

ORDINANCE NO. 7,740-N.S.

AMENDMENTS TO BERKELEY MUNICIPAL CODE CHAPTER 19.81 TO UPDATE  
THE BUILDING ENERGY SAVING ORDINANCE (BESO)

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

Section 1. That Berkeley Municipal Code Chapter 19.81 is amended to read as follows:

**Chapter 19.81**  
**BUILDING EMISSIONS 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 Reserved.
- 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 Reserved.
- 19.81.160 Severability.
- 19.81.170 Reserved.

**19.81.010 Purpose.**

The purpose of this chapter is to reduce energy use, water consumption, and greenhouse gas emissions in existing buildings. These efficiency and emission reduction improvements will lower energy and water costs, transition buildings away from the use of fossil fuels, and increase comfort, safety and health for building occupants. The provisions of the ordinance will inform decision makers about energy and emissions 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 Development or their 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. "Electrification" means the transition of building systems and appliances away from natural gas to electricity as the source of energy.

E. "Energy Report" means a report submitted by a Registered Service Provider that identifies existing conditions, opportunities for water and energy efficiency in a building, opportunities to transition off fossil fuels, greenhouse gas emissions reductions, and available incentives and financing, as well as any applicable Building Energy Score, in accordance with the standards and formats established by the Administrator.

F. "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.

G. "Energy Upgrade" means the installation or completion of recommended measure(s) that improve the building's energy efficiency, increases the building's resilience, supports the transition off fossil fuels, or decreases the building's greenhouse gas emissions.

H. "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.

I. "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.

J. "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.

K. "Large Building" means any building with 25,000 square feet or more of Gross Floor Area.

L. "Medium Building" means any building with between 15,000 and 24,999 square feet of Gross Floor Area, excluding Single Family Buildings.

M. "Real Estate Listing" means any listing of a building for sale in the City of Berkeley. "Real Estate Listings" include listing a building for sale by a property owner or by a licensed agent. "Real Estate Listings" include any listing for sale by any advertisement, internet posting, or publicly displayed sign.

N. "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.

O. "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.

P. "Single Family Building" means any building comprised solely of 1 to 4 residential units, regardless of size.

Q. "Small Building" means any building with less than 15,000 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 July 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 July 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. July 1, 2018 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. July 1, 2019 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.

E. Evaluate and Recommend Energy Upgrades Requirements

The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Large Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Large Buildings to the City Council for consideration.

**19.81.050 Medium and Small Buildings.**

A. Annual ENERGY STAR Performance Report

Owners of Medium Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis as of July, 1 2021, and no later than July 1 each year thereafter.

B. Energy Report

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

1. Prior to the Real Estate Listing of the building for Sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section 19.81.090.B of this Chapter.

C. Disclosure

All compliance documentation, including the most recent ENERGY STAR Performance Report, if applicable, a deferral or 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 prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed publicly for sale.

D. Evaluate and Recommend Energy Upgrades Requirements

The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Small and Medium Buildings based on building performance that are consistent with State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Small and Medium Buildings to the City Council for consideration.

**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:

1. Prior to the Real Estate Listing of the building for Sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section 19.81.090.B of this Chapter.

B. Disclosure

All compliance documentation, including a deferral or 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 prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed for sale.

C. Reporting Schedule

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

2015.

**D. Evaluate and Recommend Energy Upgrades Requirements**

The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Single Family Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Single Family Buildings to the City Council for consideration.

**19.81.070 Reserved.**

**19.81.080 Incentives.**

The Administrator may establish rules and regulations to encourage participation 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, electrification of building systems and appliances, and/or emissions reduction, based on the specific building type, use, vintage, and condition, that supports Berkeley's commitment to become a Fossil Fuel Free City and 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.
5. Any building that has electrified all building systems and appliances.

B. Deferral at Time of Real Estate Listing. The requirements for compliance prior to the Real Estate Listing of a building may be deferred from the seller to the buyer, and any subsequent buyers, for a period of 6 months after the original sale date. A request to defer

responsibility to the buyer must be submitted to the administrator prior to the listing of the building. The deferral shall include information on the fuel source for each end use in the building and any current or future electrification requirements and incentives.

C. Distressed Sale Extension. A 6-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 they have 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.

3. Any person subject to the requirements of this Chapter demonstrates to the Administrator that submission of an ENERGY STAR Performance Report would conflict with the requirements of State or Federal law

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 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.

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 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.

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. Exemption based on building size. Buildings 600 square feet or a higher size threshold, as determined by the Administrator, are exempt from 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. (Ord. 7397-NS § 5 (part), 2015)



**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 may 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 Reserved.**

**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 Reserved.**

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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 December 1, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.  
Noes: None.  
Absent: None.

At a regular meeting of the Council of the City of Berkeley held on December 15, 2020, this Ordinance was adopted by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.  
Noes: None.  
Absent: None.

  
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Jesse Arreguin, Mayor

ATTEST:   
\_\_\_\_\_  
Mark Numainville, City Clerk

Date signed: Dec. 17, 2020