



Rashi Kesarwani
Councilmember District 1

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 11, 2025

Item Number: 9

Item Description: Proposed Amendments to the Building Emissions Saving Ordinance (BESO)

Submitted by: Rashi Kesarwani

This revised agenda material recommends two minor revisions that maintain the core objectives and enforcement mechanism of the BESO ordinance proposal while reducing escrow costs for first-time homebuyers—without establishing a costly City rebate program in a time of budget uncertainty.



Councilmember Rashi Kesarwani

ACTION CALENDAR

February 11, 2025

TO: Honorable Mayor Adena Ishii and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Councilmembers Mark Humbert, Brent Blackaby, and Shoshana O’Keefe (Co-Sponsors)

SUBJECT: Supplemental Proposed Amendments to Building Emissions Saving Ordinance (BESO)

RECOMMENDATION

Recommend the following two minor revisions to the Building Emissions Saving Ordinance (BESO) proposal with further detail provided below: (1) escrow deposit reduced to \$5,000 and required to be split 50-50 between buyer and seller; and (2) award full six points for all panel upgrades. Significantly, this supplemental recommendation maintains the core objectives and enforcement mechanism of the BESO proposal while reducing escrow costs for first-time homebuyers—without establishing a costly City rebate program in a time of budget uncertainty. We also request the preparation of an evaluation report two years after implementation.

(1) ***Escrow Deposit Reduced to \$5,000 and Required to be Split 50-50 Between Buyer and Seller.*** To reduce costs, particularly for first-time home buyers, recommend that the escrow deposit is reduced from the proposed \$7,000 to \$5,000 to more accurately reflect the actual costs to install a heat pump water heater cited in the staff report of “under \$5,000 with currently available rebates and tax credits.”¹ Further, so as not to burden a single party (buyer or seller), *require* a 50-50 split (rather than the current proposed negotiation) for the escrow deposit of \$5,000; that is, \$2,500 from the seller and \$2,500 from the buyer, with the buyer recovering the full \$5,000 once the heat pump water heater (or other BESO compliant work) has been completed.

¹ “Proposed Amendments to the Building Emissions Saving Ordinance (BESO),” <https://berkeleyca.gov/sites/default/files/documents/2025-02-11%20Item%2009%20Proposed%20Amendments%20to%20the%20Building.pdf>, Feb. 11, 2025 Action Calendar

Ordinance amended as follows:

Section 19.81.060 D2

2. The Administrator may grant a two-year extension, with an opportunity for an additional one-year extension, to meet the requirements of BMC 19.81.060(C) if the seller ~~and~~ buyer deposit funds of an equal amount with the City in an amount of \$5,000 total~~the Administrator determines to be sufficient to render compliance.~~

Section 19.81.060 D2a

If a BESO Certificate of Compliance for the subject property is obtained prior to the expiration of the extension period, then the buyer shall recoup their full deposit in full.

Section 19.81.090 M

M. Early Refund Exception. Owners of 1 to 4 Unit Residential Buildings may apply for early remittance of the full ~~if~~ escrow deposit prior to completion of the Resilience Upgrades upon demonstration that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that the Resilience Upgrades will be completed, as determined by the Administrator.

- ***BESO Can Balance Climate Goals with Cost Sensitivity for First-Time Homebuyers.*** Berkeley's current median home value of \$1.4 million means that a typical buyer needs to have a minimum of \$280,000 cash-on-hand for a standard 20 percent down payment in order to be competitive amidst an acute shortage of homes. On top of this substantial down-payment cost, the buyer's closing costs can range anywhere from 2 to 5 percent of the purchase price (i.e., \$28,000 to \$70,000 for a median home of \$1.4 million) for a total median upfront cost of \$308,000 to \$350,000. In addition to high down-payment and closing costs, buyers are currently experiencing relatively high mortgage interest rates that significantly increase the monthly cost of owning a home. Further, because our housing stock was generally built in the 1920s to 1930s, purchased homes often require mandated health and safety upgrades at the time of purchase, including a seismic retrofit, upgrading of the private sewer lateral, and—increasingly—costly home-hardening improvements in order to obtain homeowners' insurance in fire zones. These costs add up to tens of thousands of dollars. In this cost prohibitive environment, it is not uncommon for home buyers to save for years and decades to compete for the ability to own a home in Berkeley. BESO must balance the policy goal of decarbonizing homes with being sensitive to the total costs incurred by first-time homebuyers who are not able to tap into the equity of a prior home.
- ***Berkeley City Council Voted in January 2025 to Make Homeownership Options More (not Less) Affordable for the Middle Class.*** Councilmember Kesarwani's item, "Expanding Homeownership Opportunities for Middle-Income Earners" (co-sponsored by Councilmembers Mark Humbert, Ben Bartlett, and Cecilia Lunaparra) was unanimously passed by the City Council at its January 21, 2025 meeting to request that our City Manager and Planning Commission modify our Berkeley Municipal Code Title 21

(Subdivisions) and Title 23 (Zoning) to enhance ownership opportunities for middle income earners. The proposed supplemental recommendation here to lower the escrow deposit to \$5,000 and require that it be split 50-50 will help to ensure that future middle-income buyers are not overly burdened by the upfront deposit associated with BESO compliance.

- Requiring the Seller to Provide \$2,500 Towards the Escrow Deposit Likely Incentivizes Early Compliance.** The proposed new requirement for the seller to pay \$2,500 towards emission saving measures when compliance has not been met at the time of sale may induce the seller to take some or all of the required compliance measures (see Exhibit 1) in advance of sale as appliances fail. For example, a homeowner may choose to replace an old gas stove with an induction range (worth two of the required six credits) prior to sale. As proposed, the existing homeowner's appliance choices are less likely to shift to emission savings BESO-compliant alternatives when they can negotiate for the buyer to fully fund the escrow deposit in a highly competitive housing market.

Exhibit 1: Example Credits and Compliance Costs

Measure	Credits ¹	Credit Criteria ²
Heat Pump Water Heater	6 (Full)	Emissions savings
Heat Pump HVAC	6 (Full)	Emissions savings
Knob + Tube Replacement	6 (Full)	Cost
Smart Panel	6 (Full)	Cost
Solar PV + Storage	6 (Full)	Cost
Panel Upgrade	4	Cost
Duct Sealing & Replacement	3	Emissions savings
Bi-Directional EV Charger	3	Cost
EV Charger	2	Cost
Induction Range	2	Emissions savings
Window Replacements	2	Emissions savings
Attic Insulation	2	Emissions savings
Wall Insulation	2	Emissions savings
Floor Insulation	1-2	Emissions savings
Greywater System	1-2	Cost
Air Sealing	1	Emissions savings
Prewiring & 240v Receptacles	½ per receptacle	Cost

Source: "Proposed Amendments to the Building Emissions Saving Ordinance (BESO)", <https://berkeleyca.gov/sites/default/files/documents/2025-02-11%20Item%2009%20Proposed%20Amendments%20to%20the%20Building.pdf>, Feb. 11, 2025 Action Calendar, p. 25 of 68

(2) **Award Full Six Points for All Panel Upgrades.** The Bay Area Air Quality Management District's (BAAQMD) has prohibited the sale and installation of nitrogen oxide-emitting water heaters beginning in 2027 and furnaces starting in 2029. In order to help homeowners prepare for the possible failure of their gas water heater or furnace in the future, this supplemental report requires that all panel upgrades receive the full six points for BESO compliance. This change will be applied by Planning staff administratively.

(3) **Request Evaluation Report Two Years After Implementation, Including Rebate Options for Council Consideration.** Two years after implementation, request that staff report to City Council on program implementation results, including but not limited to the following summary statistics for years one and two:

- Number of times compliance was established prior to sale (including common methods of reaching compliance and average total actual costs to do so for each method);
- Number of times escrow deposit was made and successfully used to reach compliance (including common methods of reaching compliance and average total actual costs to do so for each method);
- Number of times in which the escrow deposit was forfeited.

The report should include options for some form of transfer tax rebate to lower costs of upgrades, such as a full or partial rebate for all homeowners or a full or partial rebate for certain homeowners experiencing higher compliance costs or financial hardship, along with estimates of the potential City revenue loss for rebate options, so that Council may consider the fiscal and policy tradeoffs of these options. The report may also include recommended program changes to better achieve the policy goals of decarbonizing existing residential buildings while controlling costs for first-time home buyers.

CONTACT PERSON

Councilmember Rashi Kesarwani

(510) 981-7110

ATTACHMENT:

ORDINANCE NO. -N.S.

CHAPTER 19.81

BUILDING EMISSIONS SAVING

ORDINANCE NO. -N.S.

**CHAPTER 19.81
BUILDING EMISSIONS SAVING**

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

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

19.81.010 - Purpose.

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

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

19.81.030 - Definitions.

A. "Administrator" means the Director of Planning and Development or their designee.

B. "Building Owner" means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall also refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.

C. "Building Energy Score" means a measurement of how efficiently a building uses energy and/or water based on modeled simulations or actual energy use of the building over time compared to similar buildings, which can be in the form of a performance score, asset score or other comparable metric that meets standards and formats established by the Administrator.

D. "Credits" means a numerical value based on the improved resilience, emissions savings, cost, or other measured benefit associated with a Resilience Upgrade.

E. "Dwelling Unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

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

EG. "Energy Report" means a report submitted by a Registered Service Provider that identifies existing conditions, opportunities for water and energy efficiency in a building, opportunities to transition off fossil fuels, greenhouse gas emissions reductions, and available incentives and financing, as well as any applicable Building Energy Score, in accordance with the standards and formats established by the Administrator.

FH. "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.

GI. "~~Energy Resilience~~ Upgrade" means the installation or completion of recommended measure(s) that improve the building's energy efficiency, increases the building's resilience, supports the transition off fossil fuels, and/or decreases the building's greenhouse gas emissions.

HJ. "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.

IK. "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.

JL. "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.

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

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

MO. "Real Estate Listing" means any listing of a building for sale in the City of Berkeley. "Real Estate Listings" include listing a building for sale by a property owner or by a licensed agent. "Real Estate Listings" include any printed advertisement, internet

~~posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services. include any listing for sale by any advertisement, internet posting, or publicly displayed sign.~~

NP. "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.

~~O. "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.~~

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

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

~~S. "Transfer" means the conveyance of title to real property, excluding condominiums as defined in California Civil Code Section 1351(f), as a result of the execution of a real property sales contract as defined in Section 2985 of the California Civil Code as well as any change of ownership described in subdivision (c) of Section 61 and subdivision (c) of Section 64 of the California Revenue and Taxation Code. "Transfer" does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.~~

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

19.81.040 – Large Buildings.

A. *Annual ENERGY STAR Performance Report.* Owners of Large Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis in accordance with the phase-in schedule below and no later than July 1 each year thereafter.

B. *Energy Report.* Owners of Large Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report as specified in the phase-in schedule below and by July 1 every five years thereafter.

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

D. *Phase-in and Reporting Cycle Schedule.* Owners of Large Buildings shall be in compliance with the requirements of this section by the dates specified below.

1. July 1, 2018 for buildings with 50,000 or more square feet of Gross Floor Area, with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.
2. July 1, 2019 for buildings with 25,000 or more square feet of Gross Floor Area with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.

E. *Evaluate and Recommend Resilience Energy Upgrades Requirements.* The Administrator of this Chapter shall develop recommendations for Energy-Resilience Upgrade requirements for Large Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Resilience Upgrade requirements. The Administrator shall then report the proposed Energy-Resilience Upgrade requirements for Large Buildings to the City Council for consideration.

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

19.81.050 – Medium and Small Buildings.

A. *Annual ENERGY STAR Performance Report.* Owners of Medium Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis as of July, ~~1,~~ 2021, and no later than July 1 each year thereafter.

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

1. Prior to the Real Estate Listing of the building for ~~s~~Sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section [19.81.090.B](#) of this Chapter.

C. *Disclosure.* All compliance documentation, including the most recent ENERGY STAR Performance Report, if applicable, a deferral or a summary version of the most

recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed publicly for sale.

D. *Evaluate and Recommend Energy-Resilience Upgrades Requirements.* The Administrator of this Chapter shall develop recommendations for Energy-Resilience Upgrade requirements for Small and Medium Buildings based on building performance that are consistent with State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy-Resilience Upgrade requirements. The Administrator shall then report the proposed Energy-Resilience Upgrade requirements for Small and Medium Buildings to the City Council for consideration.

Section 5. That Berkeley Municipal Code 19.81.060 is amended to read as follows:

19.81.060 – ~~Single-Family~~1 to 4 Unit Residential Buildings.

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

AB. *Energy Report.* Owners of ~~Single-Family~~1 to 4 Unit Residential Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report:

1. Prior to the Real Estate Listing of the building for ~~s~~Sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section ~~19.81.090.B~~ of this Chapter. In the event the Building Owner fails to complete the Energy Report an administrative fee shall be charged, which is set forth in Section 19.81.120 of this code.

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

D. *Verification at Time of Transfer.* Prior to Transfer of title:

1. A BESO Certificate of Compliance for the subject property must be obtained, or
2. The Administrator may grant a two-year extension, with an opportunity for an additional one-year extension, to meet the requirements of BMC 19.81.060(C) if

the seller and/or buyer deposit funds of an equal amount with the City in an amount of \$5,000 total. The Administrator determines to be sufficient to render compliance. The seller or buyer must execute and deliver to the Administrator or their designee a binding agreement in a form acceptable to the City providing that any funds deposited with the City shall be forfeited and transferred to the City if a BESO Certificate of Compliance for the subject property has not been obtained upon the expiration of the extension period. Forfeited deposit funds shall be used for local low-income building upgrade programs, such as the Climate Equity Fund or Just Transition Residential Electrification Programs.

a. If a BESO Certificate of Compliance for the subject property is obtained prior to the expiration of the extension period, then the buyer shall recoup the full deposit in full.

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

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

E. Appeals.

1. If deposit funds are forfeited to the City pursuant to BMC 19.81.050(D)(2)(b), notice shall be mailed no more than 14 calendar days after the expiration of the extension period to the buyer of (i) the forfeiture and (ii) the opportunity to appeal. The cost of notice shall be deducted from the deposit made pursuant to BMC 19.81.050(D)(2).

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

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

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

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

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

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

BF. Disclosure. All compliance documentation, including ~~a deferral or~~ a summary version of the most recent Energy Report including a Building Energy Score, ~~when available,~~ and the Resilience Standard compliance status shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed for sale. The Building Energy Score shall be included in all Real Estate Listings and a URL link to the Energy Report included if links are supported by the listing service.

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

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

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

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

~~C. Reporting Schedule. The requirements of this Section of the ordinance shall become effective December 1, 2015.~~

~~D. Evaluate and Recommend Energy Upgrades Requirements. The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Single Family Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Single Family Buildings to the City Council for consideration.~~

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

19.81.090 – Exceptions, Deferrals and Extensions.

A. High Performance Exemption. Exemptions from the Energy Report requirements for current reporting periods may be granted for to buildings that demonstrate effective and reasonably achievable level of efficiency, electrification of building systems and appliances, and/or emissions reduction, ~~based on the specific building type, use,~~

~~vintage, and condition,~~ that support Berkeley's commitment to become a Fossil Fuel Free City and achieve carbon neutrality by 2045 ~~and 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 ~~Large building~~ Building that receives a Building Energy Score or Green Building Rating that demonstrates an effective and reasonable level of efficiency, as determined by the Administrator.
2. Any building, except for 1 to 4 Unit Residential Buildings, that completes a multi-measure energy improvement project with a verified minimum improvement, as determined by Administrator.
3. Any whole building that has been served by an income-qualified Weatherization Assistance program for low-income households.
4. Any new building or Extensive Renovation, except for 1 to 4 Unit Residential Buildings, with a construction completion date within ten years of the reporting deadline.
5. Any building that has electrified all building systems and appliances and capped all gas lines to the building.

B. *Deferral at Time of Real Estate Listing.* The requirements for compliance prior to the Real Estate Listing of a Small or Medium B ~~building~~ may be deferred from the seller to the buyer, and any subsequent buyers, for a period of 6 months after the original sale date. A request to defer responsibility to the buyer must be submitted to the administrator prior to the listing of the building. The deferral shall include information on the fuel source for each end use in the building and any current or future electrification requirements and incentives.

C. *Distressed Sale Extension.* A 6-month extension may be granted to a buyer of a building purchased from a lender following default or transfer by deed in lieu of foreclosure.

D. *Hardship Deferral.* The requirement for an ENERGY STAR Performance Report, ~~and the requirement for an Energy Report, or the Resilience Standard~~ for up to one reporting cycle may be deferred in cases of financial hardship where one of the following is provided by the Building Owner and approved by the Administrator:

1. Proof of participation in an income qualified energy assistance ~~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 transferable with a building sale, at which time compliance with this Chapter shall be required.

E. *Data Unavailable.* An exemption from ENERGY STAR Performance Report requirement for any current reporting period may be granted if:

1. The Building Owner demonstrates to the Administrator that they have been unable to obtain tenant authorization to obtain tenant utility data, despite a good faith effort to obtain such consent, or
2. The building occupant demonstrates to the Administrator that such disclosure may result in the release of proprietary information which can be characterized as a trade secret, or:-
3. Any person subject to the requirements of this Chapter demonstrates to the Administrator that submission of an ENERGY STAR Performance Report would conflict with the requirements of State or Federal law. .

F. *Deferral for Planned Demolition or Extensive Renovation.* The requirements of this Chapter may be deferred for 24 months if the owner or buyer has obtained a Building Permit, Demolition Permit, or Permit under the Zoning Ordinance that includes demolition or Extensive Renovation of the subject building.

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

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

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

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

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

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

~~K. *Exemption based on building size.* Buildings 600 square feet or a higher size threshold, as determined by the Administrator, are exempt from the requirements of this Chapter.~~

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

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

~~M. *Early Refund Exception.* Owners of 1 to 4 Unit Residential Buildings may apply for early remittance of the full escrow deposit prior to completion of the Resilience Upgrades upon demonstration that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that the Resilience Upgrades will be completed, as determined by the Administrator. If the application for an early refund is approved, the City will refund the funds deposited pursuant to BMC 19.81.060(D)(2) to the owner so that the owner may complete the Resilience Upgrades. Once the requisite Resilience Upgrades are complete, the Owner must obtain a BESO Certificate of Compliance. In the event the property owner fails to complete the requisite Resilience Upgrades within the compliance extension period, an administrative fee shall be charged, which fee is set forth in Section 19.81.120 of this code.~~

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

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

Section 8.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each

branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

1735042.1