.140 Violation – Penalty.**
- 19.81.150 Appeals.**
- 19.81.160 Severability.**
- 19.81.170 Chapter Review and Reconsideration.**

19.81.010 Purpose.

The purpose of this chapter is to reduce energy and water consumption in existing buildings. These efficiency improvements will lower energy and water costs and greenhouse gas emissions citywide and increase comfort, safety and health for building occupants. The provisions of the ordinance will inform decision makers about energy performance and improvement opportunities.

19.81.020 Applicability.

The requirements of this Chapter shall apply to all buildings that are located in whole or in part within the City. However, it shall not apply to agencies that are not subject to City authority.

19.81.030 Definitions.

- A. "Administrator" means the Director of Planning and Community Development or her/his designee.
- B. "Building Owner" means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.
- C. "Building Energy Score" means a measurement of how efficiently a building uses energy and/or water based on modeled simulations or actual energy use of the building over time compared to similar buildings, which can be in the form of a performance score, asset score or other comparable metric that meets standards and formats established by the Administrator.
- D. "Energy Report" means a report submitted by a Registered Service Provider that identifies existing conditions, opportunities for water and energy efficiency in a building, and available incentives and financing, as well as any applicable Building Energy Score, in accordance with the standards and formats established by the Administrator.
- E. "ENERGY STAR Performance Report" means an ENERGY STAR Portfolio Manager Benchmark report generated by the on-line tool developed by the U.S. Environmental Protection Agency that determines energy use intensity and an Energy Star Performance Score for a building based on utility usage data.
- F. "Extensive Renovation" means any project that replaces all building space heating, cooling, and ventilation equipment and replaces at least half of the building envelope, in accordance to standards established by the Administrator.
- G. "Green Building Rating" means an approved rating by a green building verification system consistent with standards identified by the Energy Efficiency Standardization Coordination Collaborative (EESCC) of the American National Standards Institute (ANSI), including, but not limited to the following: Build It Green (BIG) GreenPoint

Rated Existing Building; US Green Building Council Leadership in Energy and Environmental Design Existing Building Operation and Maintenance (USGBC LEED-EBOM); Passive House Institute (PHI) Certified Passive House and EnerPHit; Passive House Institute US (PHIUS) PHIUS+ Certified Project; and the International Living Future Institute Zero Net Energy Building and Living Building Challenge Certification; or any other rating demonstrating approved levels of energy efficiency, as determined by the Administrator.

- H. "Gross Floor Area" means the total size, as measured between the principal exterior surfaces of the enclosed fixed walls of the building(s). This includes *all areas* inside the building(s) such as: occupied tenant areas, common areas, meeting areas, break rooms, restrooms, elevator shafts, mechanical equipment areas, and storage rooms. Gross Floor Area should not include interstitial plenum space between floors, which may house pipes and ventilation.
- I. "Large Building" means any building with 25,000 square feet or more of Gross Floor Area.
- J. "Medium Building" means any building with between 5,000 and 24,999 square feet of Gross Floor Area, excluding Single Family Buildings.
- K. "Registered Service Provider" means an entity that has been registered by the Administrator to provide an Energy Report and/or Building Energy Score as required by this ordinance.
- L. "Sale" means the conveyance of title to real property as a result of the execution of a real property sales contract as defined in Section 2985 of the California Civil Code as well as any change of ownership described in subdivision (c) of Section 61 and subdivision (c) of Section 64 of the California Revenue and Taxation Code. "Sale" does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.
- M. "Single Family Building" means any building comprised solely of 1 to 4 residential units, regardless of size.
- N. "Small Building" means any building with less than 5,000 square feet of Gross Floor Area, excluding Single Family Buildings.

19.81.040 Large Buildings.

A. Annual ENERGY STAR Performance Report

Owners of Large Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis in accordance with the phase-in schedule below and no later than October 1 each year thereafter.

B. Energy Report

Owners of Large Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report as specified in the phase-in schedule below and by October 1 every five years thereafter.

C. Disclosure

The most recent ENERGY STAR Performance Report and a summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

D. Phase-in and Reporting Cycle Schedule

Owners of Large Buildings shall be in compliance with the requirements of this section by the dates specified below.

1. October 1, 2016 for buildings with 50,000 or more square feet of Gross Floor Area, with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.
2. October 1, 2017 for buildings with 25,000 or more square feet of Gross Floor Area with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.

19.81.050 Medium and Small Buildings.

A. Energy Report

Owners of Medium and Small Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report upon the earlier of:

1. Time of building Sale; or
2. Within 12 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure; or
3. The phase-in dates and reporting cycle provided in the schedule below.

The requirement at Sale may be transferred to the buyer and deferred for 12 months under the provisions of Section 19.81.090.B of this Chapter.

B. Disclosure

A summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

C. Phase-in and Reporting Cycle Schedule

Effective December 1, 2015, owners of Medium Buildings and Small Buildings shall be in compliance with the requirements of this section at time of building Sale or within 12 months when a lender acquires title, or by the dates specified below, whichever comes first. The requirement at Sale may be transferred to the

buyer and deferred for 12 months under the provisions of Section 19.81.090.B of this Chapter.

1. By October 1, 2018 for Medium Buildings with 15,000 or more square feet of Gross Floor Area, and on an 8 year reporting cycle thereafter.
2. By October 1, 2019 for Medium Buildings with 5,000 or more square feet of Gross Floor Area, and on an 8 year reporting cycle thereafter.
3. By October 1, 2020 for Small Buildings with less than 5,000 square feet, and on a 10 year reporting cycle thereafter.

19.81.060 Single Family Buildings

A. Energy Report

Owners of Single Family Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report at:

1. Time of building Sale; or
2. Within 12 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at Sale may be transferred to the buyer and deferred for 12 months under the provisions of Section 19.81.090.B of this Chapter.

B. Disclosure

A summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

C. Reporting Schedule

The requirements of this Section of the ordinance shall become effective December 1, 2015.

19.81.070 Early Compliance.

Any Energy Report completed after April 1, 2015 which otherwise meets the requirements of this Chapter or is deemed by the Administrator as equivalent shall be considered to be an Energy Report for the first compliance period.

19.81.080 Incentives.

The Administrator may establish rules and regulations to encourage participate in local, regional and statewide incentive programs and to otherwise incent property owners to pursue early compliance and/or achieve a high performance exemption.

19.81.090 Exceptions, Deferrals and Extensions.

- A. High Performance Exemption. Exemptions from the Energy Report requirements for current reporting periods may be granted for buildings that demonstrate effective and reasonably achievable level of efficiency, based on the specific

building type, use, vintage, and condition, that supports the Berkeley Climate Action Plan (CAP) goal of 33% energy-related greenhouse gas reduction from 2000 levels by 2020 and 80% reduction by 2050. Qualified exemptions shall include, but are not limited to:

1. Any building that receives a Building Energy Score or Green Building Rating that demonstrates an effective and reasonable level of efficiency, as determined by the Administrator.
 2. Any building that completes a multi-measure energy improvement project with a verified minimum improvement, as determined by Administrator.
 3. Any whole building that has been served by an income-qualified Weatherization Assistance program for low-income households.
 4. Any new building or Extensive Renovation with a construction completion date within ten years of the reporting deadline.
- B. Deferral at Time of Sale. The requirements for compliance prior to Sale may be deferred from the seller to the buyer, and any subsequent buyers, when the buyer and any subsequent buyers consent to comply with the requirements within 12 months of the original sale date with an application for deferral to the Administrator prior to execution of contract of sale.
- C. Distressed Sale Extension. A 12-month extension may be granted to a buyer of a building purchased from a lender following default or transfer by deed in lieu of foreclosure.
- D. Hardship Deferral. The requirement for an ENERGY STAR Performance Report and the requirement for an Energy Report may be deferred for up to one reporting cycle in cases of financial hardship where one of the following is provided by the Building Owner and approved by the Administrator:
1. Proof of participation in an energy assistance income qualified program, administered through the State of California or the local energy utility.
 2. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by Administrator.
 3. Proof that the property qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes, within two years prior to the due date of the Energy Report.
 4. Proof that a court appointed receiver is in control of the asset due to financial distress.
 5. Proof that the senior mortgage is subject to a notice of default.
 6. Proof that the responsible party is otherwise not able to meet the obligations of this Chapter.

Deferrals under this Section are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

- E. Data Unavailable. An exemption from ENERGY STAR Performance Report requirement for any current reporting period may be granted if
 1. The Building Owner demonstrates to the Administrator that he or she has been unable to obtain tenant authorization to obtain tenant utility data, despite a good faith effort to obtain such consent, or
 2. The building occupant demonstrates to the Administrator that such disclosure may result in the release of proprietary information which can be characterized as a trade secret.

- F. Deferral for Planned Demolition or Extensive Renovation. The requirements of this Chapter may be deferred for 24 months if the owner or buyer has obtained a Building Permit, Demolition Permit, or Permit under the Zoning Ordinance that includes demolition or Extensive Renovation of the subject building.

Deferrals under this subdivision are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

- G. Exemption for Sale of a Condominium. The requirements to submit an Energy Report with an Energy Benchmark to the Administrator shall not apply to any sale of a residential or commercial condominium that is a unit within a building and not a detached structure.

- H. Low Energy Use Deferral. Buildings with low energy use based on energy billing data comparing a building to similar efficient buildings or because of operations specific to their building use, such as institutions that operate less than three days a week, may be granted a Low Energy Use deferral for the current compliance cycle.

Deferrals under this subdivision are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

- I. Exemption for Long-Term Tenancy under Rent Control. The requirements of this Chapter for any building which is subject to rent control in which all of the units, excluding any owner-occupied units, have leases that date prior to January 1, 1999 may be deferred until the next reporting period.

- J. Unconditioned Floor Area Reclassification. The size classification of a building may be reduced by the Administrator to exclude physically separated floor area that is not served by heating, ventilation or cooling equipment.

- K. Phase-In.

1. Through December 1, 2015, compliance required pursuant to a Sale may be satisfied through compliance with the requirements specified under the prior

residential and commercial energy conservations ordinances, Chapters 19.16 and 19.72 of the Berkeley Municipal Code.

2. Any buyer who, prior to June 1, 2015, has filed an acceptance of compliance responsibility pursuant to Berkeley Municipal Code 19.16.080 Section A. 3 or 19.72.120 Section B, has the option of complying either with the requirements in effect at the time of filing or the requirements of this Chapter.

19.81.100 Responsibilities.

- A. It shall be the responsibility of sellers, buyers, owners, real estate agents and brokers, property managers, title companies, non-residential tenants, Registered Service Providers and energy service providers to comply with the requirements of this Chapter.
- B. The seller of any real property and the licensed real estate agent or broker handling a sale of real property shall be jointly responsible for disclosing to the prospective buyer the compliance status of the real property in question.

19.81.110 Administration and Enforcement.

The Administrator may adopt reasonable rules and regulations implementing the provisions and intent of this Chapter before the operative date of this Chapter and may amend these rules and regulations as needed. All rules and regulations adopted by the Administrator shall be posted on the City of Berkeley website.

19.81.120 Fees.

The City Council may set fees, by resolution, for the administration of this Chapter.

19.81.130 Enforcement.

The Administrator shall issue a written Notice of Violation to any building owner determined to be in violation of any provision of this Chapter. In the event a building owner fails to file an ENERGY STAR Performance Report within 30 days after the scheduled deadline or an Energy Report within 90 days after the scheduled deadline, the Administrator shall indicate the building's compliance status via the publicly accessible electronic reporting interface.

19.81.140 Violation – Penalty.

Violations of this Chapter, if charged pursuant to Chapter 1.20, shall be charged as infractions. Violations of this Chapter are also punishable pursuant to Chapter 1.28.

19.81.150 Appeals.

Aggrieved persons may file appeals to the City Manager or her/his designee.

19.81.160 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part,

section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

19.81.170 Chapter Review and Reconsideration.

The City Council, with advice from the Berkeley Energy Commission, shall, within 3 years of the effective date of this Chapter, evaluate implementation and outcomes and reconsider extending requirements to all Single Family Buildings starting in 2021. Implementation evaluation shall include an analysis of reporting systems and compliance rates, and outcomes evaluation shall analyze the number of energy improvements and amount of energy reduced as a result of this Chapter, and may recommend revisions and/or incentive programs to accelerate improvements to low performing buildings as it considers advisable. The Berkeley Energy Commission shall then report on its evaluation and recommendations to the City Council.

Section 6. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 24, 2015 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Worthington and Bates.

Noes: None.

Abstain: Wengraf.

Absent: None.

