

ORDINANCE NO. 7,387–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 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 That Section 19.16.080.A.3 of the Berkeley Municipal Code is repealed effective May 1, 2015.

Section 2. That Section 19.72.120.B of the Berkeley Municipal Code is repealed effective May 1, 2015.

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 That Chapter 19.16 of the Berkeley Municipal Code is repealed in its entirety effective July 1, 2015.

Section 4. That Chapter 19.72 of the Berkeley Municipal Code is repealed in its entirety effective July 1, 2015.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 Early Compliance.**
- 19.81.070 Incentives.**
- 19.81.080 Exceptions, Deferrals and Extensions.**
- 19.81.090 Responsibilities.**
- 19.81.100 Administration and Enforcement.**
- 19.81.110 Fees.**
- 19.81.120 Enforcement.**
- 19.81.130 Violation – Penalty.**
- 19.81.140 Appeals.**
- 19.81.150 Severability.**
- 19.81.160 Chapter Review.**

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 May 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.

19.81.080 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.

19.81.090 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 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 November 18, 2014 this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

