

City of Piedmont
COUNCIL AGENDA REPORT

DATE: January 4, 2016

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Introduction of the Concept of Building Energy Savings Regulations and Direction to Staff on Further Steps

RECOMMENDATION

Provide direction to staff regarding Building Energy Savings Regulations.

BACKGROUND

Mandates

Piedmont's Climate Action Plan, (CAP) adopted by the City in 2010, calls for a 15% reduction in 2005 greenhouse gas (GHG) emissions by 2020. In 2005, citywide emissions amounted to approximately 47,750 metric tons of CO2 equivalent. At last assessment in 2010, an approximate reduction of 7% in overall emissions had been realized, due largely to a temporary increase in hydroelectric generation by PG&E as well as reduced energy consumption in the residential sector. This GHG reduction is highly dependant upon PG&E energy generation coefficients. Thus, in order to sustainably achieve the City's 2020 reduction target, significant further emission reductions in the residential sector must be met.

Governor Brown's Executive Order S-3-05 and AB 32 both set ambitious statewide targets for greenhouse gas emissions. Recently, Senate Bill 758 and 350 have both specifically targeted energy efficiency increases in existing buildings, with the goal of doubling efficiency state-wide by 2030.

In September the California Energy Commission (CEC) released their Existing Building Efficiency Action Plan, which laid out the future of efficiency legislation on a state level. By 2020, the CEC intends to make energy efficiency data standard practice in home appraisals. Additionally, the CEC indicates that by 2017 they will assess state leaders of Building Energy Savings Ordinance (BESO) programs such as the City of Berkeley and other cities that have developed BESOS and begin to develop state standards based on these models.

Introduction

Piedmont's Climate Action Plan identifies the reduction of energy consumption through energy efficiency upgrades in existing building stock as the most significant action to achieve the 2020 GHG reduction target. Energy use in residential buildings in Piedmont is a major source of GHG emissions, comprising approximately 51% of total emissions.

Measure BE-2.1 of the Piedmont CAP identifies implementing a point-of-sale energy and water efficiency upgrade ordinance as having the highest GHG reduction potential with approximately 43% of the overall CAP emissions reduction target expected to be realized under this measure.

A BESO mandates that during a major change in building status such as sale or major renovation, a property is required to undergo a comprehensive energy efficiency audit. As a part of the audit, homeowners receive a Home Energy Score, a list of potential energy and cost saving measures, and a list of rebates to help implement efficiency upgrades. See Exhibit A on pages 7-10 for a sample report.

Generally the overarching goal of a BESO is threefold: increasing property owner awareness of energy savings potential, increasing the value of the home through a green-rating system, and reducing GHG emissions through voluntary adoption of efficiency upgrades by property owners.

Current Status

BESOs or similar ordinances are tools being increasingly adopted across the country to increase energy efficiency in existing residential and commercial buildings. A BESO, Residential Energy Conservation Ordinance (RECO), or similar measure has already been adopted locally in several cities including Berkeley, San Francisco, and Chico. The cities of Emeryville, Hayward, and Albany are also in various stages of developing similar ordinances. See Exhibits B and D on pages 10 and 20 for matrices of selected cities and states with similar disclosure and benchmarking legislation.

Potential thresholds used to trigger an energy efficiency audit under a BESO include sale of the property (i.e., point of sale) or during significant property renovation. (i.e., a building permit valuation above \$50,000 or adding heated square footage) As Piedmont is considered a completely built-out city and newly constructed buildings are already required to comply with California's Green Building Codes, a further option to increase the number of energy audits would be to phase in an energy audit requirement for all existing buildings over the next 5-8 years. Further discussion of these energy audit requirement options can be found in the Sustainability Impact section on page four of this report.

Among existing energy audit and disclosure ordinances, two common variations exist: BESOs and RECOs. RECOs normally require an energy efficiency audit as well as the adoption of specific efficiency measures, either from a checklist or as a percentage increase in home energy efficiency. BESOs normally require an energy audit, but adoption of energy efficiency measures is voluntary.

The ordinance as originally envisioned in the CAP takes a mandatory approach and requires property owners to make specific building efficiency upgrades at the ordinance-triggering thresholds. These mandatory upgrades, traditional of older style RECOs, often require property owners to expend significant funds in compliance. In the Bay Area, only Berkeley and San Francisco have implemented early versions of RECO programs. Both cities have had mixed success with implementation. In 2015, Berkeley repealed their RECO due to the following challenges:

- Requiring the same efficiency measures for all buildings is not cost effective, precludes deeper energy savings, and does not optimize non-energy health, safety, and comfort benefits.
- Difficulty updating the ordinance regularly to keep up with evolving building code standards, which resulted in out of date requirements and a misalignment with ratepayer funded incentive programs.
- Point-of-sale policy triggers provide limited impact in sectors with low building turnover rates, such as the commercial, industrial, and multifamily sectors.
- Difficulty tracking outcomes and associated savings related to energy efficiency measures.

After extensive community outreach, including workshops and stakeholder meetings, the City of Berkeley replaced its RECO with a Building Energy Savings Ordinance (BESO). Berkeley's BESO ordinance requires property owners of commercial and multi-family buildings to complete energy assessments of their property on a specified schedule while single family dwellings must complete them only during time of sale. Installing efficiency upgrades is completely voluntary under this ordinance.

Austin, Texas was one of the first cities nationally to adopt a BESO ordinance and initial results were positive. Their ordinance had a 12% adoption of voluntary efficiency measures in the first year and a drastic increase in use of the efficiency rebate programs offered by their utilities. Comparison of Austin's code can be found in Exhibit D on page 20. Austin expects further increases in the adoption rate with the implementation of a more expansive outreach plan.

Piedmont's CAP target of a 15% reduction in GHGs by 2020 is ambitious. Achieving it depends on greatly accelerating energy and water efficiency in Piedmont's existing residential, commercial, and municipal building stock. Importantly, increased energy efficiency has non-energy benefits, including improved durability, occupant comfort and indoor air quality, lower utility bills, increased property value and the creation of green jobs. Adoption of a BESO in Piedmont additionally allows the city to become recognized as a leader in effecting residential energy efficiency.

Exemptions From an Ordinance's Requirements

To decrease redundancy, early adopters of efficiency technology should be recognized as pioneering examples. The focus of an effective BESO should be those homes that are most in need of upgrades. As such, certain exemptions and deferrals might be allowed from this ordinance. These exemptions might include but are not limited to the following:

- Buildings with significant efficiency measures recently installed;

- Buildings built or previously audited within the last 10 years;
- High efficiency-rated buildings; (e.g. Home Energy Score or LEED rating)
- Buildings in low-income financing programs such as the Energy Savings Assistance Program;

Recognizing the constraints of negotiating and completing housing transactions in a timely way as well as the frequent occurrence of renovations that occur after buying a home, the City could consider allowing permit deferrals for up to 12 months upon contracted consent between buyer and seller.

Home Energy Score

A key component of standard BESOs directed at the residential sector is the Home Energy Report, specifically including the Home Energy Score from the Department of Energy. The report includes numerical valuation of the efficiency of a house on a 1-10 scale as well as recommendations of specific measures that could be implemented to increase that house's score. This is a key component of an effective BESO as there have been multiple studies conducted showing that green rated buildings (e.g. LEED, EnergyStar, etc.) sell for up to 9% more on average in California.

Desire for green homes and specifically homes with a rating such as Green Point, LEED certified, or Home Energy Scores, has increased in recent years and is expected to continue to do so. The score is normally integrated with the listing services of local realtors and agencies to assist in the home selling process and meet prospective homebuyer demand for efficient homes.

Non-Residential Buildings

Piedmont is almost entirely a residential city, with commercial, municipal, and multifamily buildings making up a small portion of the emissions portfolio. Turnover rate is significantly lower in these buildings and a different mechanism will need to be employed for benchmarking. The City might consider implementing a phased-in requirement under which commercial, municipal, and multifamily buildings must complete and submit energy efficiency audits by a specific date. Current procedure for medium sized commercial buildings in Berkeley is an energy efficiency audit every 8 years with the annual use of EPA's Energy Star Portfolio Manager to measure regular progress. Thus, given the small amount of commercial building stock, the City might consider a phase-in period of 8 years for non-residential buildings.

Sustainability Impact

The 2010 Inventory reported that Piedmont generated 44,800 metric tons of carbon dioxide equivalent that year and more than half of these emissions were the result of building energy consumption. Improving efficiency in existing buildings is currently targeted to be 43% of the CAP targeted reduction in GHGs.

Almost all (99%) of Piedmont's residential housing stock was constructed prior to implementation of California Building Energy Efficiency Standards in 1978. Seventy one percent of Piedmont's housing was built prior to 1939. Homes of this vintage frequently have minimal insulation, antiquated furnace systems, single pane windows, and gaps in the building envelope. As a result of

modern building code requirement, homes built within the last decade are approximately 4.5 times more efficient per square foot than homes built prior to 1960. While a portion of the City's building stock has been retrofitted over time to include energy efficiency improvements, a high level of energy savings can still be achieved in the majority of Piedmont homes.

As Piedmont is a built out city of 3,866 residences, the primary opportunities to upgrade efficiency in existing residences include time of sale and during large renovations. The projected combined rate of turnover and \$50,000 residential building permits is expected to be 236 units annually, or 1180 before 2020. A recent study by the Environmental Protection Agency (EPA) has shown that buildings that benchmark their data average 7% increases in efficiency. This change in efficiency increases significantly for older and more inefficient buildings.

Based on data from a similar ordinance in Austin, should the time-of-sale and \$50,000 building permit thresholds be adopted in the near future, energy savings from voluntary upgrades are estimated to be 515 metric tons of CO₂ equivalent. This is 7% of the reduction needed for the City to meet the 2020 GHG reduction goal. However, realized energy savings might be significantly higher with the implementation of a concerted outreach campaign promoting energy upgrade programs.

Approximately 1,180 of the 3,866 residences in Piedmont are expected to trigger one or both of those thresholds before 2020. However, many houses will not trigger such BESO requirements for several decades. A gradual phase in to a universal adoption requirement over the next 5-10 years is a regulation being explored in other cities in order to increase the scope and overall effectiveness of the efficiency program. If this were to be adopted in Piedmont, estimated GHG emission reductions would be approximately 1,682 metric tons of CO₂ equivalent. This would represent 24% of the GHG reductions needed to meet the 2020 CAP goal.

Financial Impact

Estimated costs of this ordinance to the City are expected to be low. The majority of staff time is expected to be spent on initial outreach to realtors, contractors, and residents for the development and implementation of the ordinance. The majority of development and implementation cost would be incurred during the CivicSpark fellow's tenure with the City, depending on implementation timeframe of the ordinance.

Other significant program costs such as energy assessor training and certification as well as integration of reporting platforms into a Department of Energy standardized tool are being borne locally by the City of Berkeley in partnership with StopWaste.org as they work to create a standardized framework for BESO adoption by smaller cities. This relieves the need for Piedmont to bear such costs should it adopt a BESO.

Maintenance of Data and Associated Costs

Ongoing costs of the program are expected to be related to the receipt of the energy scores and the maintenance of this data by the City for the purpose of measuring program effectiveness and estimated GHG reduction. Software is currently under development by the City of Berkeley to automate much of this process and reduce the need to manually input this data. The City might consider covering all or part of any remaining costs by implementing a small fee similar to other

local cities. These fees are generally within the \$79-\$120 range for residential units and could be a line item included with the permit cost or included in the auditing assessment.

Council Direction Regarding Next Steps

The City Council is asked to provide staff with direction as to whether or not to pursue development and implementation of building energy efficiency requirements through the adoption of an ordinance. Should Council determine there is a benefit to developing such regulations, staff would seek further direction as to the threshold or thresholds Council believes may be most effective.

Should Council direct staff to proceed with the development of a draft Building Energy Savings Ordinance, staff will research other city regulations, outreach to key stakeholders such as property owners, real estate agents and contractors in order to develop a draft ordinance for Council's consideration.

Exhibits

Exhibit A, pages 7-9, Home Energy Score Sample Report

Exhibit B, page 10, National Residential Benchmarking Policies Matrix

Exhibit C, pages 11-19, Berkeley BESO Ordinance

Exhibit D, page 20, Local Energy Ordinance Comparison Matrix

Home Energy Score

Score	Home Facts	Recommendations																												
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Home Energy Score

Score
Home Facts
Recommendations


Address: **12345 Honeysuckle Lane**
Smithville, AR 72466



Repair now: These improvements will save you money, conserve energy, and improve your comfort now

	Estimated utility bill savings (\$/year)
Attic : Increase attic floor insulation to at least R-38	179
Ducts : Add insulation around ducts in unconditioned spaces to at least R-6	53
Ducts : Have your ducts professionally sealed to reduce leakage	133


Replace later: These improvements will help you save energy when it's time to replace or upgrade

	Estimated utility bill savings (\$/year)
Siding : Add insulating sheathing underneath it to R-5	33
Furnace : Pick one with an ENERGY STAR label	32
Central Air : Pick one with an ENERGY STAR label	45



With these improvements
reduce your home's carbon
footprint by: **23%** 

Score ID: **42944**
homeenergyscore.gov

Comparison of U.S. Residential Energy Disclosure Policies



	Legislation				Disclosure			Trigger		Building stock
	Jurisdiction	Short name	Enacted	Effective	Efficiency Checklist	Utility Data	Evaluation/Audit	Sale	Rental	New Homes Only
Cities & Counties	Austin, TX	ECAD Ordinance	2008	2011	-	-	✓	✓	-	-
	Berkeley, CA	Building Energy Saving Ordinance	2015	2016	-	✓	✓	✓	-	-
	Chicago, IL	Ordinance No. SO2013-1645	2013	2013	-	✓	-	✓	✓	-
	Montgomery County, MD	Bill No. 31-07	2008	2008	-	✓	-	✓	-	-
	Santa Fe, NM	Ordinance No. 2007-38	2007	2008	-	-	✓	✓	-	✓
States	Alaska	AS.34.70.101	2008	2008	-	✓	-	✓	-	-
	Hawaii	§508D-10.5	2009	2009	-	✓	-	✓	-	-
	Kansas	HB 2036	2007	2007	✓	-	-	✓	-	✓
	Maine	H.P. 1468 - L.D. 2074	2006	2006	✓	-	†	†	✓	-
	New York	Truth in Heating Law	1980	1981	-	✓	-	✓	✓	-
	South Dakota	SB 64	2009	2009	✓	-	-	✓	-	✓

Updated 3/12/2015

† Standards exist for a voluntary program

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Berkeley Energy Savings Ordinance

Chapter 19.81

BUILDING ENERGY SAVING

Sections:

- 19.81.010 Purpose.**
- 19.81.020 Applicability.**
- 19.81.030 Definitions.**
- 19.81.040 Large Buildings.**
- 19.81.050 Medium and Small Buildings.**
- 19.81.060 Single Family Buildings.**
- 19.81.070 Early Compliance.**
- 19.81.080 Incentives.**
- 19.81.090 Exceptions, Deferrals and Extensions.**
- 19.81.100 Responsibilities.**
- 19.81.110 Administration and Enforcement.**
- 19.81.120 Fees.**
- 19.81.130 Enforcement.**
- 19.81.140 Violation – Penalty.**
- 19.81.150 Appeals.**
- 19.81.160 Severability.**
- 19.81.170 Chapter Review and Reconsideration.**

19.81.010 Purpose.

The purpose of this chapter is to reduce energy and water consumption in existing buildings. These efficiency improvements will lower energy and water costs and greenhouse gas emissions citywide and increase comfort, safety and health for building occupants. The provisions of the ordinance will inform decision makers about energy performance and improvement opportunities.

19.81.020 Applicability.

The requirements of this Chapter shall apply to all buildings that are located in whole or in part within the City. However, it shall not apply to agencies that are not subject to City authority.

19.81.030 Definitions.

- A. "Administrator" means the Director of Planning and Community Development or her/his designee.
- B. "Building Owner" means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.
- C. "Building Energy Score" means a measurement of how efficiently a building uses energy and/or water based on modeled simulations or actual energy use of the building over time compared to similar buildings, which can be in the form of a performance score, asset score or other comparable metric that meets standards and formats established by the Administrator.
- D. "Energy Report" means a report submitted by a Registered Service Provider that identifies existing conditions, opportunities for water and energy efficiency in a building, and available incentives and financing, as well as any applicable Building Energy Score, in accordance with the standards and formats established by the Administrator.
- E. "ENERGY STAR Performance Report" means an ENERGY STAR Portfolio Manager Benchmark report generated by the on-line tool developed by the U.S. Environmental Protection Agency that determines energy use intensity and an Energy Star Performance Score for a building based on utility usage data.
- F. "Extensive Renovation" means any project that replaces all building space heating, cooling, and ventilation equipment and replaces at least half of the building envelope, in accordance to standards established by the Administrator.
- G. "Green Building Rating" means an approved rating by a green building verification system 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.

- H. "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.
- I. "Large Building" means any building with 25,000 square feet or more of Gross Floor Area.
- J. "Medium Building" means any building with between 5,000 and 24,999 square feet of Gross Floor Area, excluding Single Family Buildings.
- K. "Registered Service Provider" means an entity that has been registered by the Administrator to provide an Energy Report and/or Building Energy Score as required by this ordinance.
- L. "Sale" means the conveyance of title to real property as a result of the execution of a real property sales contract as defined in Section 2985 of the California Civil Code as well as any change of ownership described in subdivision (c) of Section 61 and subdivision (c) of Section 64 of the California Revenue and Taxation Code. "Sale" does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.
- M. "Single Family Building" means any building comprised solely of 1 to 4 residential units, regardless of size.
- N. "Small Building" means any building with less than 5,000 square feet of Gross Floor Area, excluding Single Family Buildings.

19.81.040 Large Buildings.

A. Annual ENERGY STAR Performance Report

Owners of Large Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis in accordance with the phase-in schedule below and no later than October 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 October 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. October 1, 2016 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. October 1, 2017 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.

19.81.050 Medium and Small Buildings.

A. Energy Report

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

1. Time of building Sale; or
2. Within 12 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure; or
3. The phase-in dates and reporting cycle provided in the schedule below.

The requirement at Sale may be transferred to the buyer and deferred for 12 months under the provisions of Section 19.81.090.B of this Chapter.

B. Disclosure

A summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

C. Phase-in and Reporting Cycle Schedule

Effective December 1, 2015, owners of Medium Buildings and Small Buildings shall be in compliance with the requirements of this section at time of building Sale or within 12 months when a lender acquires title, or by the dates specified below, whichever comes first. The requirement at Sale may be transferred to the

buyer and deferred for 12 months under the provisions of Section 19.81.090.B of this Chapter.

1. By October 1, 2018 for Medium Buildings with 15,000 or more square feet of Gross Floor Area, and on an 8 year reporting cycle thereafter.
2. By October 1, 2019 for Medium Buildings with 5,000 or more square feet of Gross Floor Area, and on an 8 year reporting cycle thereafter.
3. By October 1, 2020 for Small Buildings with less than 5,000 square feet, and on a 10 year reporting cycle thereafter.

19.81.060 Single Family Buildings

A. Energy Report

Owners of Single Family Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report at:

1. Time of building Sale; or
2. Within 12 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at Sale may be transferred to the buyer and deferred for 12 months under the provisions of Section 19.81.090.B of this Chapter.

B. Disclosure

A summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

C. Reporting Schedule

The requirements of this Section of the ordinance shall become effective December 1, 2015.

19.81.070 Early Compliance.

Any Energy Report completed after April 1, 2015 which otherwise meets the requirements of this Chapter or is deemed by the Administrator as equivalent shall be considered to be an Energy Report for the first compliance period.

19.81.080 Incentives.

The Administrator may establish rules and regulations to encourage participate in local, regional and statewide incentive programs and to otherwise incent property owners to pursue early compliance and/or achieve a high performance exemption.

19.81.090 Exceptions, Deferrals and Extensions.

- A. High Performance Exemption. Exemptions from the Energy Report requirements for current reporting periods may be granted for buildings that demonstrate effective and reasonably achievable level of efficiency, based on the specific

building type, use, vintage, and condition, that supports the Berkeley Climate Action Plan (CAP) goal of 33% energy-related greenhouse gas reduction from 2000 levels by 2020 and 80% reduction by 2050. Qualified exemptions shall include, but are not limited to:

1. Any building that receives a Building Energy Score or Green Building Rating that demonstrates an effective and reasonable level of efficiency, as determined by the Administrator.
 2. Any building that completes a multi-measure energy improvement project with a verified minimum improvement, as determined by Administrator.
 3. Any whole building that has been served by an income-qualified Weatherization Assistance program for low-income households.
 4. Any new building or Extensive Renovation with a construction completion date within ten years of the reporting deadline.
- B. Deferral at Time of Sale. The requirements for compliance prior to Sale may be deferred from the seller to the buyer, and any subsequent buyers, when the buyer and any subsequent buyers consent to comply with the requirements within 12 months of the original sale date with an application for deferral to the Administrator prior to execution of contract of sale.
- C. Distressed Sale Extension. A 12-month extension may be granted to a buyer of a building purchased from a lender following default or transfer by deed in lieu of foreclosure.
- D. Hardship Deferral. The requirement for an ENERGY STAR Performance Report and the requirement for an Energy Report may be deferred for up to one reporting cycle in cases of financial hardship where one of the following is provided by the Building Owner and approved by the Administrator:
1. Proof of participation in an energy assistance income qualified program, administered through the State of California or the local energy utility.
 2. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by Administrator.
 3. Proof that the property qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes, within two years prior to the due date of the Energy Report.
 4. Proof that a court appointed receiver is in control of the asset due to financial distress.
 5. Proof that the senior mortgage is subject to a notice of default.
 6. Proof that the responsible party is otherwise not able to meet the obligations of this Chapter.

Deferrals under this Section are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

- E. Data Unavailable. An exemption from ENERGY STAR Performance Report requirement for any current reporting period may be granted if
1. The Building Owner demonstrates to the Administrator that he or she has 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.

- 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 subdivision are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

- G. Exemption for Sale of a Condominium. The requirements to submit an Energy Report with an Energy Benchmark to the Administrator shall not apply to any sale of a residential or commercial condominium that is a unit within a building and not a detached structure.

- H. Low Energy Use Deferral. Buildings with low energy use based on energy billing data comparing a building to similar efficient buildings or because of operations specific to their building use, such as institutions that operate less than three days a week, may be granted a Low Energy Use deferral for the current compliance cycle.

Deferrals under this subdivision are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

- I. Exemption for Long-Term Tenancy under Rent Control. The requirements of this Chapter for any building which is subject to rent control in which all of the units, excluding any owner-occupied units, have leases that date prior to January 1, 1999 may be deferred until the next reporting period.

- J. Unconditioned Floor Area Reclassification. The size classification of a building may be reduced by the Administrator to exclude physically separated floor area that is not served by heating, ventilation or cooling equipment.

- K. Phase-In.

1. Through December 1, 2015, compliance required pursuant to a Sale may be satisfied through compliance with the requirements specified under the prior

residential and commercial energy conservations ordinances, Chapters 19.16 and 19.72 of the Berkeley Municipal Code.

2. Any buyer who, prior to June 1, 2015, has filed an acceptance of compliance responsibility pursuant to Berkeley Municipal Code 19.16.080 Section A. 3 or 19.72.120 Section B, has the option of complying either with the requirements in effect at the time of filing or the requirements of this Chapter.

19.81.100 Responsibilities.

- A. It shall be the responsibility of sellers, buyers, owners, real estate agents and brokers, property managers, title companies, non-residential tenants, Registered Service Providers and energy service providers to comply with the requirements of this Chapter.
- B. The seller of any real property and the licensed real estate agent or broker handling a sale of real property shall be jointly responsible for disclosing to the prospective buyer the compliance status of the real property in question.

19.81.110 Administration and Enforcement.

The Administrator may adopt reasonable rules and regulations implementing the provisions and intent of this Chapter before the operative date of this Chapter and may amend these rules and regulations as needed. All rules and regulations adopted by the Administrator shall be posted on the City of Berkeley website.

19.81.120 Fees.

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

19.81.130 Enforcement.

The Administrator shall issue a written Notice of Violation to any building owner determined to be in violation of any provision of this Chapter. In the event a building owner fails to file an ENERGY STAR Performance Report within 30 days after the scheduled deadline or an Energy Report within 90 days after the scheduled deadline, the Administrator shall indicate the building's compliance status via the publicly accessible electronic reporting interface.

19.81.140 Violation – Penalty.

Violations of this Chapter, if charged pursuant to Chapter 1.20, shall be charged as infractions. Violations of this Chapter are also punishable pursuant to Chapter 1.28.

19.81.150 Appeals.

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

19.81.160 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part,

section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

19.81.170 Chapter Review and Reconsideration.

The City Council, with advice from the Berkeley Energy Commission, shall, within 3 years of the effective date of this Chapter, evaluate implementation and outcomes and reconsider extending requirements to all Single Family Buildings starting in 2021. Implementation evaluation shall include an analysis of reporting systems and compliance rates, and outcomes evaluation shall analyze the number of energy improvements and amount of energy reduced as a result of this Chapter, and may recommend revisions and/or incentive programs to accelerate improvements to low performing buildings as it considers advisable. The Berkeley Energy Commission shall then report on its evaluation and recommendations to the City Council.

Section 6. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Energy Ordinance Comparison Matrix

Ordinance Name	Piedmont (proposed)	Albany (proposed)	Berkeley	Austin	Boston	San Francisco
	Building Energy Savings Ordinance (BESO)	Building Energy Assessment and Disclosure Act (BEADO)	Building Energy Savings Ordinance (BESO)	Energy Conservation Audit and Disclosure Ordinance (ECAD)	Building Energy Reporting and Disclosure Ordinance (BERDO)	Existing Commercial Buildings Energy Performance Ordinance/RECO
Date Passed	Pending	Pending	2015	2011	2013	2011
Single Family Dwellings	Pending	Time of sale and every 12 years, audit	Time of sale audit	Time of sale audit	None	Time of Sale
Multifamily Dwelling Units & Commercial	Pending	Audit every 12 years, EPA Energy Star report annually (>25,000 sq ft buildings)	Audit every 5 or 8 years, depending on size, annual Energy Star Report	<p>Multifamily must audit every 10 years and post results publicly</p> <p>Buildings with >10,000 sq ft must report Energy Rating annually</p>	>50,000 sq ft or 50+ units energy & water use assessment annually, building audit every 5 years	>10,000 sq ft benchmark energy use annually, energy audit every 5 years. Residential units must have inspection to prove installation of certain efficiency measures.