




Office of the City Manager

**01**

**Worksession Item**

WORKSESSION  
November 18, 2014

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Eric Angstadt, Director, Planning and Development  
Subject: Building Energy Saving Ordinance (BESO) Worksession

### INTRODUCTION

The Office of Energy and Sustainable Development will conduct a workshop on the Building Energy Saving Ordinance (BESO), scheduled for consideration during the council meeting later this evening. The ordinance and summary overview are attached for reference.

The goal of the ordinance is to motivate property owners to reduce greenhouse gas emissions by making optimal use of efficiency technologies and incentives in all existing buildings. BESO would replace the current Residential and Commercial Energy Conservation Ordinances (RECO and CECO).

### CURRENT SITUATION AND ITS EFFECTS

- The minimum energy and water saving measures prescribed by RECO and CECO are out of date with building science, lag behind the current Title 24 California Energy Code and do not align with rate-payer funded incentive programs.
- Requiring the same measures for all buildings is not cost effective, precludes deeper energy savings and does not optimize non-energy health, safety and comfort benefits.
- Given the current time of sale and remodel triggers, the impact of the current RECO and CECO is limited because relatively few buildings are affected.
- Information systems currently deployed to manage compliance with RECO and CECO fail to provide a web-based interface that would enable building owners, as well as prospective buyers and tenants, to compare properties and make informed decisions involving energy performance.
- The City currently has no way to track outcomes and associated savings related to energy efficiency measures.

### BACKGROUND

Development of proposed ordinance was informed by community input gathered at various venues, including three public workshops hosted by the Berkeley Energy Commission; discussions with the Housing Advisory

Commission, the Community Environmental Advisory Commission and the Berkeley Rent Board; a series of technical advisory meetings with efficiency experts; and presentations at meetings of Berkeley stakeholders, including the Berkeley Association of Realtors, the Berkeley Property Owners Association, commercial property owners and managers, the Sierra Club and others. The proposal is also informed by extensive research into existing energy information disclosure policies in California and around the country.

The proposed ordinance requirements would:

- Remove existing requirements to install minimum RECO and CECO measures at time of sale or remodel
- Require energy assessments and disclosure of energy information (requirements vary by building size)
- Simplify the process by enabling on-line applications and requiring only a single site visit
- Provide a summary of the energy assessments and the benchmark scores of all buildings on a City website

#### ENVIRONMENTAL SUSTAINABILITY

This ordinance is a key implementation action of the Climate Action Plan and is projected to result in substantial reductions in energy use and greenhouse gas emissions, as well as improve indoor air quality that will contribute to the health and well-being of occupants.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

- New City administrative costs will be recovered by filing fees, ranging from \$79 to \$240 depending on building size, which will be due upon filing an energy assessment every five to ten years (timeframe also depends on building size).
- Client costs will include the fees, noted above, plus any assessment costs in excess of available financial and technical assistance incentives.
- Assessments will be conducted by private entities registered with the City who will establish their own competitive rates. It is expected that costs will range from estimated \$200 to \$600 for single family homes up to \$10,000 for a very large commercial building.
- All buildings that complete energy upgrades, demonstrate highly efficient energy use or have severe financial hardship will be exempt from assessment requirements and filing fees.

#### CONTACT PERSON

Billi Romain, Sustainability Coordinator, Planning and Development, 981-7432

Attachments:           1. BESO Overview  
                              2. Building Energy Saving Ordinance

# Berkeley's Updated Building Energy Saving Ordinance (BESO)

Berkeley's proposed energy ordinance would require all Berkeley building owners to evaluate and publicly report building energy and water consumption. The goal of this ordinance is to motivate property owners to reduce energy and water usage by making optimal use of efficiency technologies and incentives. **Highly efficient buildings and those that access free income-qualified energy services will be exempt from the energy audit provision.**

## Requirements for:

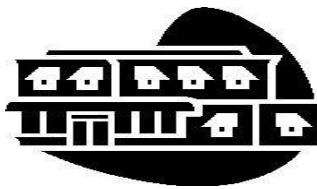
### Large Buildings

25,000 sq ft or more



### Medium Buildings

5,000-24,999 sq ft



### Small Buildings

Up to 5,000 sq ft &  
1-4 residential units



Owners must report energy use every year. Buildings must undergo an energy efficiency audit every 5 years.  
**Phase-in starting in 2016**

Buildings must undergo an energy efficiency audit every 8 years or at time of sale (whichever comes first)  
**Phase-in starting in 2018**

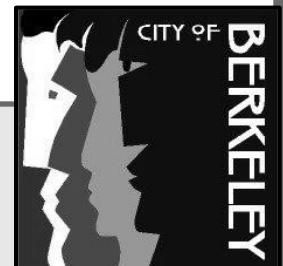
Buildings must undergo an energy efficiency audit every 10 years or at time of sale (whichever comes first)  
**Phase-in starting in 2020**

## Benefits of Energy Information Reporting:

- Shows property owners how to reduce energy costs & increase property values.
- Provides building-specific recommendations to maximize efficiency, health, safety & comfort.
- Identifies potential natural gas hazards.
- Teaches owners how to access valuable financing & incentive opportunities.
- Motivates property owners to invest in energy-saving improvements.

For more information:

[www.cityofberkeley.info/EnergyOrdinanceUpdate](http://www.cityofberkeley.info/EnergyOrdinanceUpdate) or  
email [greenbuilding@cityofberkeley.info](mailto:greenbuilding@cityofberkeley.info)



ORDINANCE NO. #,###-N.S.

ADOPTING 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 JULY 1, 2015, AND REPEALING SECTIONS 19.16.080.a.3 AND 19.72.120.b EFFECTIVE MAY 1, 2015

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

Section 1. That Section 19.16.080.A.3 and Section 19.72.120.B of the Berkeley Municipal Code are repealed effective May 1, 2015.

Section 2. That Chapters 19.16 and 19.72 of the Berkeley Municipal Code are repealed in their entirety effective July 1, 2015.

Section 3. That BMC Chapter 19.81 is added to the Berkeley Municipal Code to read as follows:

**Sections:**

**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" shall mean 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 rating 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 and opportunities for water and energy efficiency in a building, 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 designed for existing buildings, such as GreenPoint Rated, US Green Building Council Leadership in Energy and Environmental Design (USGBC LEED) or new building certification such as Zero Net Energy Building or Living Building Challenge Certification, demonstrating approved levels of energy efficiency, as determined by the Administrator.
- H. “Gross Floor Space” 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 Space 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 Space.

- J. "Medium Building" means any building with between 5,000 and 24,999 square feet of Gross Floor Space, excluding buildings comprised of 1 to 4 attached residential units.
- 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 effected by operation of law.
- M. "Small Building" means any building with less than 5,000 square feet of Gross Floor Space, and any building comprised of 1 to 4 attached residential units, regardless of size.

#### **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, 2016 for buildings with 50,000 or more square feet of Gross Floor Space, with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.
2. July 1, 2017 for buildings with 25,000 or more square feet of Gross Floor Space 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 that includes a Building Energy Score 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.

#### **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 April 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.

1. By July 1, 2018 for Medium Buildings with 15,000 or more square feet of Gross Floor Space, and on an 8 year reporting cycle thereafter.
2. By July 1, 2019 for Medium Buildings with 5,000 or more square feet of Gross Floor Space, and on an 8 year reporting cycle thereafter.
3. Requirements for Small Buildings shall be phased-in starting July 1, 2020 and ending July 1, 2025, and on a 10 year reporting cycle thereafter. The

specific schedule shall be published by the Administrator at least two years prior to the start of phase-in.

### **19.81.060 Early Compliance**

Any Energy Report completed after December 31, 2014 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.

### **19.81.070 Incentives**

The Administrator may establish rules and regulations to incent property owners to pursue early compliance and/or achieve a high performance exemption.

### **19.81.80 Exceptions, Deferrals and Extensions**

- A. High Performance Exemption. An exemption from the Energy Report requirement for current reporting period for buildings that demonstrates an 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 1990 levels by 2020 and 80% reduction by 2050, may be granted for:
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 consents 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 energy efficiency income qualified programs.
  2. 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.
  3. Proof that a court appointed receiver is in control of the asset due to financial distress.
  4. Proof that the senior mortgage is subject to a notice of default.
  5. 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.
  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 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 Building Use Deferral. Buildings with uses that are very low energy intensity 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 Building Use deferral for the current compliance cycle, provided it can be demonstrated to the Administrator that there are procedures or controls in place to power down energy systems when the building is unoccupied.

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 Space 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 July 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 May 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.

#### **19.81.90 Responsibilities**

- A. It shall be the responsibility of sellers, buyers, owners, real estate agents and brokers, property managers, title companies, non-residential tenants 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.

#### **19.81.100 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.

#### **19.81.110 Fees**

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

#### **19.81.120 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 for 30 days after the scheduled deadline or an Energy Report 90 days after the scheduled deadline, the Administrator shall indicate the building's compliance status via the publicly accessible electronic reporting interface.

#### **19.81.130 Violation – Penalty**

A violation of this Chapter shall be a misdemeanor, but may be charged as an infraction as set forth in Chapter 1.20, and is punishable by administrative citation as set forth in Chapter 1.28.

Administrative fines collected under this section shall be used to fund implementation and enforcement of the Berkeley Building Energy Saving Ordinance.

### **19.81. 140 Appeals**

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

### **19.81.150 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.

### **19.81.160 Chapter Review**

The Berkeley Energy Commission shall, within 3 years of the effective date of this Chapter, evaluate implementation and outcomes. 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 4. 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.