

# **BMC CHAPTER 19.81**

## **Building Emissions Saving Ordinance (BESO)**

### ADMINISTRATIVE REGULATIONS

Version 5.0

Effective Date: January 1, 2026

### PREFACE

These regulations have been adopted by the Administrator pursuant to the Building Emissions Saving Ordinance (BESO), Berkeley Municipal Code (BMC) 19.81. Except as provided below, the Administrator shall post proposed changes to the regulations on a City website and solicit feedback at least 30 days in advance of adoption. New regulations will become effective no fewer than 30 days after adoption and posting. The Administrator shall maintain a list of interested parties and provide notification to such parties when changes are proposed or adopted. The Administrator may make immediate changes to the regulations if there is a compelling need, such as improving customer service.

The Administrator shall publish and maintain a consolidated set of information materials incorporating the ordinance, these regulations and other materials to assist the public in complying with BESO requirements.

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## Article I. BESO Requirements for Existing Buildings

### Section I.1 - Intent and Scope (ref. BMC Sections 19.81.010 - 020)

#### I. Intent

- A. Berkeley Municipal Code Chapter 19.81 (Building Emissions Saving Ordinance – “BESO”) was established and amended with the intent of reducing energy use, water consumption, and greenhouse gas emissions in existing buildings, increasing building resilience, and promoting public health. BESO mandates energy and electrification assessments and benchmarking for existing buildings within City limits. The resulting information is made publicly available to inform building owners, prospective buyers, and lessees of building energy, emissions, and resilience performance and worthwhile improvement opportunities. BESO also requires the completion of resilience upgrades at the time of sale for small residential buildings, further supporting decarbonization, safety, and climate adaptation. Together, these provisions encourage cost-effective investment in energy efficiency, electrification, and resilience measures, helping to transition buildings away from fossil fuels while improving comfort, safety, and health for Berkeley residents.

#### II. Scope

- A. The following regulations shall apply to all residential and commercial buildings that are located within Berkeley city limits but shall not apply to agencies that are not subject to City authority.
- B. BESO has various requirements based on the building size and type:
  1. **1–4 Unit Residential Buildings:** Must complete an Energy Assessment prior to listing a building for sale and disclose Energy Assessment Report to potential buyers. Must complete Resilience Upgrades either prior to close of sale or within 2 years of purchase.
  2. **Small Multifamily and Commercial Buildings:** (<15,000 sq. ft.) Must complete an Energy Assessment prior to listing a building for sale. *(see Section I.4)*
  3. **Medium Multifamily and Commercial Buildings:** (15,000–24,999 sq. ft.) Must complete an Energy Assessment prior to listing a building for sale and submit Energy Benchmark reports annually. *(see Section I.4)*
  4. **Large Multifamily and Commercial Buildings:** (≥25,000 sq. ft.) Must complete an Energy Assessment at least once every five (5) years and submit Energy Benchmark reports annually. *(see Section I.5)*

### Section I.2 - Building Use Types and Definitions (ref. BMC Sections 19.81.030)

#### I. General Definitions

- A. “Ordinance” means the Building Emissions Saving Ordinance (BESO), Berkeley Municipal Code (BMC), Chapter 19.81

- B.** “Building” means a single structure wholly or partially enclosed within exterior walls, or within exterior and abutment walls (party walls), and a roof, affording shelter to persons, animals, or property. Buildings less than 850 square feet in floor area are exempt from the Ordinance.
- C.** "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.
- D.** “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.
- E.** “Unconditioned Floor Space” means physically separated floor area that is not served by heating, ventilation, or cooling equipment that may be subtracted from a Building’s Gross Floor Space total, as verified by a Registered Energy Assessor or by providing other satisfactory evidence to the Administrator.
- F.** “Compliance Document” means any form issued by the City, stating BESO compliance status for a specific property, including “BESO Assessment Confirmation (Form A)”, “BESO Certificate of Compliance”, “BESO Deferral to Buyer (Form C)”, “BESO Other Deferral (Form D)”, “BESO Exemption Confirmation (Form E)”, and “BESO High-Performance Exemption (Form A-HPE)”
- G.** “Sale” means ownership transfer of 51% or over of a property, in addition to definition provided in Ordinance. All other definitions provided in Section 19.81.030 of the Ordinance are incorporated herein.
- H.** "Listing" means any announcement of a building for sale in the City of Berkeley. “Listing” applies to a building for sale by a property owner or by a licensed agent. "Listing" includes any notice for sale by any advertisement, internet posting, publicly displayed sign, or through a private database, (i.e. Multiple Listing Services), intended for use by real estate licensees or buyers with the purpose to identify and compare real properties for purchase.
- I.** “Seller” means any individual or entity possessing title to a building that includes a covered building and is seeking to sell the building.
- J.** “Buyer” means any individual or entity that is seeking to purchase a covered building.
- K.** “Energy Report” and “Energy Assessment” are used interchangeably throughout and mean 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.

## II. Building Use Types

- A. “1 to 4 Unit Residential Building” means any building comprised of solely 1 to 4 Dwelling Units, regardless of size. An Accessory Dwelling Unit (ADU) is not a dwelling unit.
- B. “Small Building” means any building with less than 15,000 square feet of Gross Floor Area, excluding 1 to 4 Unit Residential Buildings.
- C. “Medium Building” means any building with between 15,000 and 24,999 square feet or more of Gross Floor Area, excluding 1 to 4 Unit Residential Buildings.
- D. “Large Building” means any building with 25,000 square feet or more of Gross Floor Area.
- E. “Multifamily Building” means a Building with 5 or more dwelling units, including congregant residences that house more than 16 occupants, such as cooperatives, fraternities and sororities.
- F. “Commercial Building” means a Building that is of a non-residential use covered by Assembly Bill 802 (Stats. 2015, Chapter 590) codified at Public Resource Code section 25402.10, including the following use types (identified in the California Building Standards Code Title 24, Section 302): Assembly (A), Business (B), Educational (E), Institutional (I-1, I-2), Mercantile (M), Residential – Transient (R-1 Hotel, for example), Storage (S), and Utility – Parking Garage (U) and excludes industrial and residential areas such as: Factory and industrial (F-1, F- 2), High Hazards (H-1 to H-5), and Residential (R-2 to R-4). Buildings or campuses with more than half of the total Gross Floor Area dedicated to scientific experiments requiring controlled environments, or for manufacturing or industrial purposes are excluded.
- G. “Mixed Use Building” means a Building that contains both residential and commercial uses, including live/work and work/live areas. See Section II.1.B for reporting options for Mixed Use Buildings.
- H. “Historic Structure” means a building that is a registered historic site on the City of Berkeley list of Landmarks, Structures of Merit and Historic Districts, found here: <https://berkeleyca.gov/construction-development/permits-design-parameters/design-parameters/landmark-alterations>, and/or the National Register of Historic Places maintained by the National Park Service, found here: <https://www.nps.gov/subjects/nationalregister/index.htm>
- I. “Campus” means two or more Covered Buildings on the same parcel, campus, or site that are served by one common Energy meter without submetering, such that their Energy use cannot be tracked individually.

## Section I.3 - 1 to 4 Unit Residential Building Requirements (ref. BMC Sections 19.81.060 & 19.81.090)

### I. Covered Buildings

- A. This section applies to all residential buildings with up to four (4) attached dwelling units being sold, excluding individual condominiums and Accessory Dwelling Units (ADUs).
- B. Buildings containing three (3) or four (4) units shall be treated as Small Multifamily Buildings until their phase-in date of January 1, 2028, after which this section applies.

## II. Seller Requirements

### A. Energy Assessment

1. A Seller shall complete an Energy Assessment prior to listing a property for sale.
2. The assessment must be performed by a qualified Registered Energy Assessor for 1 to 4 Unit Residential buildings.
3. The Energy Assessment shall be a Home Energy Score assessment for all residential buildings with up to four (4) attached dwelling units. A separate Home Energy Score assessment is needed for each individual unit.
4. Energy Assessments remain valid for five (5) years from the date of the assessment. An Energy Assessment may be reused for subsequent sales within this 5-year period. However, once an Energy Report has expired, a new one is required.
5. Failure to complete and disclose the Energy Assessment prior to listing the property shall result in an Administrative Noncompliance Fee, see Section I.7.

### B. Disclosure Obligations

1. Sellers, with the assistance of their realtor or real estate agent, are required to disclose the most current Home Energy Score on all public listings. The following language must be included in the “Public Remarks” or “Property Information” of the MLS listing:
  - i. Single Family Homes: “Home Energy Score of [#].”
  - ii. 2+ Unit Buildings: “Home Energy Score of [#] for [Unit Identifier], [#] for [Unit Identifier].”
2. Sellers are required to include a copy of the most recent Energy Assessment and compliance information in the disclosure documents provided to potential buyers and in the real estate transfer documents prior to the close of escrow.

### C. Resilience Standard Compliance Options

1. The Seller shall choose one of the following options prior to the transfer of the property:
  - i. Complete upgrades that meet the Resilience Standard in Section I.3.IV prior to sale. The Seller must obtain a BESO Certificate of Compliance prior to transfer of title.
  - ii. Defer compliance with the Resilience Standard to the Buyer and submit Resilience Upgrade Payment. In coordination with the Buyer and title company, submit a BESO Upgrade Deposit Form and provide a \$2,500 Resilience Upgrade Payment to the City, as part of the total \$5,000 deposit required. See Section I.3.VII for deposit requirements.

## III. Buyer Requirements

### A. Resilience Standard Compliance

1. If the Seller has deferred compliance with the Resilience Standard to the Buyer, the Buyer is required to:
  - i. Submit a \$2,500 Resilience Upgrade Deposit to the City, as part of the total \$5,000 deposit required. See (I.3.VII) for deposit requirements.

- ii. Complete a BESO Upgrade Deposit Form in coordination with the Seller and title company.
- iii. Complete resilience upgrades and obtain a BESO Certificate of Compliance within two years of the property transfer (also known as the *Buyer Compliance Period*).

**B. Buyer Compliance Period**

1. The 2-year Buyer Compliance Period may be extended by one (1) additional year, for a total of three (3) years from the date of property transfer. To obtain this one-year extension, the Buyer must submit a “Request for One-Year Extension” application on the BESO Portal.
2. The Buyer Compliance Period may only be extended beyond three years for special circumstances beyond a homeowner's control. To request an extension beyond three years, the Buyer must:
  - i. Submit the special circumstances extension request by emailing the BESO Helpdesk before the expiration of the Buyer Compliance Period.
  - ii. Demonstrate that additional time is needed due to one of the following circumstances:
    - a. PG&E service upgrade delays
    - b. Supply chain delays
    - c. Delays required to minimize disruptions to tenants
    - d. Other delays due to circumstances beyond the homeowner’s control
  - iii. The Administrator retains authority to approve or deny additional extension requests that extend the Buyer Compliance Period beyond three (3) years.
3. If the property is resold before the expiration of the Buyer Compliance Period and a BESO Certificate of Compliance has not been obtained prior to the new transfer, the original Seller’s \$2,500 Resilience Upgrade Payment shall be forfeited and the original Buyer’s \$2,500 deposit may be converted to a Resilience Upgrade Payment, as they are the new Seller. An additional \$2,500 deposit will need to be submitted by the new Buyer.

**IV. Resilience Standard**

- A.** Each unit within a building shall achieve a minimum of 6 credits to satisfy the Resilience Standard. Refer to **Appendix A** for the complete list of eligible upgrade measures and corresponding credit values.
- B.** A single upgrade measure that serves multiple residential units within a building may have the associated credits applied to each affected unit. For example, if attic insulation is installed in a stacked duplex, both units may receive credits.
- C.** To qualify for credits, each upgrade measure must meet the following requirements:
  1. The measure must be installed in full compliance with the criteria specified in **Appendix A**; partial credits shall not be awarded.
  2. Timeline for Completion:
    - i. If the Seller obtains the BESO Certificate of Compliance prior to the sale, each measure must have been completed within five (5) years prior to

the property transfer date, except in the case of the Heat Pump Exemption. An installed heat pump water heater or HVAC is exempt, regardless of when it was installed (see Section I.3.V below).

- ii. If the Buyer is responsible for meeting the Resilience Standard, each credited measure must be completed within the Buyer Compliance Period.
- 3. Verification documentation for each measure must be submitted to the Administrator for review and approval. Refer to **Appendix A** for detailed documentation requirements for each measure.
- D. Applicability of Measure and Credit Versions
  - 1. The list of eligible Resilience Upgrade measures and associated credit values in **Appendix A** may be updated periodically by the Administrator.
  - 2. The version of **Appendix A** in effect on the date of property transfer shall apply. However, a property owner may choose to comply with a more recent version if updates occur during their compliance period, provided all requirements of the updated version are met.
- E. Failure to meet the Resilience Standard requirements may result in an Administrative Citation, see Section I.7.

## V. Alternative Compliance Pathway - Heat Pump Exemption

- A. Buildings in which all dwelling units are fully served by an electric heat pump system for water heating and/or space heating shall be exempt from completing additional upgrades to satisfy the Resilience Standard.
- B. Buildings that qualify for a heat pump exemption are still required to complete the Energy Assessment prior to listing a building for sale. The Energy Assessment Report may be used as required verification documentation instead of a building permit.
- C. To obtain this exemption, the Building Owner must obtain a BESO Certificate of Compliance. A qualifying heat pump installation shall remain eligible for this exemption regardless of the date it was installed.
- D. An electric water heating or space heating system that serves all dwelling units within the building and does not utilize any fossil fuel source may also qualify for this exemption, subject to review and approval by the Administrator. Interested parties should contact the BESO Helpdesk for guidance. Approval of alternative electric systems is at the sole discretion of the Administrator.

## VI. BESO Certificate of Compliance

- A. To obtain a BESO Certificate of Compliance a Building Owner must:
  - 1. Meet the Resilience Standard by completing upgrades to achieve a minimum of six (6) credits or verify home is served by a heat pump water heater or heat pump HVAC.
  - 2. Submit an application with all supporting documentation required to verify each upgrade measure and an application fee, see Section I.7.
- B. The BESO Certificate of Compliance expires 5 years from the date of issuance. For subsequent sales after the 5-year expiration date, a new Certificate of Compliance is required to satisfy the Resilience Standard.

- C. One Certificate of Compliance is needed per building. All units in the building must complete the upgrade requirements and each achieve a minimum of six (6) credits, for the building to receive the BESO Certificate of Compliance. However, a single upgrade measure that serves multiple residential units within a building may have the associated credits applied to each affected unit.

## VII. Deposit and Resilience Upgrade Payment

### A. Depositing Requirements

1. If a Seller has not obtained a BESO Certificate of Compliance prior to the transfer of a property, the Seller and Buyer must each submit \$2,500, for a total of \$5,000, to the City, via the title company, as a Resilience Upgrade Payment from the Seller and a Resilience Upgrade Deposit from the Buyer. Both the Resilience Upgrade Payment and Deposit will be refunded to the Buyer once upgrades have been completed.
2. The Resilience Upgrade Payment and Deposit must be submitted prior to the transfer of the property.
3. A completed BESO Upgrade Deposit Form, submitted by the title company, must accompany the Resilience Upgrade Payment and Deposit. The form must be signed by both the Buyer and Seller; electronic signatures are acceptable.
4. The payment must be made via a check issued by the title company or by a cashier's check. Personal checks will not be accepted.

### B. Refunding the Resilience Upgrade Payment and Deposit

1. Following issuance of the BESO Certificate of Compliance, the Buyer must submit a BESO Upgrade Deposit Refund Form to the Administrator to request release of the deposited funds.
2. The Resilience Upgrade Payment and Deposit shall be refunded in its entirety only when the Resilience Standard has been fully satisfied. A property is not eligible for a partial refund if the Resilience Standard requirements are not met.
3. The funds deposited with the City may be refunded only to the Buyer. Refunds shall not be transferred to new owners in the event of a resale that occurs during the Buyer Compliance Period.

### C. Forfeiture of the Resilience Upgrade Payment and Deposit

1. The Resilience Upgrade Payment and Deposit may be forfeited to the City if a BESO Certificate of Compliance is not obtained prior to the expiration of the Buyer Compliance Period (including any approved extensions).
2. Upon expiration of the Buyer Compliance Period, the Administrator shall mail a written notice to the Buyer indicating the forfeiture of the Resilience Upgrade Payment and Deposit and providing instructions regarding the opportunity to appeal.
3. **Forfeiture Appeals Process**
  - i. The Buyer may submit a written appeal within fourteen (14) calendar days of the date the forfeiture notice was mailed. A written appeal must be submitted to the Administrator and must include all grounds for the appeal.

- ii. Upon receipt of a timely appeal, the Administrator shall, within fourteen (14) calendar days, schedule a hearing before a designated Hearing Officer.
- iii. The Hearing Officer shall serve a written decision upon the appellant within fourteen (14) calendar days of the conclusion of the hearing. Copies of the decision shall also be sent to the Administrator and the City Manager. The decision of the Hearing Officer shall be deemed final upon mailing.
- iv. Appeal fees shall be paid by the appellant. The City may deduct these fees from the Resilience Upgrade Payment and Deposit prior to any refund or final disposition of funds.

## VIII. Exemptions, Exceptions, and Deferrals

### A. General Provisions for Exemptions and Deferrals.

- 1. A Building Owner may request an exemption, deferral, or extension by submitting all required supporting documentation to the Administrator, using a process prescribed by the Administrator.
- 2. Unless otherwise specified, exemptions, deferrals, and extensions are granted to the Building Owner and do not transfer to a new Buyer upon sale of the property.
- 3. Only one exemption, deferral, or extension may be applied to a building at any given time. Multiple or cumulative exemptions/deferrals are not permitted.

### B. All-Electric Building Exemption

- 1. Buildings that have fully electrified all energy-consuming systems and appliances and have properly capped the gas service line shall be exempt from the Energy Assessment and Resilience Standard upgrade requirements.
- 2. To obtain this exemption, the Building Owner must submit an exemption application through the BESO Portal and provide documentation demonstrating that the building is fully electric. The following documentation must be provided:
  - i. Building permits verifying the removal or decommissioning of gas systems. **OR**
  - ii. Confirmation from the gas utility company that the gas meter has been removed and the service line has been capped.
- 3. Upon review and approval of the submitted documentation, the Administrator shall issue an official exemption notice, which must be provided to the title company and included in disclosure documents prior to transfer of title.

### C. First-Time Home Buyer Exemption:

- 1. Buyers participating in an approved income-qualified, first-time home buying program or down payment assistance program are exempt from the Resilience Standard upgrade requirements.
- 2. Proof of enrollment in an approved program must be submitted to Administrator prior to the transfer of title. Upon approval, the Administrator shall issue formal exemption documentation, which must be provided to the

title company. A Buyer cannot request a first-time homebuyer exemption after the transfer of title.

3. Approved programs currently include:
  - i. [California MyHome Assistance Program](#)
  - ii. [CalPLUS FHA Program](#)
  - iii. [CalPLUS Access FHA](#)
4. Additional programs may be approved if they meet the following criteria:
  - i. The program must be operated directly by, or administered in formal partnership with, a recognized government entity at the local (city or county), state, or federal level.
  - ii. The program must be explicitly designed for first-time homebuyers.
  - iii. The program must include an income eligibility limit.

**D. Accessory Dwelling Units (ADUs):**

1. Accessory dwelling units (ADU) are exempt from meeting the resilience standard. If an ADU is attached to a small residential building, all other dwelling units in the building that are not designated as an ADU are subject to the resilience upgrade requirement.
2. To confirm this exemption, the property owner must email the Administrator documentation demonstrating that the property contains one or more attached ADU(s). Acceptable documentation includes, but is not limited to:
  - i. Approved building permits for the ADU,
  - ii. Assessor’s parcel data sheet, or
  - iii. Property tax bill indicating the presence of an ADU.

**E. Demolition Exemption**

1. A building that is scheduled for full demolition shall be exempt from the Resilience Standard upgrade requirements.
2. To obtain this exemption, the Buyer must submit a signed affidavit to the Administrator attesting that the building will be fully demolished. The affidavit shall include:
  - i. A clear statement confirming the intent to fully demolish the structure.
  - ii. Reference to any associated demolition permit number(s), if available at the time of submission.
  - iii. The anticipated timeline for demolition activities.
3. Upon review and approval of the affidavit, the Administrator shall issue a formal demolition exemption notice, which must be included in the disclosure documents and provided to the title company prior to the transfer of title.
4. If the building is not fully demolished within the timeline specified in the affidavit, the exemption may be revoked at the discretion of the Administrator, and the Buyer shall be required to meet all applicable Resilience Standard requirements.

**F. Probate and Foreclosure Sale Exemption:**

1. Properties transferred through a probate sale, foreclosure sale, or other court-ordered sale are exempt from the Energy Assessment and Resilience Standard upgrade requirements for that sale.

2. Documentation verifying the transfer type must be submitted to the Administrator prior to the transfer of title. Acceptable documentation includes, but is not limited to:
  - i. Court Order Confirming Sale of Real Property or Letters Testamentary or Administration (for probate transactions);
  - ii. Trustee's Deed Upon Sale or lender-issued REO/Bank-Owned sale documentation (for foreclosure transactions).
3. Upon approval, the Administrator shall issue formal exemption documentation, which must be provided to the title company. A Buyer or Seller cannot request a probate or foreclosure exemption after the transfer of title.
4. The property shall be subject to the requirements of this section for subsequent sales.

**G. Financial Hardship Deferrals**

1. Compliance with the requirements of the Resilience Standard may be deferred in cases of financial hardship, subject to approval by the Administrator.
2. To qualify for a deferral under this section the Buyer must submit for approval by the Administrator one of the following:
  - i. Proof of participation in an income-qualified energy assistance program, administered through the State of California or the local energy utility
  - ii. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by the Administrator
  - iii. Proof that the property qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes
  - iv. Proof that a court appointed receiver is in control of the asset due to financial distress
  - v. Proof that the senior mortgage is subject to a notice of default
  - vi. Proof that the party responsible is otherwise not able to meet the obligations of this Chapter
3. Once approved, the Buyer Compliance Period shall be extended for an additional one (1) year. The buyer may request a renewal of the hardship deferral annually if eligibility continues.

**H. Early Refund Exception:**

1. A BESO Upgrade Deposit may be refunded to the Buyer prior to completion of the Resilience Upgrades through an early refund process. To qualify for an early refund, the Buyer must:
  - i. Provide a signed contract with a licensed contractor clearly indicating that the work to be performed will fulfill the Resilience Standard requirements within the Buyer Compliance Period.
  - ii. Obtain all required building permits for the planned upgrades and provide the associated permit number(s) to the Administrator.
  - iii. Submit an application and application fee to obtain a Temporary Certificate of Compliance.

2. If the submitted documentation is approved, the Administrator shall issue a Temporary BESO Certificate of Compliance. This temporary certificate shall remain valid only until the expiration of the Buyer Compliance Period (including any approved extensions). Upon issuance of the temporary certificate, the Buyer may then submit a BESO Upgrade Deposit Refund Form to request release of the deposit.
3. Upon completion of the required resilience upgrades, the Buyer remains responsible for submitting a final application to obtain the official BESO Certificate of Compliance.
4. In the event the Buyer fails to complete the Resilience Standard requirements and obtain the final BESO Certificate of Compliance before the expiration of the Buyer Compliance Period (including any approved extensions), an administrative citation shall be issued.

## Section I.4 - Small and Medium Commercial and Multifamily Building Requirements (ref. BMC Sections 19.81.050 & 19.81.090)

### I. Covered Buildings

- A. This section applies to all commercial and multifamily buildings smaller than 25,000 square feet, excluding 1 to 4 Unit Residential Buildings.

### II. Requirements at Time of Listing

#### A. Energy Assessment

1. A Seller shall complete an Energy Assessment prior to listing a property for sale. The assessment must be performed by a qualified Registered Energy Assessor for the building type.
2. Following the assessment, the seller must submit the required filing fee to the City (see Section I.7 below for the fee by building type). Once both the assessment and filing fee have been received, the City will issue a BESO Compliance Confirmation (Form A).
3. The BESO Compliance Confirmation (Form A) and the Energy Assessment Report must be included in the real estate transfer documents prior to close of escrow.
4. Energy Assessments remain valid for five (5) years from the date of assessment. An Energy Assessment may be reused for subsequent sales within this 5-year period. A new Energy Assessment is required if the prior assessment has expired.

#### B. Time of Listing Deferral

1. A seller may request to defer the Energy Assessment requirement to the buyer by submitting a Deferral to Buyer Request.
2. If approved, the reporting requirements at Time of Listing may be deferred for six (6) months from the original date of sale, provided the buyer agrees to fulfill the requirements within the deferral period.
3. Seller requirements prior to listing:

- i. The Seller must submit a Request Deferral to Buyer application and pay the associated deferral fee. The application must include disclosure of the fuel source for all major energy systems and appliances.
  - ii. If the application is approved, the seller will receive a BESO Fuel Source Disclosure, which must be provided to all potential buyers and included in the real estate listing.
  - iii. Once a sale date and buyer have been established. The Buyer must submit a separate application to obtain the BESO Deferral to Buyer (Form C), acknowledging buyer's responsibility for compliance with the Ordinance.
  - iv. The BESO Deferral to Buyer (Form C) and the Fuel Source Disclosure must be included in the real estate transfer documents prior to close of escrow.
4. Buyer compliance obligations:
- i. The buyer must complete the Energy Assessment and submit the required filing fee to the City. Once both the assessment and filing fee have been received, the City will issue the BESO Assessment Confirmation (Form A).
  - ii. The buyer must complete the Energy Assessment and obtain the BESO Assessment Confirmation (Form A) within six (6) months of the date of sale.

**C. Disclosure Obligations**

1. Sellers are required to disclose the most current Energy Assessment, Building Energy Score, or Fuel Source Disclosure and most current Compliance Document to existing tenants and prospective tenants and all prospective Buyers.
2. The most current Energy Assessment and Building Energy Score or Fuel Source Disclosure must be included with the disclosure documents provided to prospective Buyers.

**III. Annual Benchmarking Requirements**

- A.** Medium Buildings, 15,000 – 24,999 square feet, are required to submit an annual Energy Benchmarking Report, see Section I.6 – Annual Energy Benchmark.

**IV. Extensions, Deferrals, and Exemptions**

**A. General Provisions for Exemptions, Deferrals and Extensions**

1. The extensions, deferrals, and exemptions in the section only apply to the Energy Assessment requirement.
2. A Building Owner may request an exemption, deferral, or extension by submitting a written request and providing supporting documentation to the Administrator.
3. Unless otherwise specified, exemptions, deferrals, and extensions are granted to the Building Owner and do not transfer to a new owner upon sale of the property.
4. Only one exemption, deferral, or extension may be applied to a building at any given time. Multiple or cumulative exemptions/deferrals are not permitted.

- B. High-Performance Exemption.** To recognize buildings that have achieved significant energy efficiency, the Administrator may grant an exemption from Energy Assessment requirements, according to the conditions below:
1. A High-Performance Exemption relieves the Building Owner of the requirement to submit an Energy Assessment for the current reporting period.
  2. All High-Performance Buildings are still subject to disclosure requirements
  3. A High-Performance Exemption and the status of High-Performance Building shall be granted for any whole building that has demonstrated any of the following:
    - i. Living Building Certification or Zero Net Energy Building Certification through the International Living Future Institute
    - ii. Certification by the U.S. Green Building Council's LEED for Existing Building: Operation and Maintenance (EB:O&M)
    - iii. Certification as a Build It Green GreenPoint Rated Existing Whole Building
    - iv. Completion of a verified multi-measure comprehensive energy improvement project with minimum 10% energy improvement, including participation in the Bay Area Multifamily Building Enhancement Program (BAMBE).
    - v. Completion of an electrification project, transitioning the building's water and/or space heating from natural gas to electric heat pump.
    - vi. All-electric building, with no natural gas use
    - vii. New Construction or Completed Extensive Renovation. Buildings that have been newly constructed or extensively renovated are exempt from reporting requirements for 10 years following the completion of such construction or Extensive Renovation. A project qualifies as an "Extensive Renovation" if it includes replacement of all energy-related equipment and at least half of the building envelope.
- C. Distressed Sale Extension**
1. Reporting requirements at Time of Listing may be deferred for a period of 6 months from the original date of sale if the Buyer is able to demonstrate that the building was purchased from a lender that acquired title due to default or transfer by deed in lieu of foreclosure.
  2. This extension may be granted for any building that is currently not in compliance with the BESO or may be applied to extend an existing Time of Listing Deferral.
- D. Financial Hardship Deferrals**
1. Reporting requirements may be deferred in cases of financial hardship
  2. To qualify for a deferral under this section the Building Owner must submit for approval by the Administrator one of the following:
    - i. Proof of participation in an income-qualified energy assistance program, administered through the State of California or the local energy utility

- ii. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by the Administrator
- iii. 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 Assessment Report
- iv. Proof that a court appointed receiver is in control of the asset due to financial distress
- v. Proof that the senior mortgage is subject to a notice of default
- vi. Proof that the responsible party is otherwise not able to meet the obligations of this Chapter
- vii. Any building granted a Financial Hardship Deferral that is not otherwise in compliance may only be sold if the Buyer applies for a Time of Listing Deferral

**E. Deferral for Long-Term Tenancy under Rent Control**

1. All reporting requirements under this Chapter may be deferred for any building which is subject to rent control (as defined by Berkeley Municipal Code Chapter 13.76) in which all of the units, excluding any owner-occupied units, have leases that date prior to January 1, 1999.

**F. Planned Demolition or Extensive Renovation**

1. The Energy Assessment requirement may be deferred for 24 months if the Building Owner submits to the Administrator a Building Permit, Demolition Permit or Permit under the Zoning Ordinance that includes complete demolition or Extensive Renovation of the subject building. A project qualifies as an “Extensive Renovation” if it includes replacement of all energy-related equipment and at least half of the building envelope.

## Section I.5 Large Commercial and Multifamily Buildings Requirements (ref. BMC Sections 19.81.040 & 19.81.090)

### I. Covered Buildings

- A. This section applies to all commercial and multifamily buildings 25,000 square feet and greater.

### II. Energy Assessment Requirement

#### A. Energy Assessment

1. The Building Owner or Manager of a Large Building must complete a comprehensive Energy Assessment for their building every five (5) years. The assessment must be performed by a qualified Registered Energy Assessor for the building type.
2. The Owner must also submit the required assessment filing fee to the City along with the assessment. Once both the assessment and filing fee have been received, the property will be compliant with that cycle’s assessment requirement.

3. Energy Assessments intended to comply with a subsequent cycle must be completed no sooner than 24 months prior to the assessment due date.
4. The Energy Assessments for buildings within a Campus are due based on individual building Gross Floor Area.

**B. Disclosure**

1. The most recent ENERGY STAR® Performance Report and a summary version of the most recent Energy Assessment, including the Building Energy Score when available, shall be made publicly available by the Administrator.
2. Building owners must provide these documents, along with the most current BESO Compliance Document to all existing lessees and to prospective lessees and buyers prior to the execution of a lease or contract for sale.

**III. Annual Benchmarking Requirements**

- A.** Owners of Large Buildings are required to submit an annual Energy Benchmarking Report, see Section I.6 – Annual Energy Benchmark.

**IV. Extensions, Deferrals, and Exemptions**

**A. General Provisions for Extensions, Deferrals, and Exemptions**

1. The extensions, deferrals, and exemptions in the section only apply to the Energy Assessment requirement.
2. A Building Owner may request an exemption, deferral, or extension by submitting a written request and providing supporting documentation to the Administrator.
3. Only one exemption, deferral, or extension may be applied to a building at any given time. Multiple or cumulative exemptions/deferrals are not permitted.

**B. All-Electric Building Exemption**

1. Buildings that have fully electrified all energy-consuming systems and appliances, have eliminated gas usage entirely, and have properly capped the gas service line may be exempt from the Energy Assessment requirement.
2. To obtain this exemption, the Building Owner must request an exemption via email to the BESO helpdesk and provide sufficient documentation demonstrating that the building is fully electric.
3. Upon review and approval of the submitted documentation, the Administrator shall issue an official exemption notice.
4. All-Electric Buildings are still subject to the Annual Energy Benchmarking requirement.

**C. Low Energy Use Deferral**

1. The Energy Assessment requirement for the current compliance cycle may be deferred for five (5) years if the Building Owner demonstrates that the building has low energy use by meeting the following:
  - i. Building Types eligible for an ENERGY STAR® Score or Certification must have an ENERGY STAR Score of 80 or greater.
  - ii. A building type that is not eligible for an ENERGY STAR® score may qualify for a Low Energy Use Deferral if its verified Site Energy Use

Intensity (Site EUI), as reported on the most recent benchmark, is at least 25% below the National Median for that property type.

2. To obtain the deferral, the building's low energy use must be verified by a Professional Engineer or a BESO Registered Energy Assessor.
3. The Professional Engineer or a BESO Registered Energy Assessor must complete and sign the ENERGY STAR® Data Verification Checklist (available in the Portfolio Manager Reporting tab), excluding the Indoor Air Quality section, and email the checklist to the Administrator.

**D. Electrification Project Deferral**

1. The Energy Assessment requirement may be deferred to the next 5-year cycle if the building completes an electrification project that transitions the whole building's water and/or space heating from natural gas to electric heat pump(s).
2. To qualify for the deferral, the building owner must demonstrate that all required building permits for the electrification project have been obtained and finalized.

**E. Unconditioned Floor Area Reclassification**

1. A building's size classification may be adjusted to exclude unconditioned floor space. The adjusted size is determined by subtracting the square footage of physically separated areas not served by heating, ventilation, or cooling equipment from the building's Gross Floor Area.
2. If an entire building is not served by heating, ventilation, or cooling equipment, the building is exempt from the Energy Assessment requirement.
3. A Building Owner may request a size reclassification by submitting a written request to the Administrator, along with documentation demonstrating the extent of unconditioned floor area. The Administrator may require additional information or verification before approving the reclassification.

**F. Deferral for Long-Term Tenancy under Rent Control**

1. All reporting requirements under this Chapter may be deferred for any building which is subject to rent control (as defined by Berkeley Municipal Code Chapter 13.76) in which all of the units, excluding any owner-occupied units, have leases that date prior to January 1, 1999

**G. Planned Demolition or Extensive Renovation**

1. All reporting requirements under this Chapter may be deferred for 24 months if the Building Owner submits to the Administrator a Building Permit, Demolition Permit or Permit under the Zoning Ordinance that includes complete demolition or Extensive Renovation of the subject building. A project qualifies as an "Extensive Renovation" if it includes replacement of all energy-related equipment and at least half of the building envelope.

**H. Industrial and Laboratory Exemption**

1. If more than half of a building or campus is dedicated to scientific experiments requiring controlled environments or for manufacturing or industrial purposes, it is permanently exempt from the assessment requirement.

## Section I.6 - Annual Energy Benchmarking

### I. Covered Buildings

- A. The requirements in this Section shall apply to all Commercial, Multifamily, and 1 to 4 Unit Residential Buildings 15,000 square feet and larger.

### II. Annual Energy Benchmarking Requirement

#### A. Benchmark Reporting Requirement

1. The Building Owner or Manager must submit an annual ENERGY STAR® Portfolio Manager Benchmarking Report by July 1 each year, reporting the building's energy use for the previous calendar year.
2. The report must include all electric and gas utility accounts serving the building and cover the period from January 1 through December 31.
3. The report may be submitted by the Building Owner, a Registered BESO Assessor, or another authorized agent.
4. The Administrator will review each benchmark submittal for accuracy. If the benchmark contains errors or does not meet the data requirements, the Administrator will notify the submitter with a list of required corrections. The Building Owner or Manager is responsible for making corrections and resubmitting the benchmark.
5. Once the benchmark has been reviewed and approved, the Administrator will send a confirmation email to the submitter.

#### B. Benchmark Reporting Template

1. The Administrator will publish a link to the ENERGY STAR® Portfolio Manager reporting template for each reporting year on the City's website.
2. All benchmarking reports must be submitted using the published reporting template.

#### C. Campus Reporting Requirements

1. All buildings 15,000 square feet or greater within a campus complex must report energy use individually.
2. If one or more buildings share a common energy meter, those buildings may submit a single Benchmark Report. The Benchmark Report must include the combined square footage and building characteristics of all buildings included in the single submittal.

#### D. Disclosure

1. The City shall publicly disclose the energy performance and compliance status of each building on the City's website.

### III. Extensions and Exemptions

#### A. General Provisions for Extensions and Exemptions

1. The extensions and exemptions in this section only apply to the Annual Energy Benchmark requirement.
2. A Building Owner may request an exemption by submitting a written request and providing supporting documentation to the Administrator.

3. Unless otherwise noted, all extensions and exemptions only apply to a single calendar year. All benchmarking requirements will resume the subsequent year following the exemption. The Building Owner must request a new exemption each year if the exemption still applies.

**B. Energy Data Unavailable Exemption**

1. The requirement to report annual Energy Benchmarking may be exempt for a single calendar year if one of the following two conditions is met:
  - i. The Building Owner of a building with less than 3 non-residential active utility accounts or less than 5 residential utility accounts certifies to the Administrator that they have been unable to obtain tenant authorization to access tenant utility data, despite a good faith effort to obtain such consent. To demonstrate a good faith effort to obtain consent, the Building Owner must submit a tenant-signed copy of the ENERGY STAR Tenant Authorization Notice indicating one or more tenants have refused to authorize disclosure of their energy use data. State reporting requirements may still apply.
  - ii. 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. State reporting requirements may still apply.
2. The deferral application must be filed and approved prior to the building's reporting due date.

**C. Low Occupancy Exemption**

1. The requirement to report annual Energy Benchmarking may be exempt for a single calendar year if a building did not have a certificate of occupancy or temporary certificate of occupancy for more than half of the calendar year for which reporting is required.

**D. New Construction Exemption**

1. Newly constructed properties are exempt from the annual energy benchmarking requirement for up to two (2) years from the date the Certificate of Occupancy is issued. Properties must begin reporting with the first full calendar year of energy use data following issuance. For example, if a Certificate of Occupancy in 2026, the first benchmarking report will be due July 1, 2028, covering energy use data for the 2027 calendar year.

**E. Industrial and Laboratory Exemption**

1. If more than half of a building or campus is dedicated to scientific experiments requiring controlled environments or for manufacturing or industrial purposes, it is permanently exempt from benchmarking requirements.

**Section I.7. Fees and Enforcement (ref. BMC Sections 19.81.110 - 140)**

**I. Administrative Fees**

**A.** All BESO Program Fees are specified in Table 1 below:

<b>Application/Building Type</b>	<b>Filing Frequency</b>	<b>Fee</b>
<b>BESO Certificate of Compliance – Resilience Standard</b> <i>1-2 Unit Residential Buildings</i>	Upon Completion of Resilience Upgrades	\$150
<b>Energy Assessment (Form A)</b> <i>1-2 Unit Residential Buildings</i>	At Time of Listing	N/A
<b>Energy Assessment (Form A)</b> <i>Small Commercial and Multifamily Buildings less than 5,000 sqft (including 3-4 Unit Residential Buildings)</i>	At Time of Listing	\$79
<b>Energy Assessment (Form A)</b> <i>Medium Commercial and Multifamily Buildings 5,000 to 24,999 sqft</i>	At Time of Listing	\$152
<b>Energy Assessment</b> <i>Large Commercial and Multifamily Buildings 25,000 sqft and greater</i>	Every 5 years	\$275
<b>Time of Listing Deferral</b> <i>Small and Medium Commercial and Multifamily (including 3-4 Unit Residential Buildings)</i>	At Time of Listing	\$110
<b>Administrative Late Fee</b>	N/A	\$85
<b>Energy Report Non-Compliance Fee</b>	N/A	\$500

**B.** The following filings are exempt from fees:

1. High Performance Exemption
2. Extensions and Deferrals
3. Deferrals for New or Planned Construction
4. Low Energy Use Deferral
5. Data Unavailable Deferral

**C.** An Administrative Late Fee shall be paid by Building Owners that fail to submit a BESO deferral application prior to listing or complete an Energy Assessment by the building’s specified assessment due date.

**D.** An Energy Report Non-Compliance Fee must be paid by the seller if an Energy Report is not completed prior to the transfer of title.

**E.** The Administrator is authorized to determine whether any or all Building Owners have complied with the requirements set forth in the Ordinance.

## II. Enforcement

### A. Violations

1. If the reporting requirements of this Ordinance are not met, the Administrator may issue a Notice of Violation, providing the responsible party 90 days to correct the violation and come into compliance.
2. If compliance is not achieved within 90 days, the Administrator may issue an Administrative Citation in accordance with BMC Chapter 1.28.030.

### B. Penalty

1. If a Building Owner fails to correct the violation(s) by the deadlines specified in a Notice of Violation, the Administrator may impose fines according to BMC Chapter 1.28.
2. Failure to comply with BESO can result in an administrative citation. Citation penalties begin at a rate of one hundred dollars (\$100.00) per violation, per day and may increase with subsequent citations to two hundred dollars (\$200.00) per violation, per day and five hundred dollars (\$500.00) per violation, per day.
3. Upon Sale of a Building or transfer of title due to default or deed in lieu of foreclosure, any and all fines accrued under this section remain the responsibility of the original Building Owner to whom they were assessed.

### C. Suspension of Fines

1. Accrual of fines imposed due to a violation of the Ordinance based upon a missing or incomplete Energy Assessment or Energy Benchmark may be suspended by the Administrator for a period of up to ninety (90) days if the Building Owner demonstrates that they have made a deposit with a Registered Energy Assessor contracted to provide an Energy Assessment or Energy Benchmark for the building in violation.

### D. Appeals

1. Unless otherwise specified, any recipient of a Notice of Violation under this section may contest the existence of a violation through a hearing request submitted to the City Manager or his/her designee in accordance with BMC Chapter 1.28.060.

## III. Obligation to Comply

- A. Lack of notification by the Administrator does not relieve the Building Owner, Seller, or Buyer of the obligation to comply with the Ordinance.
- B. No building will be cited in violation of the Ordinance without prior notification, as described in Section I.7 of these Rules and Regulations.

## Article II. Energy Assessment and Reporting Requirements

The following Article outlines specific standards and formats, as established by the Administrator, required for completion of a sufficient “Energy Report” according to the size and use classification of the individual building being evaluated. (ref. BMC Sections 19.81.030)

### Section II.1. Registered Energy Assessors and Assessment Procedures

#### I. Registered Energy Assessor (REA) Qualification

##### A. General Requirement

1. To conduct an Energy Assessment, a service provider must be registered with the City of Berkeley as a Registered Energy Assessor (REA) for the applicable Building Use Type, as defined in Section I.2.II.
2. 1-4 Unit Residential Building Assessors must register as individuals. Multifamily and Commercial assessors may register as a company.

##### B. Registration Process - To register as a BESO Energy Assessor, applicants must:

1. Meet the minimum qualifications established for the applicable Building Use Type (see Sections II.2–II.4).
2. Obtain and maintain a valid City of Berkeley Business License.
3. Complete and submit the Energy Assessor Registration Agreement to the Administrator.
4. Provide proof of professional liability insurance or other insurance coverage, as required by the Registration Agreement.
5. Contact the Administrator to schedule and complete a BESO Assessor Orientation.

##### C. Ongoing Requirements

1. REAs must maintain all required professional credentials and insurance as a condition of remaining on the City’s registry.
2. REAs must comply with all provisions of the BESO Assessor Terms and Conditions outlined in **APPENDIX B**, including demonstrating professional competence and experience.
3. Failure to maintain a Berkeley Business License, required insurance, or minimum qualifications, may result in suspension or removal from the City’s registry.
4. Knowingly submitting incomplete, inaccurate, or false information may result in removal from the registry.

#### II. Mixed Use Buildings

##### A. In the case of Mixed-Use Buildings with floor area that constitute both Commercial and Multifamily Building Use Types, the following energy assessment standards apply:

1. In cases where a secondary Building Use Type is less than 20% of the gross floor area and/or less than 5,000 square feet, the entire building shall be subject to assessment standards for the predominant Building Use Type.
2. In cases where both Building Use Types constitute the same amount of square footage, the Building Owner may choose to complete either a Multifamily or Commercial Building Assessment.

3. In cases where both Building Use Types constitute more than 20% of the total building square footage and each Use Type constitutes over 5,000 square feet, each section of the building shall be subject to the regulations pertaining to the corresponding Building Use Type (Section I.2.II). A single REA must submit all assessment information for the subject building.
4. In the case of building occupancies of a hybrid live/work nature, the REA may treat the Building Use Type as either a Multifamily Building or a Commercial Building, or, if the building is less than 5,000 square feet, as a Single Family Building.

### III. General Assessment Requirements

- A. All Assessments shall:
  1. Be prepared and submitted in accordance with the requirements for each Building Use Type as described in the appropriate sections below.
  2. Be provided by the REA directly to the Building Owner, and to the Administrator, within two (2) weeks of conducting an assessment.
  3. Submission of required information shall imply that it is complete and has been verified by the REA and conforms with these Regulations.
- B. Registered Energy Assessors shall:
  1. Perform assessments in a professional and timely manner.
  2. Provide clear and accurate information to customers about opportunities for improvements to efficiency, health, and comfort related to energy and water systems in their buildings.
  3. Be completed based on visual observations and/or usage analytics, including the following:
    - i. Interviews with customers to understand priorities and goals for building improvements and health and safety issues.
    - ii. A visual examination of the current conditions of the energy and water systems.
    - iii. For Multifamily Buildings, a sample inspection of at least one in seven of every unit type (defined as having same/similar floor plan), with representation from multiple building floors and including all four building orientations. In no case shall the inspection of units be less than 10% of total units.
- C. Include an analysis of energy and water saving opportunities and recommended energy measures, by providing the following:
  1. Energy use information including a benchmark comparing actual energy use or modeled energy use to similar buildings.
  2. Efficiency opportunity analysis using the appropriate method as specified for each building type in the Sections below.
  3. A review of existing and potential renewable generation.

## Section II.2. 1 to 4 Unit Residential Assessment and Reporting Requirements

### I. Covered Buildings

- A. Buildings covered by this Section include all residential buildings with up to four (4) attached dwelling units. See Section I.2.II for Building Use Type definitions.
- B. Buildings with three (3) to four (4) dwelling units may follow the requirements of this Section or Section II.3, Multifamily Assessment and Reporting Requirements, until January 1, 2028. On January 1, 2028, residential buildings with three (3) to four (4) units must follow the requirements of this section.

### II. Assessor Qualifications

- A. All 1-4 Unit Residential Building Energy Assessors must be a qualified Home Energy Score Assessor affiliated with the BayREN Home Energy Score (HES) Program. For more information on the qualifications to become a BayREN HES Assessor visit: <https://www.bayren.org/partner-us/home-energy-score-assessors>.

### III. Assessment Requirements

- A. The Energy Assessment shall be a Home Energy Score assessment using the Department of Energy's Home Energy Score tool.
- B. A separate Home Energy Score assessment is needed for each individual unit.
- C. A complete assessment shall consist of the following elements:
  1. A Home Energy Score Assessment and supporting documentation for HES Scorable Buildings, including the HES electrification checklist.
  2. A description of the building and existing energy characteristics.
  3. Recommended energy efficiency and electrification upgrades.
  4. A description of non-energy benefits for recommendations, including indoor air quality, noise, comfort, deferred maintenance and durability.
  5. A list of applicable incentives, rebates, financing and tax deductions or credits, including web addresses for each resource.
  6. Estimated annual energy costs from implementing the recommended measures.

### IV. Assessment Submittal Requirements

- A. Reports and data shall be provided by an REA to the Administrator and submission of this information shall imply that it is complete and has been verified by the REA.
- B. Incomplete information will be returned to REA for correction within 2 weeks. The report will not be valid until it is accepted by the Administrator.
- C. The REA must provide a copy of the Home Energy Score(s) for the building through the BESO portal.

## Section II.3. Multifamily Assessment and Reporting Requirements

### I. Covered Buildings

- A. This Section applies to all Multifamily Buildings with five (5) or more attached dwelling units. See Section I.2.II for Building Use Type definitions.

- B.** Buildings with three (3) to four (4) dwelling units may either comply with this Section or Section II.2 (1-4 Unit Residential Buildings) until January 1, 2028. Starting January 1, 2028 residential buildings with three (3) to four (4) units must comply with Section II.2.
- C.** For Mixed Use Buildings, see Section II.1.II.

## II. Assessor Qualifications

- A.** Multifamily Assessors must possess at least two (2) of the following credentials:
  - 1. HERS Whole House (HERS II) Rater
  - 2. BPI Certified Multifamily Building Analyst
  - 3. GreenPoint Rater Existing Home Multifamily Rater
- B.** All Assessors must be approved as Registered Energy Assessors, per Section II.1

## III. Assessment Requirements

- A.** A building energy analysis shall be conducted using Title 24 ACM approved modeling software or utility interval data analysis including:
  - 1. Modeling software – Energy Pro modules Residential Performance, Non-Residential Performance and GreenPoint Rated, EnergyPro Lite and Treat
  - 2. Interval Data Analysis Software - WEGOwise, FirstFuel and Energy Scorecards
- B.** Energy Assessment
  - 1. The Building Energy Assessment shall be conducted in accordance with the Bay Area Regional Energy Network (BayREN) Multifamily Program standards, the Existing Multifamily Assessment Protocols Multifamily Subcommittee (California Home Energy Retrofit Coordinating Committee California Tax Credit Allocation Committee), the BuildItGreen Existing Home Multifamily protocols, or an equivalent method, approved by the Administrator on a case-by-case basis, that conforms to standards and protocols accepted by a State agency, such as the California Energy Commission.
  - 2. The Building Energy Assessment shall meet or exceed standards established in latest edition of the ASHRAE's Procedures for Commercial Building Energy Audits, as follows:
    - i. Buildings under 50,000 square feet shall meet or exceed requirements established by ASHRAE Level I Energy Audit.
    - ii. Buildings 50,000 sf or more shall meet or exceed requirements established by ASHRAE Level II Energy Audit.
  - 3. Residential Unit Sampling Protocol
    - i. At least 1 in 7 of every unit type (defined as having same/similar floor plan) with representation from multiple building floors and including all four building orientations shall be inspected.
    - ii. In no case shall the inspection of units be less than 10% of total units.
- C.** The Assessment report shall include the following:
  - 1. An assessment of building energy systems and site conditions
  - 2. An analysis and evaluation of equipment and energy usage
  - 3. Recommended strategies to optimize building resource utilization
  - 4. A description of the building, its occupancy and use and existing energy and water systems

5. A description of the metering configuration and tenant owner responsibilities
6. Verification of property details and meter information used to generate the Building Energy Score, including gross square footage
7. Verification of gross and conditioned square footage
8. Identification of existing conditions and any planned capital projects or changes in use
9. Identification of on-site energy production capacity
10. A description of opportunities for:
  - i. Low-cost measures
  - ii. Operations and maintenance measures
  - iii. Measures pursuant to planned capital projects
  - iv. Opportunities for capital intensive measures
  - v. Opportunities for retrocommissioning measures (buildings 25,000 sq. ft. and over)
  - vi. Applicable incentives, rebates, financing and tax deductions or credits, and web addresses for each
  - vii. Estimated costs and potential savings of each measure or group of measures, a simple payback and a net present value (NPV) of cost effective measures

#### IV. Assessment Submittal Requirements

- A. Assessments and data shall be provided by an REA to the Administrator and submission of this information shall imply that it is complete and has been verified by the REA
- B. Incomplete information will be returned to REA for correction within 2 weeks. The report will not be valid until it is accepted by the Administrator.
- C. The REA provide the information in the following manner to the Administrator:
  1. A copy of the Building Energy Report shall be uploaded in typewritten PDF format or may be submitted through the Asset Score reporting template platform.
  2. Assessments for buildings less than 25,000 square feet must be submitted through the online BESO Portal by the REA.
  3. Assessments for buildings 25,000 square feet and greater must be emailed to the Administrator by the REA.

## Section II.4. Commercial Energy Assessment and Reporting Requirements

### I. Covered Buildings

- A. Buildings covered by this Section include all Non-Residential Buildings. See Section I.2.II for Building Use Type definitions.
- B. See Section II.1.II for Mixed Use Buildings

### II. Assessor Qualifications

- A. All Commercial Energy Assessors must possess one of the following credentials:
  1. ASHRAE Building Energy Assessment Professional Certification (BEAP)

2. Association of Energy Engineers Certified Energy Manager or Certified Energy Auditor
  3. California Professional Engineer licensed through the National Society of Professional Engineers
  4. Energy Management Professional Certification
- B.** Energy Assessors must be approved as Registered Energy Assessors, per Section II.1.

### III. Assessment Requirements

- A.** The Building Energy Assessment shall meet or exceed standards established in latest edition of the ASHRAE's Procedures for Commercial Building Energy Audits, as follows:
1. Buildings under 50,000 sf shall meet or exceed requirements established by ASHRAE Level I Energy Audit.
  2. Buildings 50,000 sf or more shall meet or exceed requirements established by ASHRAE Level II Energy Audit.
  3. The water plumbing SB 407 compliance shall be based on a visual inspection of the appliance labels.
  4. The analysis of rooftop solar potential shall be conducted using a software tool that provides an estimate for a solar photovoltaic system on the roof of the building that is based on the actual site conditions.
- B.** The Energy Assessment report shall include the following:
1. An assessment of building energy systems and site conditions
  2. An analysis and evaluation of equipment and energy usage
  3. Recommended strategies to optimize building resource utilization
  4. A description of the building, its occupancy and use and existing energy and water systems
  5. A description of the metering configuration and tenant owner responsibilities
  6. Verification of property details and meter information used to generate the Building Energy Score, including gross square footage
  7. Verification of gross and conditioned square footage
  8. Identification of existing conditions and any planned capital projects or changes in use
  9. Identification of on-site energy production capacity
  10. A description of opportunities for:
    - i. Low-cost measures
    - ii. Operations and maintenance measures
    - iii. Measures pursuant to planned capital projects
    - iv. Opportunities for capital intensive measures
    - v. Applicable incentives, rebates, financing and tax deductions or credits, and web addresses for each
    - vi. Estimated costs and potential savings of each measure or group of measures, a simple payback and a net present value (NPV) of cost effective measures

#### IV. Assessment Submittal Requirements

- A.** Assessment and data shall be provided by an REA to the Administrator and submission of this information shall imply that it is complete and has been verified by the REA.
- B.** The report will not be valid until it is accepted by the Administrator.
- C.** The REA shall provide the information in the following manner to the Administrator:
  - 1. A copy of the Assessment Report shall be uploaded in typewritten PDF format, or may be submitted through the Asset Score reporting template platform.
  - 2. Assessments for buildings less than 25,000 square feet must be submitted through the online BESO Portal by the REA.
  - 3. Assessments for buildings 25,000 square feet and greater must be emailed to the Administrator by the REA.

## APPENDIX A: BESO RESILIENCE MEASURES AND CREDITS

*(All work must be permitted and meet code requirements at the date of permit application)*

Measure <sup>1</sup>	Installation Criteria	Credits	Required Verification Documentation <i>(All items must be submitted)</i>
<b>Heat Pump Water Heater<sup>2</sup></b>	Install an electric heat pump water heater that supplies hot water to the entire building or unit.	<b>6</b>	I. Permit + approved final inspection
<b>Heat Pump HVAC<sup>2</sup></b>	Install an electric heat pump HVAC system to serve all conditioned areas of the building or unit.	<b>6</b>	I. Permit + approved final inspection
<b>Knob &amp; Tube Replacement with Pre-Wiring of 240v receptacles</b>	Replace outdated knob and tube wiring with code compliant electrical systems and install 240v receptacles for water heater, HVAC, clothes dryer, and stove/oven.	<b>6</b>	I. Permit + approved final inspection II. Contractor invoice with description of electrical wiring replacement and locations of all 240v outlets
<b>Smart Service Panel</b>	Install an advanced electrical smart panel. Must be capable of real-time energy monitoring with Wi-Fi or cellular connectivity.	<b>6</b>	I. Permit + approved final inspection II. Contractor invoice III. Smart panel specification sheet
<b>Electrical Service Panel Upgrade</b>	Increase electrical service capacity and install a new electrical panel. New panel must be sized to support electric-ready infrastructure.	<b>6</b>	I. Permit + approved final inspection
<b>Solar PV</b>	Install a solar photovoltaic system. Must be connected to the electrical grid.	<b>3</b>	I. Permit + approved final inspection
<b>Battery Energy Storage System</b>	Install a battery energy storage system to accompany a solar PV installation to provide backup power and maximize solar use. Must be connected to the electrical grid.	<b>3</b>	I. Permit + approved final inspection

<sup>1</sup> Some upgrade measures may involve additional work based on site conditions to ensure safety and code compliance. In addition, the City of Berkeley also requires installation of an automatic gas shut-off valve whenever mechanical or plumbing permits are issued, to help reduce fire risk during earthquakes.

<sup>2</sup> If an electric heat pump system was installed prior to sale the building qualifies for a Heat Pump Exemption, and no additional Resilience Upgrades are required.

Measure <sup>1</sup>	Installation Criteria	Credits	Required Verification Documentation <i>(All items must be submitted)</i>
<b>EV Charger</b>	Install a hard-wired electric vehicle charging station. Must be Level 2 (240V).	<b>2</b>	I. Permit + approved final inspection II. Contractor invoice with model info
<b>Electric or Induction Range</b>	Replace a gas cooking range with a fully electric range (must include both stove and oven), using either induction or electric resistance technology. The gas line to the stove must be permanently capped. <i>May require the installation of an electrical circuit and 240v outlet.</i>	<b>2</b>	I. Permit + approved final inspection II. Purchase confirmation (receipt or invoice)
<b>Window Replacements</b>	Install high-performance windows to reduce energy loss and improve home comfort. Must replace at least 50% of window glazed. <i>(Credits will be scaled based on % of glazed area replaced.)</i>	<b>4</b> (76-100%) <b>2</b> (50-75%)	I. Permit + approved final inspection
<b>Wall Insulation</b>	Install insulation in exterior walls, serving at least 50% of the home's floor area, to reduce energy loss and improve home comfort. <i>(Credits will be scaled based on the % of floor area served by insulated exterior walls.)</i>	<b>4</b> (76-100%) <b>2</b> (50-75%)	I. Permit + approved final inspection II. Contractor Invoice with description of insulated areas indicating % of floor area insulated
<b>Attic Insulation</b>	Add insulation to entire attic surface area to reduce energy loss and improve home comfort.	<b>2</b>	I. Permit + approved final inspection II. Contractor invoice with description of insulated areas
<b>High Home Energy Score</b>	Home Energy Score of a 9 or 10, demonstrating high level of home energy efficiency, dated within five years.	<b>2</b>	I. Home Energy Score
<b>HVAC Duct Improvements (Seal and Insulate OR Replace)</b>	Seal and insulate <b>OR</b> replace ductwork to reduce air leaks and improve HVAC efficiency. Sealing and insulation are suitable for ducts in fair condition. Replace ducts if they are damaged, poorly sized, or beyond repair.	<b>2</b>	I. Permit + approved final inspection II. Contractor invoice with description of duct improvements

Measure <sup>1</sup>	Installation Criteria	Credits	Required Verification Documentation <i>(All items must be submitted)</i>
<b>Whole-house Fan</b>	Install a whole-house fan that draws cool outdoor air through open windows, exhausts the warmer air into the attic, and then expels warm indoor air through attic vents, improving air circulation and supporting passive cooling. <i>May require the installation of an electrical circuit and outlet.</i>	<b>2</b>	I. Permit + approved final inspection II. Contractor invoice III. Whole-house fan specification sheet
<b>Electric Clothes Dryer</b>	Replace a gas clothes dryer with a heat pump dryer, electric resistance dryer, or combo washer-dryer heat pump unit. The gas line must be permanently capped. <i>May require the installation of an electrical circuit and 240v outlet.</i>	<b>2 (Heat Pump) 1 (Electric Resistance)</b>	I. Permit + approved final inspection II. Purchase confirmation (receipt or invoice)
<b>Prewiring &amp; 240v receptacles</b>	Install dedicated 240V circuits and receptacles to support future electric appliances or vehicle chargers. 240v receptacles may be installed for the following equipment/systems: Range/Oven, Clothes Dryer, Water Heater, Furnace, or EV charger	<b>2 (three or more receptacles) 1 (at least two receptacles)</b>	I. Permit + approved final inspection II. Contractor invoice with description of outlet locations
<b>Floor/Crawlspace Insulation</b>	Insulate entire floor or crawlspace area to reduce energy loss and improve home comfort.	<b>1</b>	I. Permit + approved final inspection II. Contractor invoice with description of insulated areas
<b>Greywater System</b>	Install a plumbing system that reuses gently used water from sinks and showers for irrigation. Must be a permitted system that diverts greywater from at least two fixtures (sinks or showers). <i>A laundry to landscape system would not qualify.</i>	<b>1</b>	I. Permit + approved final inspection
<b>Air Sealing</b>	Seal gaps and cracks in the building envelope to reduce drafts and energy loss. Sealing must be conducted by a professional and address key areas including attic access, plumbing and electrical penetrations, recessed lighting, exterior doors and windows, and wall-to-floor transitions.	<b>1</b>	I. Contractor invoice with description of sealed areas II. Photos of installed air sealing measures

## APPENDIX B: BESO ASSESSOR TERMS AND CONIDITIONS

### 1. Compliance with Standards

By signing below, Energy Assessor agrees to abide by all City of Berkeley Policies, the City of Berkeley Building Emissions Saving Ordinance and Administrative Regulations, and the Energy Assessor Registration Terms and Conditions below.

Energy Assessor ensures that they have the necessary qualifications, licensing insurance, competence and experience required to fulfill their respective responsibilities in providing the services and deliverables detailed in program standards.

Energy Assessor understands that registration with the City of Berkeley does not constitute an endorsement of any kind on the part of the City. Energy Assessor shall not state or imply any such endorsement, either directly or indirectly, and shall not claim association with the City of Berkeley in any capacity other than as an independent assessor for the BESO Program. Energy Assessor shall be solely responsible for all representations made to customers regarding the Program or work performed for a customer under the Program.

Failure to comply with Standards and Policies shall result in termination of this Agreement and removal from the registered BESO Energy Assessor list.

### 2. Minimum Insurance Requirements

Type of Coverage	Minimum Coverage Limits
Commercial General Liability	\$1 million per occurrence for Commercial and Multifamily Assessors \$500,000 per occurrence for Home Assessors
Automobile Liability	\$500,000
CA Statutory Workers' Compensation (not required for sole proprietor)	\$1 million

### 3. Customer Satisfaction

Energy Assessor agrees to:

- A. Train internal staff, as applicable, to field customer inquiries about the BESO Program;
- B. Correct, without charge, any requests for correction from the City related to any failure to abide by program standards, such as insufficient or untimely reporting of assessment results, within ten (10) working days of the request;
- C. Repair, without charge, damage to a customer's property resulting from an assessment or other action or inaction arising under or related to the Program;
- D. Immediately report to the City of Berkeley, all customer conflicts that are not resolved to customer's full satisfaction.

#### **4. Indemnification**

Energy Assessor agrees to release, defend, indemnify, and hold harmless the City, including its officers, directors, employees and agents, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the BESO program.

Energy Assessor acknowledges that the City has developed the Building Emissions Saving Ordinance solely for the purpose of promoting energy efficiency assessments and improvements, and that the City has no responsibility of any kind for, and shall have no liability arising out of the performance of, any service, installation, operation, or maintenance of services provided.

#### **5. Changes in the Berkeley BESO Program Terms; Severability**

BESO Program Eligibility Requirements and Standards are available online at [www.BerkeleyCA.gov/BESO](http://www.BerkeleyCA.gov/BESO) and upon request by emailing [BESO@BerkeleyCA.gov](mailto:BESO@BerkeleyCA.gov). The City reserves the right to change these BESO Program Terms at any time without prior notice. If any provision of these BESO Program Terms is determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these BESO Program Terms and shall not affect the validity or enforceability of any remaining provisions.

#### **6. Termination**

Energy Assessor or the City of Berkeley may terminate this Agreement at any time upon written notice to the other party. The termination takes effect immediately and Assessor shall stop any and all work performed under this Agreement. In the event of termination, Assessor agrees to waive any claim for damages, including loss of anticipated profit of any inspection, resulting from termination.

## APPENDIX C: BESO ASSESSMENT REQUIREMENTS CHART

Please note, all ADUs are exempt from the Ordinance. All individually owned units within a larger building (such as an attached condominium) and buildings over 25,000 ft<sup>2</sup> are exempt at time of sale.

Building Use Type	Gross Floor Area	Required Energy Assessment	Energy Benchmark
<b>Commercial</b> or <b>Predominant Commercial</b> (Multifamily use = <20% gross floor area)	50,000 ft <sup>2</sup> and above	ASHRAE Level II	Submit Annually
	25,000 – 49,999 ft <sup>2</sup>	ASHRAE Level I	Submit Annually
	15,000 – 24,999 ft <sup>2</sup>	ASHRAE Level I	Submit Annually
	14,999 ft <sup>2</sup> and below	ASHRAE Level I	Not required
<b>Multifamily</b> or <b>Predominant Multifamily</b> (Commercial use = <20% gross floor area)	50,000 ft <sup>2</sup> and above	ASHRAE Level II	Submit Annually
	25,000 – 49,999 ft <sup>2</sup>	ASHRAE Level I	Submit Annually
	15,000 – 24,999 ft <sup>2</sup>	ASHRAE Level I	Submit Annually
	14,999 ft <sup>2</sup> and below	ASHRAE Level I	Not required
<b>Mixed Use</b> (Both building use types = >20% gross floor area)	10,000 ft <sup>2</sup> and above	Commercial <u>AND</u> Multifamily - ASHRAE Level I or II depending on square footage of use type, see above	Depends on square footage of use type – See Above
	9,999 ft <sup>2</sup> and below	Commercial <u>OR</u> Multifamily applied to whole building – ASHRAE Level I	Not required
<b>1-4 Unit Residential Buildings</b>	1-2 Unit Residential Buildings (Single Family Homes and Duplexes)	Home Energy Score ( <u>Note</u> : One HES score per unit)	Not required
	3-4 units Residential Buildings (Triplexes and Quadplexes)	Home Energy Score ( <u>Note</u> : One HES score per unit) or Multifamily Assessment (ASHRAE Level I)	Not required