

ORDINANCE NO. 7,953-N.S.

AMENDMENTS TO THE BUILDING EMISSIONS SAVING ORDINANCE; AMENDING
BERKELEY MUNICIPAL CODE CHAPTER 19.81**CHAPTER 19.81
BUILDING EMISSIONS SAVING**

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

Section 1. That Berkeley Municipal Code 19.81.010 is amended to read as follows:

19.81.010 - Purpose.

The purpose of this chapter is to reduce energy use, water consumption, and greenhouse gas emissions in existing buildings, to increase the resilience of these buildings, and to promote public health. These improvements will increase comfort, safety and health for building occupants, transition buildings away from the use of fossil fuels, and may lower energy and water costs. The provisions of the ordinance will inform decision makers about energy, emissions, and resilience performance and improvement opportunities.

Section 2. That Berkeley Municipal Code 19.81.030 is amended to read as follows:

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 also 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. "Credits" means a numerical value based on the improved resilience, emissions savings, cost, or other measured benefit associated with a Resilience Upgrade.
- E. "Dwelling Unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

F. "Electrification" means the transition of building systems and appliances away from natural gas to electricity as the source of energy.

G. "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.

H. "ENERGY STAR Performance Report" means an ENERGY STAR Portfolio Manager Benchmark report generated by the online 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.

I. "Resilience 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, and/or decreases the building's greenhouse gas emissions.

J. "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.

K. "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.

L. "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.

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

N. "Medium Building" means any building with between 15,000 and 24,999 square feet of Gross Floor Area, excluding 1 to 4 Unit Residential Buildings.

O. "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 printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services.

P. "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.

Q. "Resilience Upgrade Payment" means a monetary charge, as defined in Article XIII C, section 1(e)(5) of the California Constitution, that is imposed by the City on the seller as a result of the seller not complying with the seller's legal obligation to obtain a BESO Certificate of Compliance prior to transfer of title.

R. "1 to 4 Unit Residential Building" means any building comprised of solely 1 to 4 Dwelling Units, regardless of size. For the purpose of determining which buildings constitute a 1 to 4 Unit Residential Building subject to this Chapter, an Accessory Dwelling Unit (ADU) as defined in Chapter 23.502 of this Code is not a Dwelling Unit.

S. "Small Building" means any building with less than 15,000 square feet of Gross Floor Area, excluding 1 to 4 Unit Residential Buildings.

T. "Transfer" means the conveyance of title to real property, excluding condominiums as defined in California Civil Code Section [1351\(f\)](#), 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. "Transfer" 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.

Section 3. That Berkeley Municipal Code 19.81.040 is amended to read as follows:

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 Resilience Upgrades Requirements.* The Administrator of this Chapter shall develop recommendations for Resilience 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 Resilience Upgrade requirements. The Administrator shall then report the proposed Resilience Upgrade requirements for Large Buildings to the City Council for consideration.

Section 4. That Berkeley Municipal Code 19.81.050 is amended to read as follows:

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 Resilience Upgrades Requirements.* The Administrator of this Chapter shall develop recommendations for Resilience 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 Resilience Upgrade requirements. The Administrator shall then report the proposed Resilience Upgrade requirements for Small and Medium Buildings to the City Council for consideration. Section 5. That Berkeley Municipal Code 19.81.060 is amended to read as follows:

19.81.060 – 1 to 4 Unit Residential Buildings.

A. *Resilience Standard.* When a 1 to 4 Unit Residential Building is Transferred, the property being Transferred shall achieve a required number of Credits, as determined by the Administrator, by undergoing Resilience Upgrades.

B. *Energy Report.* Owners of 1 to 4 Unit Residential 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.

In the event the Building Owner fails to complete the Energy Report, an administrative fee, which is set forth in Section 19.81.120 of this code, shall be charged to cover staff time required to assist the buyer with compliance in the absence of the Energy Report.

C. *BESO Certificate of Compliance.* Upon submittal of documentation verifying that a Building Owner has achieved the required number of Resilience Upgrade credits, as determined by the Administrator, the Administrator shall issue a BESO Certificate of Compliance. A BESO Certificate of Compliance shall expire 5 years after issuance.

D. *Seller Obligation at Time of Transfer.* Prior to Transfer, seller shall obtain a BESO Certificate of Compliance for the subject property. If the seller fails to obtain a BESO Certificate of Compliance before Transfer, the seller must make a Resilience Upgrade Payment to the City of \$2,500.

E. *Buyer Obligation at Time of Transfer.* A buyer who purchases a property that has not obtained a BESO Certificate of Compliance by the date of Transfer shall obtain a BESO Certificate of Compliance within two years of Transfer (“Buyer Compliance Period”), which may be extended up to one year at the discretion of the Administrator. Buyer shall, within ten days of Transfer, deposit funds with the City in an amount of \$2,500 (“Buyer’s Deposit”) and must execute and deliver to the Administrator or their designee a binding agreement in a form acceptable to the City providing that any funds deposited with the City shall be forfeited and transferred to the City if a BESO Certificate of Compliance for the subject property has not been obtained upon the expiration of the Buyer Compliance Period.

1. If a BESO Certificate of Compliance for the subject property is obtained prior to the expiration of the Buyer Compliance Period, then the buyer shall recoup the

Buyer's Deposit in full, as well as the Resilience Upgrade Payment made by the seller.

2. If a BESO Certificate of Compliance for the subject property was not obtained prior to the expiration of the Buyer Compliance Period, then the Buyer's Deposit will be forfeited to the City unless the buyer (i) can show that one or more of the conditions in Section 19.81.090 has been met, or (ii) petitions for an additional extension of the Buyer Compliance Period pursuant to subparagraph 3.

3. The buyer may be granted an additional extension of the Buyer Compliance Period if they can show that special circumstances, such as delays due to utility capacity or equipment supply chains or delays required to minimize disruptions to tenants, warrant an additional extension of a reasonable amount of time.

4. If the BESO Certificate of Compliance was not obtained after the expiration of the Buyer's Compliance Period and any extensions, then the forfeited Buyer's Deposit and Resilience Upgrade Payment funds shall be used by the City for local low-income building upgrade programs, such as the Climate Equity Fund or Just Transition Residential Electrification Programs.

F. Appeals.

1. After the expiration of the Buyer Compliance Period, notice shall be mailed to the buyer of (i) the expiration of the Buyer Compliance Period and the forfeiture of the Buyer's Deposit under BMC 19.81.060(E)(2) and (ii) the opportunity to appeal. The cost of notice shall be deducted from the deposit made pursuant to BMC 19.81.060(E).

2. Within 14 calendar days of mailing of forfeiture notice, the buyer may appeal the forfeiture.

a. An appeal shall be submitted to the City Manager or the City Manager's designee in writing and must state all of the reasons for the appeal.

b. Appeal fees shall be paid by the person filing the appeal (the appellant).

3. Where a timely appeal has been filed, the City Manager or the City Manager's designee shall, within 14 calendar days, set the appeal for a hearing before a Hearing Officer to be designated by the City Manager.

4. At the appeal hearing, the Hearing Officer may: (i) continue the public hearing; or (ii) reverse, affirm, or modify the decision of the prior review authority.

5. The Hearing Officer shall serve a written decision upon the appellant within 14 calendar days of the hearing, and shall send a copy to the Administrator and the City Manager. The Hearing Officer's decision shall be final when mailed.

G. Disclosure. All compliance documentation, including a summary version of the most recent Energy Report including a Building Energy Score and the Resilience Standard

compliance status 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. The Building Energy Score shall be included in all Real Estate Listings and a URL link to the Energy Report included if links are supported by the listing service.

H. *Phase-in*. Owners of 1 to 4 Unit Residential Buildings shall comply with the requirements of this section starting on the dates specified below. These buildings shall be treated as Small Buildings until their phase-in date.

1. January 1, 2026 for 1 to 4 Unit Residential Buildings containing one or two residential units.
2. January 1, 2028 for 1 to 4 Unit Buildings containing three or four residential units.

I. *Responsibilities*. Except as otherwise provided or as allowed by the Administrator, the Building Owner is responsible for compliance with this Section. The seller of any real property shall be responsible for disclosing to prospective buyers the requirements of this Section and the compliance status of the real property in question. Upon transfer of ownership, the buyer will be responsible for the compliance with this Section, regardless of any disclosure or failure to disclose.

Section 6. That Berkeley Municipal Code 19.81.090 is amended to read as follows:

19.81.090 – Exceptions, Deferrals and Extensions.

A. *High Performance Exemption*. Exemptions from the Energy Report requirements for current reporting periods may be granted to buildings that demonstrate effective and reasonably achievable level of efficiency, electrification of building systems and appliances, and/or emissions reduction that support Berkeley's commitment to become a Fossil Fuel Free City and achieve carbon neutrality by 2045. Qualified exemptions shall include, but are not limited to:

1. Any Large 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, except for 1 to 4 Unit Residential Buildings, 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, except for 1 to 4 Unit Residential Buildings, with a construction completion date within ten years of the reporting deadline.

5. Any building that has electrified all building systems and appliances and capped all gas lines to the building.

B. *Deferral at Time of Real Estate Listing.* The requirements for compliance with the Energy Report requirement prior to the Real Estate Listing of a Small or Medium 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, an Energy Report, or the Resilience Standard may be deferred 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 income qualified energy assistance 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 transferable 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, or

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 transferable 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 transferable 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. *Recent Resilience Upgrades.* Buildings that completed the requisite number of Resilience Upgrades, as determined by the Administrator, within the last 5 years may obtain a BESO Certificate of Compliance if the Building Owner submits sufficient proof to the Administrator.

L. *Heat Pump System Exemption.* 1 to 4 Unit Residential Buildings in which all units being transferred are completely served by at least one electric heat pump system or electric equivalent, as determined by the administrator, may obtain a BESO Certificate of Compliance. The Energy Report shall provide confirmation for this exemption.

M. *Early Refund Exception.* Owners of 1 to 4 Unit Residential Buildings may apply for early remittance of the Buyer's Deposit and Resilience Upgrade Payment prior to

completion of the Resilience Upgrades upon demonstration that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that the Resilience Upgrades will be completed, as determined by the Administrator. If the application for an early refund is approved, the City will refund the funds deposited pursuant to BMC 19.81.060(E) to the owner so that the owner may complete the Resilience Upgrades. Once the requisite Resilience Upgrades are complete, the Owner must obtain a BESO Certificate of Compliance. In the event the property owner fails to complete the requisite Resilience Upgrades within the Buyer Compliance period, an administrative citation shall be charged, which fee is set forth in Section 19.81.140 of this code.

N. *First-Time Homebuyer Exemption.* Buyers of 1 to 4 Unit Residential Buildings participating in an approved local, State, or Federal income-qualified first-time home buyer program or down payment assistance program are exempt from the Resilience Standard requirements of this chapter.

Section 7. These amendments to Berkeley Municipal Code Chapter 19.81 shall become effective on January 1, 2026.

Section 8.

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 March 25, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.