



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
REGULAR MEETING**

**Monday, December 2, 2024  
10:00 AM**

2180 Milvia Street, 1st Floor - Cypress Room

Committee Members:

Councilmembers Susan Wengraf, Cecilia Lunaparra, and Mark Humbert  
Alternate: Councilmember Igor Tregub

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. All Committee meetings are recorded. To access the meeting remotely use this URL - <https://cityofberkeley-info.zoomgov.com/j/1612806382> . To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter **Meeting ID: 161 280 6382**. To provide public comment, press \*9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov).

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

**California Government Code Section 84308 (Levine Act)** Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

# AGENDA

## Roll Call

## Public Comment on Non-Agenda Matters

## Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

### 1. Minutes - October 22, 2024

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### 2. Proposed Amendments to the Building Emissions Saving Ordinance (BESO)

*(Item contains supplemental material)*

**From: City Manager**

**Referred: February 13, 2024**

**Deadline: February 4, 2025**

**Recommendation:** Adopt first reading of an Ordinance amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

## Unscheduled Items

### 3. **First Year Free - Fill Empty Storefronts Act**

**From: Councilmember Hahn (Author)**

**Date Referred: October 15, 2024**

**Date Due: February 12, 2025**

**Recommendation:** Refer to the City Manager to (1) create and implement a First Year Free Program for Berkeley, modeled after San Francisco's successful program, for an initial period of 5 years and (2) study and report back to Council on other strategies to attract new businesses and fill empty storefronts.

**Financial Implications:** See report.

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

## Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**

## Adjournment

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*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee in advance of the meeting and retained as part of the official record.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

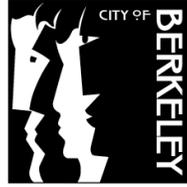
~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 27, 2024.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov).*



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
SPECIAL MEETING MINUTES**

**Tuesday, October 22, 2024  
11:00 AM**

2180 Milvia Street, 1st Floor - Cypress Room

1404 Le Roy Ave, Berkeley, CA 94708 – Teleconference Location

Committee Members:

Councilmembers Susan Wengraf, Cecilia Lunaparra, and Mark Humbert

Alternate: Councilmember Igor Tregub

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. All Committee meetings are recorded. To access the meeting remotely use this URL - <https://cityofberkeley-info.zoomgov.com/j/1612794676>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter **Meeting ID: 161 279 4676**. To provide public comment, press \*9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov).

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## MINUTES

**Roll Call:** 11:02 a.m.

**Present:** Wengraf, Humbert

**Absent:** Lunaparra

Councilmember Lunaparra present at 11:08 a.m.

**Public Comment on Non-Agenda Matters:** 1 speaker

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

1. **Minutes - July 1, 2024**

**Action:** M/S/C (Wengraf/Lunaparra) to approve the July 1, 2024 minutes.

**Vote:** All Ayes.

### Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

## Committee Action Items

### 2. **Affordable Housing for Artists: AB-812 Implementation and Cultural District Statutory Standardization**

**From: Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor)**

**Referred: May 21, 2024**

**Due: October 26, 2024**

**Recommendation:** Pursuant to California Government Code Section 65914.8, refer to the City Manager, City Attorney, and Planning Commission:

1. To study and develop an Ordinance and implementation plan for Assembly Bill 812 (2023) to reserve for artists up to 10 percent of Below Market Rate units under Berkeley Municipal Code 23.328 (Inclusionary Housing) within a half-mile of a state-designated cultural district or within any similar locally designated cultural district, with consideration for consistency with existing Affordable Housing Preference Policy;
2. Consider common standards for locally designated cultural districts, including but not limited to Overlay Zones, and implementation of cultural district designation within the boundaries of Area Specific Plans, including but not limited to the Adeline Corridor and San Pablo Corridor Specific Plans;
3. Pursuant to California Government Code Section 8758, consider solicitation of state designation for cultural districts in the City of Berkeley.

**Financial Implications:** Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

**Action:** 2 speakers. M/S/C (Wengraf/Lunaparra) to forward the item to Council with a Qualified Positive Recommendation that the Council:

1. Refer to the City Manager and the Civic Arts Commission to:
  - a. Consider common standards for locally designated cultural districts, including but not limited to Overlay Zones, and implementation of cultural district designation within the boundaries of Area Specific Plans, including but not limited to the Adeline Corridor and San Pablo Corridor Specific Plans;
  - b. Pursuant to California Government Code Section 8758, consider solicitation of state designation for cultural districts in the City of Berkeley.
2. Defer referral of the study and development of an ordinance and implementation plan until later in the process when there is more information regarding the applicable standards and definitions.

**Vote:** All Ayes.

## Committee Action Items

3. **Berkeley Green New Deal: Just Transition Framework for the General Plan's Environmental Justice Element** *(Item contains revised material)*  
**From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)**  
**Referred Date: October 23, 2023**  
**Due Date: October 31, 2024**  
**Recommendation:** Refer consideration of the following concepts to the Land Use, Housing, and Economic Development (LUHED) Policy Committee; City Manager; Planning Commission; and Environment and Climate Commission for inclusion in General Plan amendments pursuant to California Government Code Section 65302(h) to advance the city's environmental justice goals under a Just Transition Framework:
- Just Transition principles adopted by City Council in Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal";
  - Transportation Demand Management (TDM) planning to reduce Vehicle Miles Traveled (VMT) per capita by at least 25% by 2030;
  - The development of a workforce development board to increase equitable access to green jobs and accelerate the fossil-free economy.
- Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** 1 speaker. M/S/C (Wengraf/Lunaparra) to forward the item to Council with a Qualified Positive Recommendation to refer this item to the budget process and to the Environment and Climate Commission for further consideration.  
**Vote:** All Ayes.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

4. **Proposed Amendments to the Building Emissions Saving Ordinance (BESO)** *(Item contains supplemental material)*  
**From: City Manager**  
**Referred: February 13, 2024**  
**Deadline: December 31, 2024**  
**Recommendation:** Adopt first reading of an Ordinance amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

**5. First Year Free - Fill Empty Storefronts Act**

**From: Councilmember Hahn (Author)**

**Date Referred: October 15, 2024**

**Date Due: February 12, 2025**

**Recommendation:** Refer to the City Manager to (1) create and implement a First Year Free Program for Berkeley, modeled after San Francisco's successful program, for an initial period of 5 years and (2) study and report back to Council on other strategies to attract new businesses and fill empty storefronts.

**Financial Implications:** See report.

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

### Items for Future Agendas

- Item 4 and Item 5 scheduled for the December 2, 2024 regular meeting.

### Adjournment

**Action:** M/S/C (Humbert/Wengraf) to adjourn the meeting.

**Vote:** All Ayes

Adjourned at 12:47 p.m.

I hereby certify that the foregoing is a true and correct record of the Land Use, Housing & Economic Development Committee meeting held on October 22, 2024.

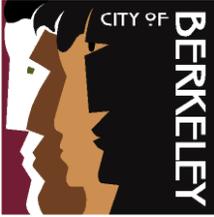
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Keith Nesbit, Assistant City Clerk

### Communications

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Planning and Development Department  
Office of Energy and Sustainable Development

## Berkeley's Building Emissions Saving Ordinance (BESO) Proposed Amendments

In December 2020, Berkeley City Council directed staff to recommend upgrade requirements for Berkeley's Building Emission Saving Ordinance (BESO) for Council's consideration. The following year, City Council adopted Berkeley's Existing Building Electrification Strategy (BEBES), which identified a time of sale upgrade policy as one of the four primary policy strategies to equitably decarbonize Berkeley's existing buildings. The proposed BESO amendments build on BESO's current requirements of energy disclosure at the time of sale and are coupled with upgrade requirements. Prior to BESO, from 1987-2015, Berkeley required prescriptive energy efficiency measures at time of sale through the Residential Energy Conservation Ordinance (RECO). The proposed BESO amendments increase resilience and can improve indoor air quality, comfort, health, and safety. They can also help new Berkeley homeowners prepare for the Bay Area Quality Management District's (BAAQMD) zero NOx emissions standard, which prohibits the sale and installation of NOx emitting gas-powered water heaters and furnaces, starting in 2027. Homeowners can install an electric heat pump early (which is a zero NOx appliance) or complete necessary electrical upgrades to ensure a seamless transition.

### Flexible Resilience Standard

The proposed amendments to BESO would **maintain the current assessment and disclosure requirements** and **establish a flexible resilience standard** that requires small residential building owners to complete upgrades from a **menu of options** when a property is sold. **Building owners can choose which upgrades to complete** that best fit with their preferences and building's conditions. Each upgrade measure will have a **corresponding credit value based on its emissions reductions and/or costs**. A building owner would need to complete one or more measures to meet the required **number of credits within two years of the sale**. The cost of compliance will vary, as a homeowner can choose which upgrades they want to complete. The proposed amendments would require **6 credits for full compliance**. Here's an initial list of measures and potential credits:

Measure	Credits*	Measure	Credits*
Heat Pump Water Heater	6 (Full)	Induction Range	2
Heat Pump HVAC	6 (Full)	Window Replacements	2
Knob + Tube Replacement	6 (Full)	Attic Insulation	2
Smart Panel	6 (Full)	Wall Insulation	2
Solar PV + Storage	6 (Full)	Floor Insulation	1-2
Panel Upgrade	4	Greywater System	1-2
Duct Sealing & Replacement	3	Air Sealing	1
Bi-Directional EV Charger	3	Prewiring & 240v Receptacles	½ per receptacle
EV Charger	2	*The credit values may be subject to change.	

Installing a heat pump water heater is the simplest and cheapest way to comply. Without rebates, the average purchase and installation cost of a heat pump water heater in Alameda County is ~\$6,800<sup>1</sup>. There are tax credits and rebates currently available to reduce this cost.

### **Escrow Deposit**

Similar to Berkeley's Private Sewer Lateral Program, a cash **deposit** to cover the cost of compliance will be held by the City through escrow and be **refunded in full once the upgrades are complete**. The deposit will be set at an amount equivalent to the minimum estimated cost of compliance.

### **Heat Pump Exemption Pathway**

**If a building has at least one electric heat pump system, then no additional upgrades are needed.** The proposed amendments include a heat pump exemption pathway that encourages homeowners to install a heat pump in advance of a home sale in order to meet full compliance. Currently, 5-7% of Berkeley homes would already qualify for this exemption, and more will become exempt as they transition to electric heat pumps.

### **Additional Exemptions and Support**

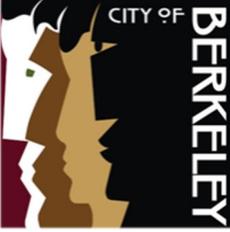
- **First-time Homebuyers** – First time homebuyers participating in an approved income-qualified first-time home buying program or down payment assistance program would be exempt from the flexible resilience standard.
- **Early Refund Exception** – Building owners may apply for an early refund of their deposited funds if they supply sufficient evidence, such as issued building permits and a contract for qualifying work, to show the upgrades will be completed.
- **High Home Energy Score Credit** – Buildings that have received a high Home Energy Score demonstrate a high level of energy efficiency and will receive bonus credits, reducing the number of upgrades needed to meet the standard.

### **Phase-In Timeline for Building Types:**

- **Phase I:** Single Family Homes, ADUs, Duplexes, Condominiums within 1-4 Unit buildings (approximately 700 homes/units each year) - expected implementation 2026
- **Phase II:** Triplexes and Fourplexes (approximately 50 buildings each year) - expected implementation 2028

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<sup>1</sup> Based on data through TECH Clean California: <https://techcleanca.com/>



# Building Emissions Saving Ordinance (BESO)

Time of Sale Upgrade Requirements

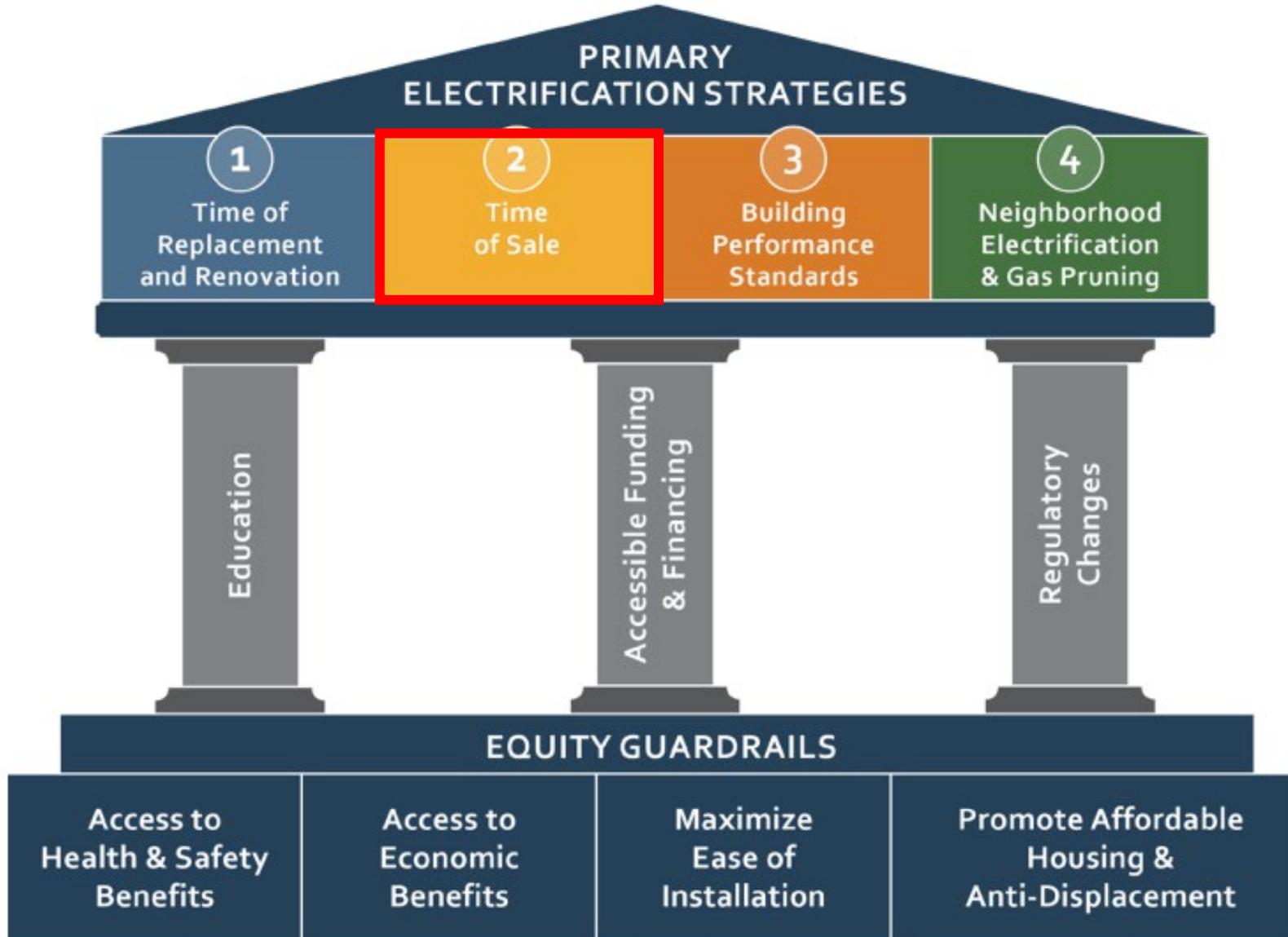
October 7, 2024



# Background and Current BESO Requirements



# Berkeley's Existing Building Electrification Strategy



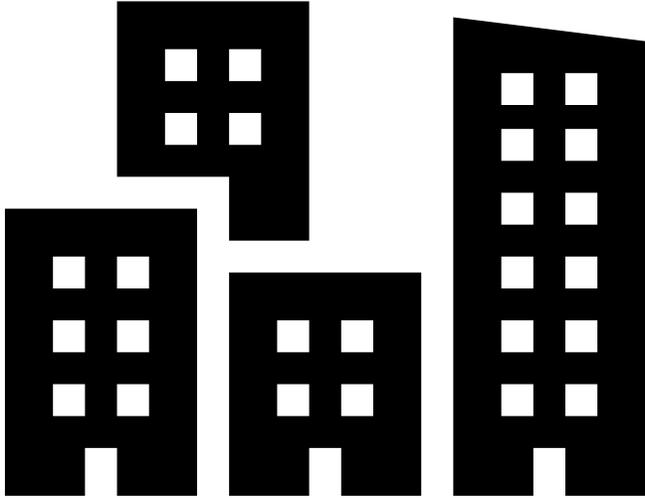
# Building Emissions Saving Ordinance (BESO)

## Time of Sale Program



Buildings **less** than  
25,000 sqft

## Large Building Program



Buildings **greater** than  
25,000 sqft

# Current Time of Sale Program



- Requires an **energy/electrification assessment** prior to listing a building for sale.
  - Home Energy Score for Single family homes
  - Provides information to potential buyers
- Refers building owners into local incentive programs to complete voluntary upgrades

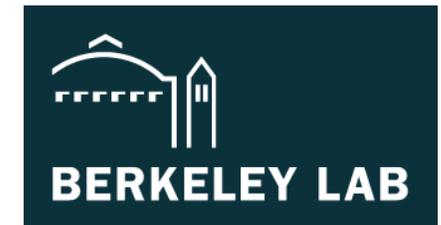


# Technical Advisory Committee



## Members:

- Building Decarbonization Experts
- BESO Assessors
- Architects
- Electrification Contractors
- Utilities
- Regional and State entities



# Outreach and Engagement

- Real Estate Community
  - Realtor Offices
  - Real Estate Professionals Webinar
  - Bridge Association of Realtors
- Berkeley Rent Board – Sustainability Committee
- Berkeley Neighborhoods Council
- City Green Building Coordination Team
- Berkeley Property Owners Association
- Community and Environmental Organizations
- Council Policy Committees
- Environment and Climate Commission



# Proposed Upgrade Requirements

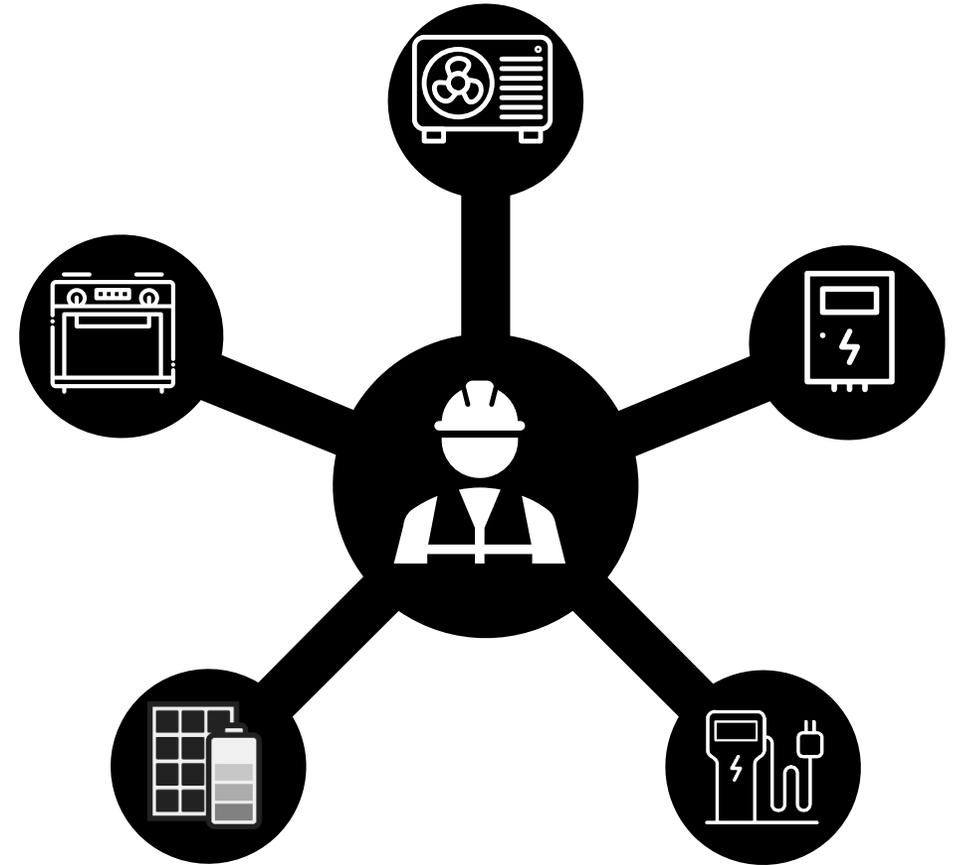
# Proposed Time of Sale BESO Requirements

- Seller completes the BESO assessment
- Buyer completes the upgrade(s) within 2 years of the sale if compliance has not been met



# Flexible Resilience Standard

- **Upgrade requirements:**
  - List of possible upgrades
  - Each upgrade has a corresponding credit value
  - Buildings need to achieve minimum number of credits through upgrades
- **Credit value criteria:**
  - Emissions savings
  - Cost
  - Health, safety, resilience bonus
- **Rationale:**
  - Addresses range of building conditions
  - Owner can prioritize



# Potential Measures & Credits



## Credits Needed: 6

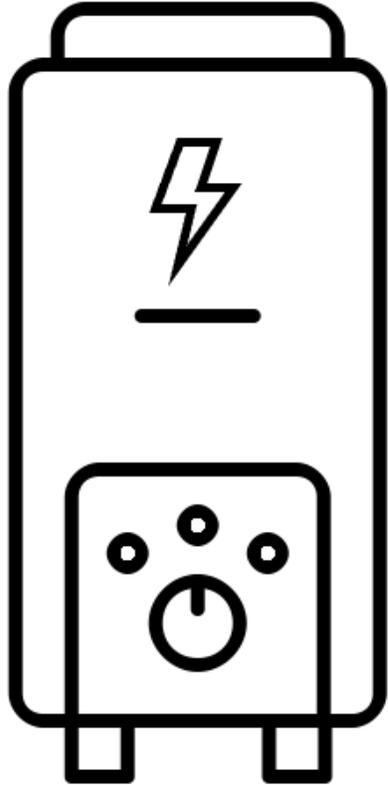
Measure	Credits*	Criteria
Heat Pump Water Heater	6	Emissions
Heat Pump HVAC	6	Emissions
Knob + Tube Replacement	6	Cost
Smart Panel	6	Cost
Solar PV + Storage	6	Cost
Panel Upgrade	4	Cost
Duct Sealing & Replacement	3	Emissions
Bi-Directional EV Charger	3	Cost
EV Charger	2	Cost

Measure	Credits*	Criteria
Induction Range	2	Emissions
Window Replacements	2	Emissions
Attic Insulation	2	Emissions
Wall Insulation	2	Emissions
Floor Insulation	1-2	Emissions
Greywater System	1-2	Cost
Air Sealing	1	Emissions
Prewiring & 240v receptacles	1/2 per receptacle	Cost

\*The credit values are subject to change once vetted by the Technical Advisory Committee



# Example Compliance Costs



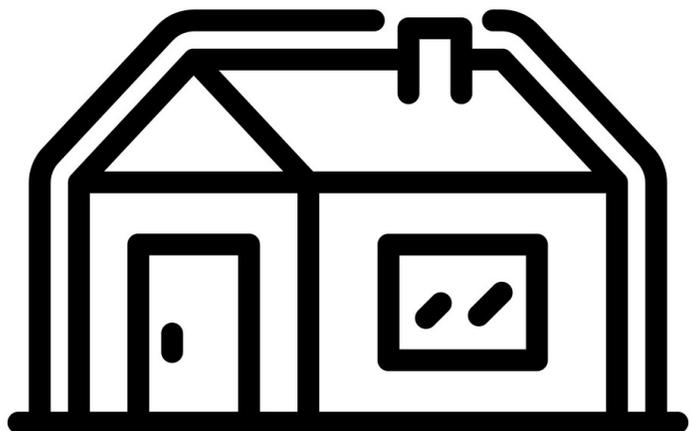
## Heat Pump Water Heater

Measure	Credits	Average Cost
Heat Pump Water Heater	6	\$6,800
<b>Total</b>	<b>6</b>	<b>\$6,800*</b>

**\*Up to \$2,000 Federal Tax Credit available**



# Example Compliance Costs



## Energy Efficiency & Envelope Improvements

Measure	Credits	Average Cost
Attic Insulation	2	\$2,500
Air Sealing	1	\$1,500
Duct Sealing/Replacement	3	\$4,600
<b>Total</b>	<b>6</b>	<b>\$8,600*</b>

\*Up to \$1,200 Federal Tax Credit available



# Example Compliance Costs

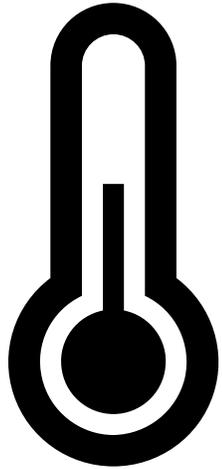


Measure	Credits	Average Cost
Panel upsizing and replacement	4	\$4,300
240v outlet installation (oven, dryer, water heater, EV charger)	2	\$1,800
<b>Total</b>	<b>6</b>	<b>\$6,100*</b>

**Electric Ready –  
Preparing for  
BAAQMD Compliance**

**\*Up to \$600 Federal Tax Credit available  
(in conjunction with another energy improvement)**

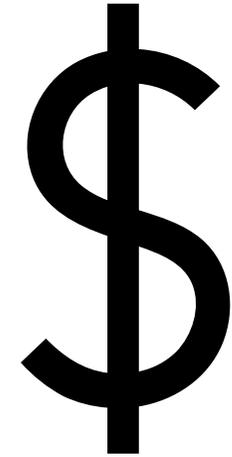
# Benefits to Homeowners



**Improve Comfort  
and Indoor Air  
Quality**



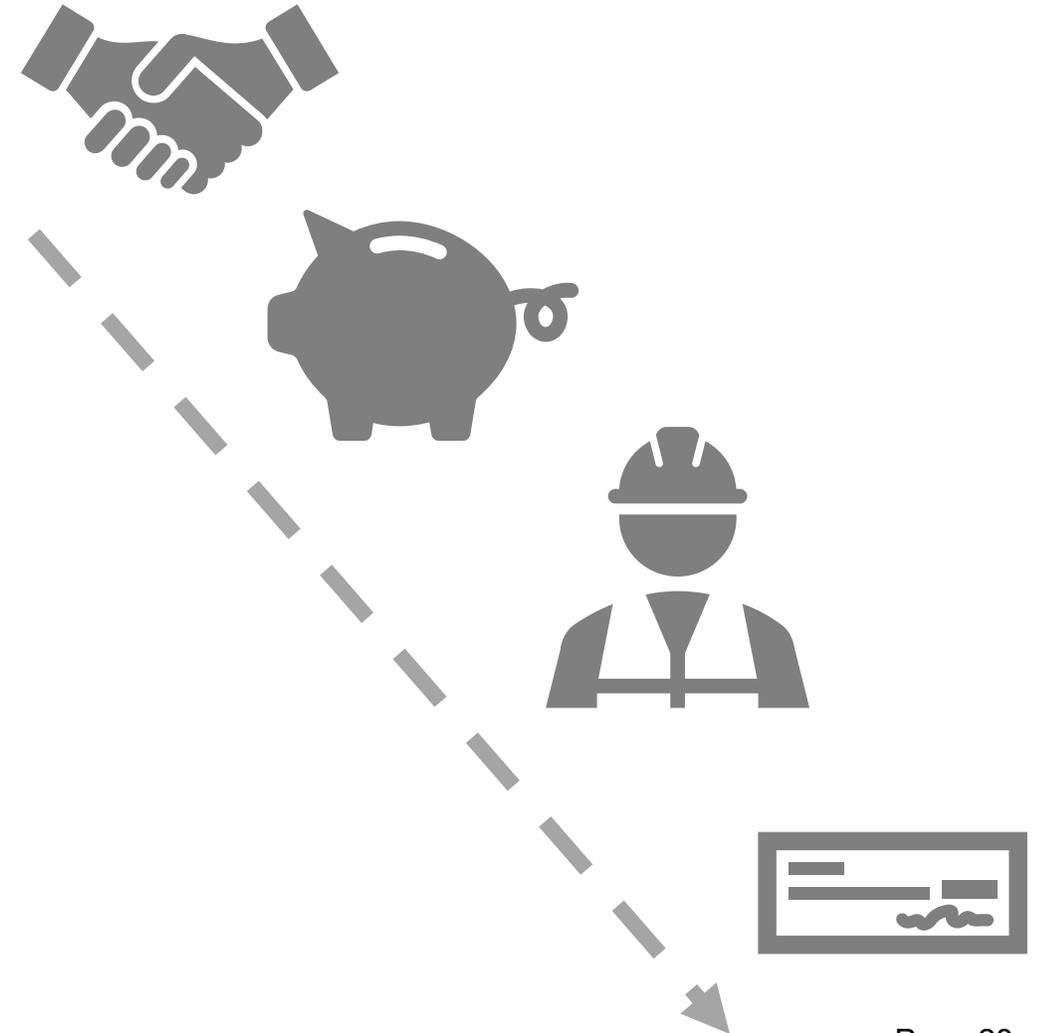
**Increase Safety**



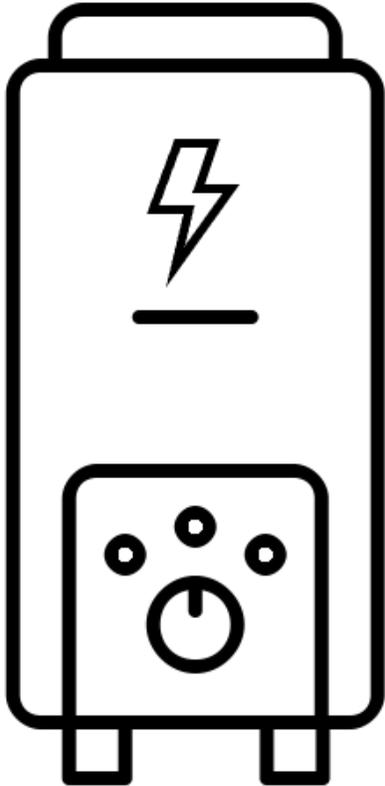
**Decrease utility  
costs**

# Utilize Escrow Deposit

- Deposit sent from escrow to City
- Buyer has up to 2 years to complete upgrades
- Refunded once property is compliant
- After 2-years the funds are forfeited to the City and could be used to help fund low-income electrification programs
- Operate similar to Private Sewer Lateral

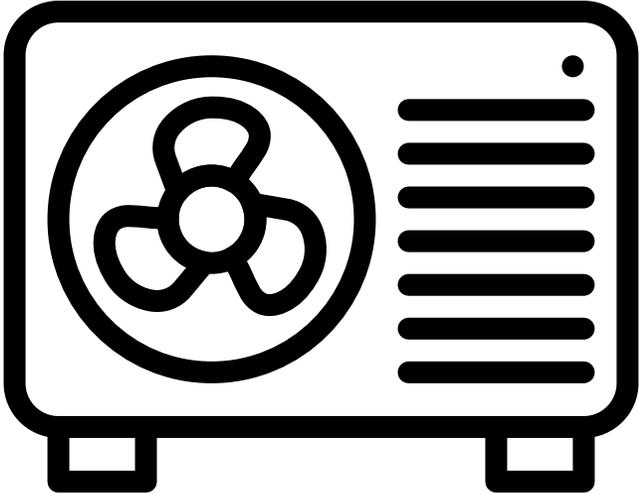


# Exemption Pathway: Heat Pump System



**Water Heating**

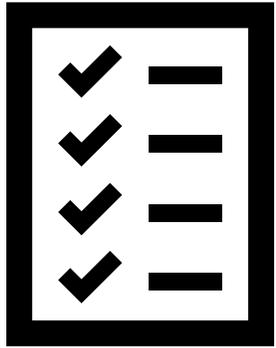
**OR**



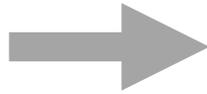
**Space Heating/HVAC**



# Example: Home *doesn't* have a heat pump system



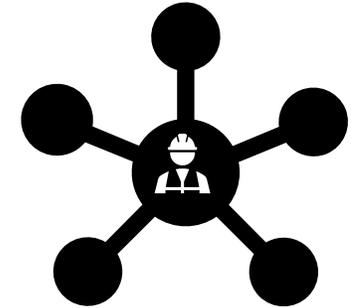
Seller completes assessment (Home Energy Score)



Home listed for sale

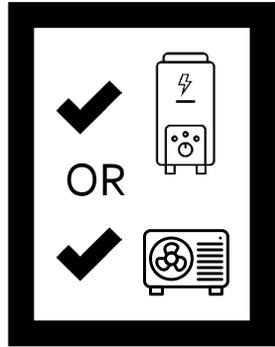


Funds to cover upgrades negotiated at closing through escrow deposit



Buyer completes upgrades to meet target credit requirement and utilizes escrow deposit

# Example: Home *has* a heat pump system



Seller completes assessment  
(Home Energy Score)



Home listed for  
sale



Fully Compliant, no  
upgrade needed

# Phase-in by Building Type



- **Phase I: Single-family, ADUs, Duplexes, Condos within 1-4 unit buildings**
  - Expected implementation 2026
  - Likely to be owner-occupied
  - Bulk of sales
  
- **Phase II: 3-4 Units**
  - Expected implementation 2028
  - Likely to be rental properties
  - Complex/shared systems
  - Need to develop additional support systems



# Berkeley Sales Analysis



Building Type	Avg. # of Buildings Sold per Year	% of Sales
Single Family	600	61%
Duplex	60	6%
Condominiums (within 2-4 Unit Buildings)	30	3%
3-4 Units	50	5%
Not subject buildings (Commercial, larger Multifamily, industrial)	260	25%

# Proposed Exemptions/Support



- **BESO Exemptions:**
  - All-electric homes
  - Refinances, partial and inheritance transfers
  - Income qualified **First Time Home Buyers**
- **Support:**
  - **Offset BESO assessment costs** for income qualified sellers
  - Credit for **High Home Energy Score**
  - Option to obtain **early refund**
  - **Hardship** extensions and deferrals



# Feedback from Additional Outreach

- **Timeline to complete upgrades**
  - *Concerns:* Some upgrades may take longer than 2 years
  - *Potential Update:* Allow 1-year with up to 2-year extension (up to 3 years total)
- **Condominiums**
  - *Concerns:* Technical feasibility, lowest entry for homeownership
  - *Potential Update:* Exclude condominiums
- **ADUs**
  - *Concerns:* Size limitations, additional costs to complete upgrades
  - *Potential Update:* Exclude ADUs
- **Escrow deposit**
  - *Concerns:* Requires buyers to have additional funds on hand for closing



# Key Takeaways

- Only applies to buildings/units being sold
- Sellers are not required to complete upgrades
- Flexible upgrade options that buyers can choose from
- Upgrade Exemptions
  - Buildings with an electric water heater **OR** heat pump HVAC
  - Income qualified First Time Home Buyers
- Improves comfort, safety, and resilience

# Thank You!



## **Ammon Reagan**

BESO Program Coordinator

Office of Energy and Sustainable Development

[AREagan@BerkeleyCA.gov](mailto:AREagan@BerkeleyCA.gov)

## **Sarah Moore**

Manager

Office of Energy and Sustainable Development

[SMoore@BerkeleyCA.gov](mailto:SMoore@BerkeleyCA.gov)



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~~ measures will lower energy and water costs, transition buildings away from the use of fossil fuels, and 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 or a unit within 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 resiliency, emissions savings, cost, or other measured benefit associated with a Resiliency 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 solely of 1 to 4 ~~residential Dwelling U~~units, regardless of size. A single condominium unit within a 1 to 4 Unit Residential Building qualifies as a 1 to 4 Unit Residential Building unto itself.

**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. (Ord. 7740-NS § 1, 2020; Ord. 7397-NS § 5 (part), 2015)

~~S. "Transfer" means the conveyance of title to real property, including 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. (Ord. 7740-NS § 1, 2020; Ord. 7477-NS § 2, 2016; Ord. 7397-NS § 5 (part), 2015)

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

**19.81.060 – Single-Family1 to 4 Unit Residential Buildings.**

A. Resilience Standard. When a unit within a 1 to 4 Unit Residential Building is transferred, or when an entire 1 to 4 Unit Residential Building is transferred, the entity being transferred shall achieve a required number of Credits, as determined by the Administrator, by undergoing Resilience Upgrades.

AB. Energy Report. Owners of Single-Family1 to 4 Unit Residential Buildings and owners of a unit residing within a 1 to 4 Unit Residential Building 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 or unit for sSale; 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 property owner fails to complete the Energy Report an administrative fee shall be charged, which fee 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 one-year extension, with an opportunity for an additional one-year extension, to meet the requirements of BMC 19.81.060(C) if the Transferor and Transferee deposit funds with the City in an amount the Administrator determines to be sufficient to render compliance. The Transferor and Transferee must execute and deliver to the Administrator or her 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 Transferor and Transferee shall recoup their 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 and transferred to the City.

#### E. Appeals.

1. If deposit funds are forfeited and transferred 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 Transferor and Transferee of (i) the forfeiture and transfer 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 Transferor or Transferee may appeal the forfeiture and transfer.

a. An appeal shall be submitted to the City Manager 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 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 or affirm the decision of the prior review authority.

5. When acting on an appeal, the Hearing Officer will use the same decision-making criteria and shall make the same findings as the prior review authority.

6. 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 and units residing within a 1 to 4 Unit Residential Building.
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 purchasers 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. (Ord. 7740-NS § 1, 2020; Ord. 7397-NS § 5 (part), 2015)

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 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 supports Berkeley's commitment to become a Fossil Fuel Free City, meet Race to Zero by reducing GHG emissions 60.5% from 2018 by 2030.

~~and become carbon neutral 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 or unit that has electrified all building systems and appliances and capped all gas lines to the building or unit.

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~~ 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 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 Small or Medium building 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. (Ord. 7740-NS § 1, 2020; Ord. 7477-NS § 3, 2016; Ord. 7397-NS § 5 (part), 2015)~~

~~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 where all units being transferred are completely served by at least one electric heat pump system or 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 their escrow deposit prior to completion of the Resilience Upgrades upon a showing that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that they 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 or of units within 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 may be 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, 2025.

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

# Building Emissions Saving Ordinance (BESO)

## Time of Sale Upgrade Requirements

June 3, 2024



# Background and Current BESO Requirements

# Residential Energy Conservation Ordinance (RECO)



- Started in 1987
- Required 10 minimal energy/water measures at point of sale or remodel
- Buyer to install within 12 months

## Lessons Learned

- One size doesn't fit all
- Wasn't getting to deep GHG reductions

Residential Energy Conservation Ordinance (RECO)  
Chapter 19.16  
Ordinance 6099-N.S.

Unit # \_\_\_\_\_

**FORM A**

Escrow Closing date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Address of Property: \_\_\_\_\_ Unit # \_\_\_\_\_

Title Company: \_\_\_\_\_ Escrow #: \_\_\_\_\_

Structure \_\_\_\_ of \_\_\_\_ Number of units: \_\_\_\_\_ (NOTE: Each structure requires a separate Form A) Circle one: PASS FAIL

Acceptance of this form by the City deems the property to be in compliance with RECO (Ordinance 6099, BMC 19.16) It is given to property owners by the RECO inspector after a satisfactory RECO inspection. File this form with: City of Berkeley Building & Safety Division, 2120 Milvia St., Berkeley, CA 94704; Telephone 981-7440 A \$20 filing fee is required for each residential structure. The maximum required expenditure for meeting the requirements of this Ordinance is 0.75% of the final sale price for the property. See below.

**KNOB & TUBE WIRING Notification** (Attach Electrician's safety inspection report, if applicable.) YES NO N/A

If Knob & Tube wiring is in the attic, has a licensed electrician inspected, signed & posted a safety notice in the attic?

RECO MEASURES:	Complete	Incomplete	N/A	Unit #
1. Ceiling insulation of minimum thermal resistance value R-30 installed .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
2. Furnace heating ducts sealed at plenum and all joints in heating duct system sealed with mastic and insulated to a minimum of R-3 .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
3. Hot water pipes in pumped, recirculating domestic water heating systems insulated to a minimum thermal resistance of R-3. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
4. All domestic storage water heaters insulated to a minimum total of R-12. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
5. All exposed hot and cold water pipes within at least 24 inches of water heater are insulated to a minimum thermal resistance of R-3, except within 6 inches of single-wall flue and one inch of a double walled flue .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
6. Installed low-flow faucet devices or fixtures with a maximum flow rate of 3 gallons/minute in all showers; a maximum of 2.75 gallons per minute in all sinks and lavatories; and a maximum of 4 gallons/minute in all other faucets .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
7. Installed toilet fixtures designed to use no more than 1.6 gallons per flush, or existing fixtures modified to reduce the amount of water used while ensuring correct operation. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
8. Approved weatherstripping must be installed on all exterior doors .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
9. Approved dampers, doors, or other devices to block air flow and reduce heat loss through chimneys are installed and working .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
10. Multi-unit structure common area light fixtures have lamps of at least 25 lumens per watt .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___

**NOTE:**  If any items are checked "INCOMPLETE" because the maximum required expenditure for this sale has been met, check here and attach itemized receipts for RECO measures (with an explanation, if necessary) and note the maximum required expenditure amount:

Final Sale Price \$ \_\_\_\_\_ X 0.0075 = \$ \_\_\_\_\_ City Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

Seller/Owner: \_\_\_\_\_ Buyer: \_\_\_\_\_

(Type/Print Name)

Seller/Owner: \_\_\_\_\_ Buyer: \_\_\_\_\_

(SIGNATURE)

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Inspector Name & Agency: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Inspection Fee paid by: \_\_\_\_\_ Amount paid: \$ \_\_\_\_\_

Filing Fee (\$20/structure) paid by: \_\_\_\_\_ Amount paid \$ \_\_\_\_\_

ORIGINAL: Building & Safety    Yellow: Owner    Pink: Inspector

# Zero-NOx Appliance Rule

Prohibits the sale and installation of **NEW** NOx emitting gas water heaters and furnaces

## No Gas Water Heating

- **2027** – Smaller buildings
- **2031** – Medium/large buildings

## No Gas Space Heating (HVAC)

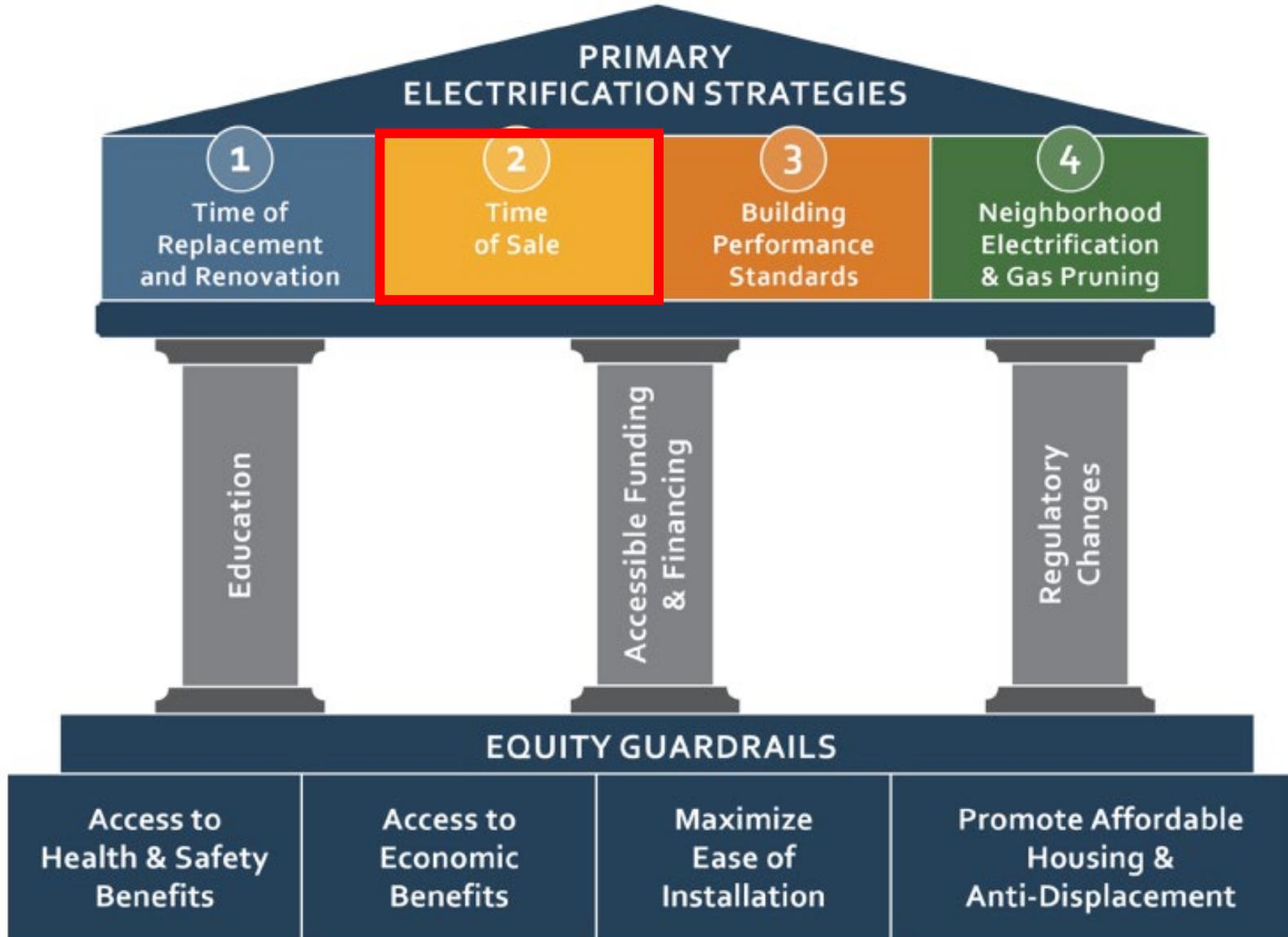
- **2029** – All buildings



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT



# Berkeley's Existing Building Electrification Strategy



# Building Emissions Saving Ordinance (BESO)

## Time of Sale Program



Buildings **less** than  
25,000 sqft

## Large Building Program



Buildings **greater** than  
25,000 sqft



# Upgrade Requirements Timeline

## Small Residential: Time of Sale



- Develop policy recommendation



- Bring proposal to Council
- Prep for implementation



- Start implementation



- Start developing policy recommendation



## Medium/Large Buildings: Building Performance Standard (BPS)

# Current Time of Sale Program



- Requires an **energy/electrification assessment** prior to listing a building for sale.
  - Home Energy Score for Single family homes
  - Provides information to potential buyers
- Refers building owners into local incentive programs to complete voluntary upgrades





# Policy Objectives for Proposed Requirements

 Accelerate building electrification and resilience upgrades

 Promote early compliance

 Align with available resources

 Ensure smooth sales process

 Provide flexibility in required upgrades

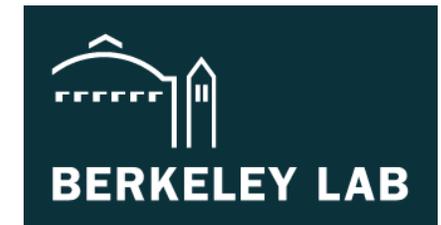
 Ensure renters are protected

# Technical Advisory Committee



## Members:

- Building Decarbonization Experts
- BESO Assessors
- Architects
- Electrification Contractors
- Utilities
- Regional and State entities



# Outreach and Engagement



- Real Estate Community
  - Realtor Offices
  - Real Estate Professionals Webinar
  - Bridge Association of Realtors
- Berkeley Rent Board – Sustainability Committee
- Berkeley Neighborhoods Council
- City Green Building Coordination Team
- Berkeley Property Owners Association
- Community and Environmental Organizations
- Council Policy Sub-committee (FITES)
- Environment and Climate Commission



# Proposed Upgrade Requirements

# Overview of Proposed BESO Requirements

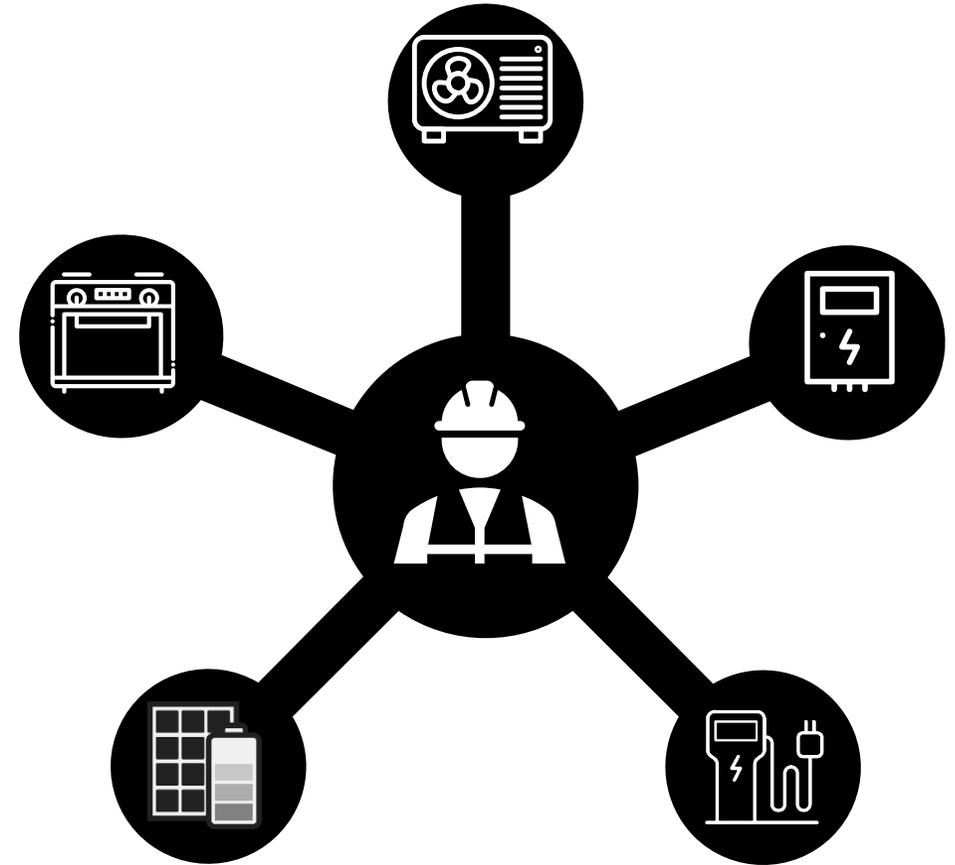
- Seller completes the BESO assessment
- Buyer completes the upgrade(s) within 2 years of the sale if compliance has not been met



# Flexible Resilience Standard



- **Upgrade requirements:**
  - List of possible upgrades
  - Each upgrade has a corresponding credit value
  - Buildings need to achieve minimum number of credits through upgrades
- **Credit value criteria:**
  - Emissions savings
  - Cost
  - Health, safety, resilience bonus
- **Rationale:**
  - Addresses range of building conditions
  - Owner can prioritize





# Potential Measures & Credits

## Credits Needed: 6

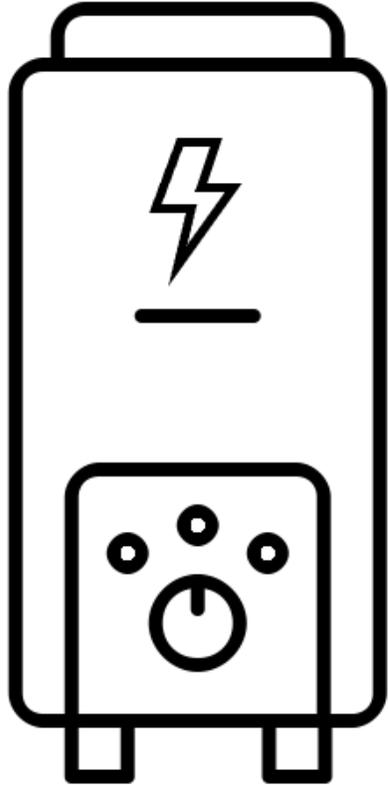
Measure	Credits*	Criteria
Heat Pump Water Heater	6	Emissions
Heat Pump HVAC	6	Emissions
Knob + Tube Replacement	6	Cost
Smart Panel	6	Cost
Solar PV + Storage	6	Cost
Panel Upgrade	4	Cost
Duct Sealing & Replacement	3	Emissions
Bi-Directional EV Charger	3	Cost
EV Charger	2	Cost

Measure	Credits*	Criteria
Induction Range	2	Emissions
Window Replacements	2	Emissions
Attic Insulation	2	Emissions
Wall Insulation	2	Emissions
Floor Insulation	1-2	Emissions
Greywater System	1-2	Cost
Air Sealing	1	Emissions
Prewiring & 240v receptacles	1/2 per receptacle	Cost

\*The credit values are subject to change once vetted by the Technical Advisory Committee



# Example Compliance Costs



## Heat Pump Water Heater

Measure	Credits	Average Cost	Available Incentives
Heat Pump Water Heater	6	\$6,800	Tax credit, TECH Clean CA, etc.
<b>Total</b>	<b>6</b>	<b>\$6,800</b>	<b>\$2,000+</b>

Average Cost after incentives:  
**\$4,800 or less**



# Example Compliance Costs



## Energy Efficiency & Envelope Improvements

Measure	Credits	Average Cost	Available Incentives
Attic Insulation	2	\$2,500	\$1,000
Air Sealing	1	\$1,500	n/a
Duct Sealing/Replacement	3	\$4,600	\$800
<b>Total</b>	<b>6</b>	<b>\$8,600</b>	<b>\$1,800</b>

Average Cost with incentives:

**\$6,800**



# Example Compliance Costs

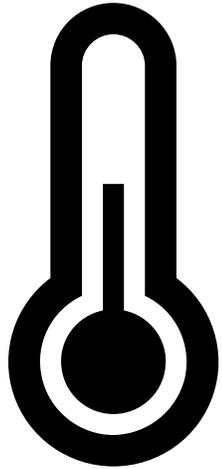


Measure	Credits	Average Cost	Available Rebate
Panel upsizing and replacement	4	\$4,300	n/a
240v outlet installation (oven, dryer, water heater, EV charger)	2	\$1,800	n/a
<b>Total</b>	<b>6</b>	<b>\$6,100</b>	<b>n/a</b>

**Electric Ready –  
Preparing for  
BAAQMD Compliance**

**Average Cost after rebates:  
\$6,100**

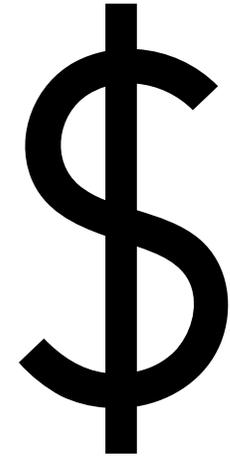
# Benefits to Homeowners



**Improve Comfort  
and Indoor Air  
Quality**



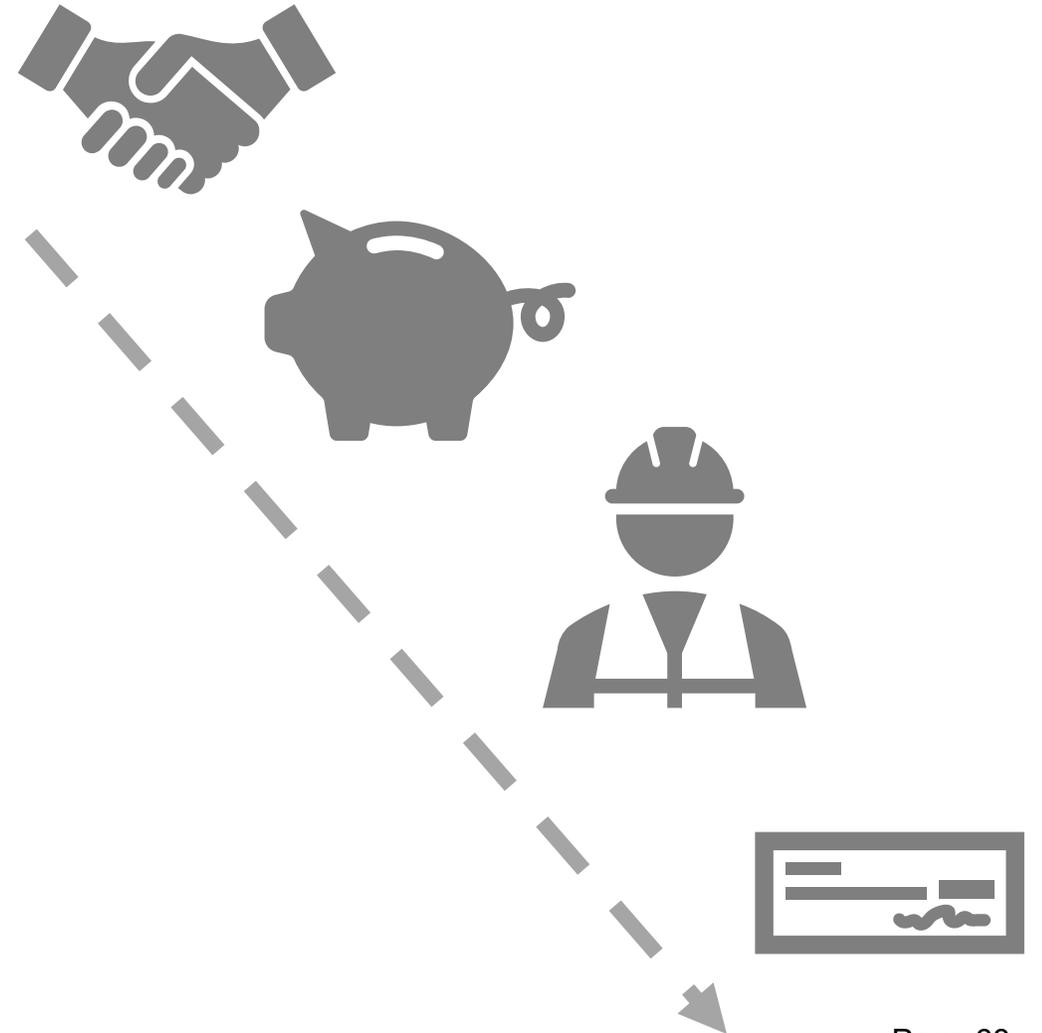
**Increase Safety**



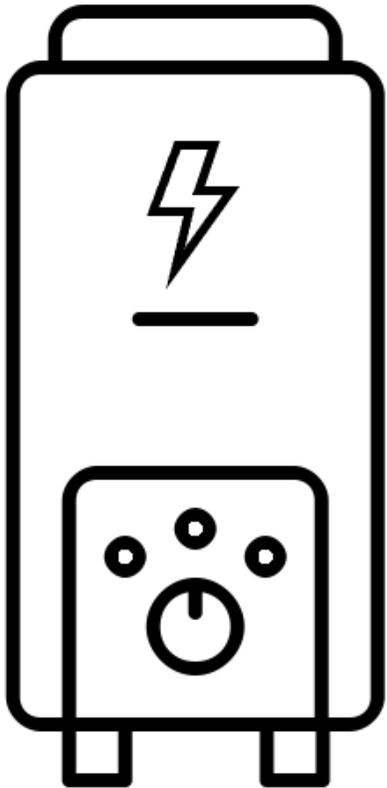
**Decrease utility  
costs**

# Utilize Escrow Deposit

- Deposit sent from escrow to City
- Buyer has up to 2 years to complete upgrades
- Refunded once property is compliant
- After 2-years the funds are forfeited to the City and could be used to help fund low-income electrification programs
- Operate similar to Private Sewer Lateral

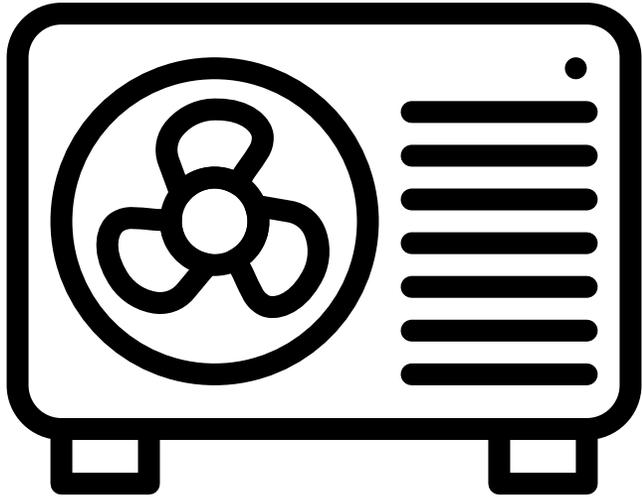


# Exemption Pathway: Heat Pump System



**Water Heating**

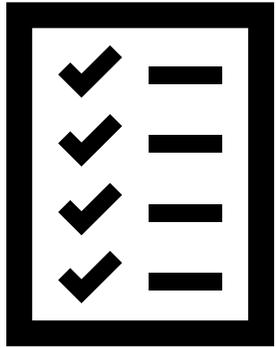
**OR**



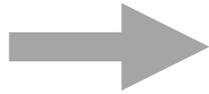
**Space Heating/HVAC**



# Example: Home *doesn't* have a heat pump system



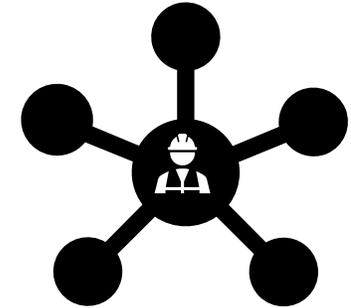
Seller completes assessment (Home Energy Score)



Home listed for sale

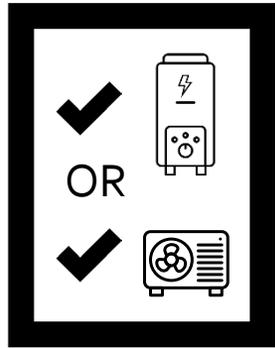


Funds to cover upgrades negotiated at closing through escrow deposit



Buyer completes upgrades to meet target credit requirement and utilizes escrow deposit

# Example: Home *has* a heat pump system



Seller completes assessment  
(Home Energy Score)



Home listed for  
sale



Fully Compliant, no  
upgrade needed

# Phase-in by Building Type



- **Phase I: Single-family, ADUs, Duplexes, Condos within 1-4 unit buildings**
  - Expected implementation 2025
  - Likely to be owner-occupied
  - Bulk of sales
  
- **Phase II: 3-4 Units**
  - Expected implementation 2027
  - Likely to be rental properties
  - Complex/shared systems
  - Need to develop additional support systems



# Berkeley Sales Analysis

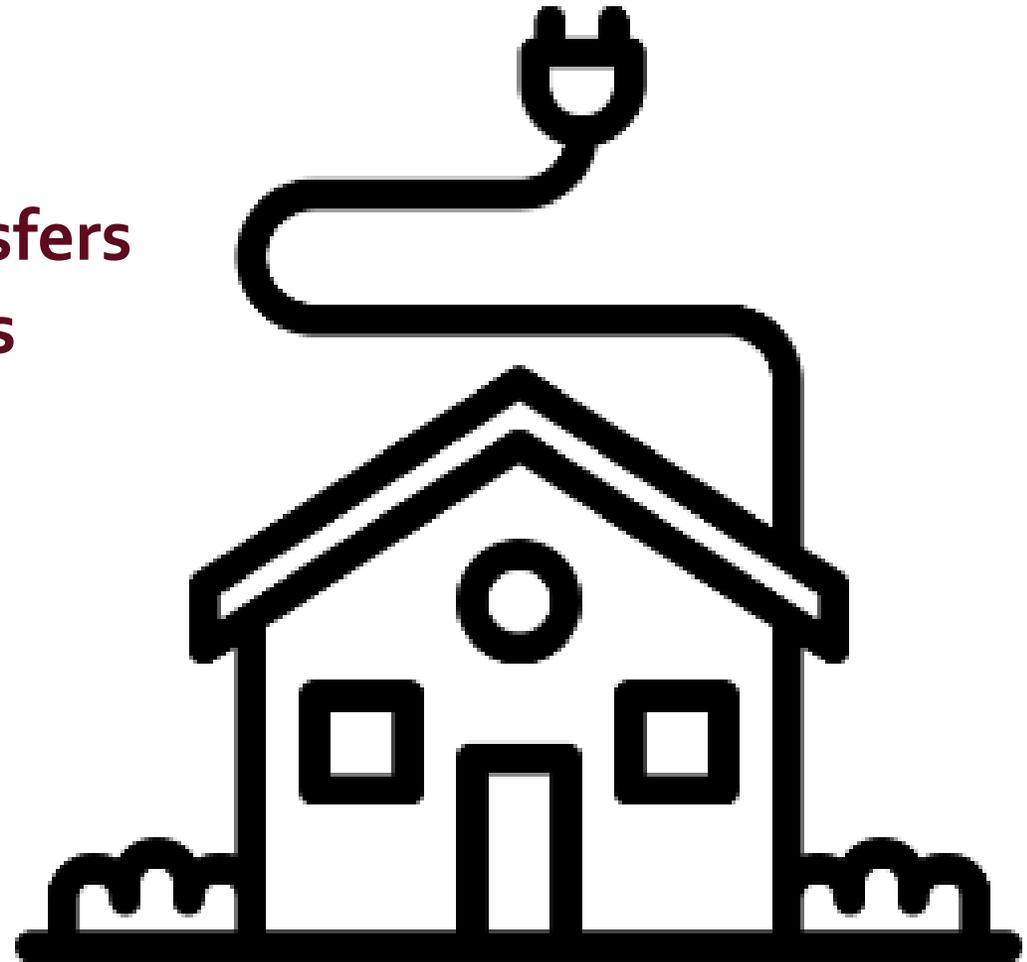


Building Type	Avg. # of Buildings Sold per Year	% of Sales
Single Family	600	61%
Duplex	60	6%
Condominiums (within 2-4 Unit Buildings)	30	3%
3-4 Units	50	5%
Not subject buildings (Commercial, larger Multifamily, industrial)	260	25%

# Proposed Exemptions/Support



- **BESO Exemptions:**
  - **All-electric homes** with permits showing capped gas line
  - **Refinances, partial and inheritance transfers**
  - Income qualified **First Time Home Buyers**
- **Support:**
  - **Offset assessment costs** for income qualified sellers
  - Credit for **High Home Energy Score**
  - Option to obtain **early refund**
  - **Hardship** extensions and deferrals



# September 9, 2020 – Berkeley Marina

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# Thank You!



## **Ammon Reagan**

BESO Program Coordinator

Office of Energy and Sustainable Development

[AREagan@BerkeleyCA.gov](mailto:AREagan@BerkeleyCA.gov)

## **Sarah Moore**

Manager

Office of Energy and Sustainable Development

[SMoore@BerkeleyCA.gov](mailto:SMoore@BerkeleyCA.gov)





Planning and Development Department  
Office of Energy and Sustainable Development

## Berkeley's Building Emissions Saving Ordinance (BESO) Proposed Amendments

In December 2020, Berkeley City Council directed staff to recommend upgrade requirements for Berkeley's Building Emission Saving Ordinance (BESO) for Council's consideration. The following year, City Council adopted Berkeley's Existing Building Electrification Strategy (BEBES), which identified a time of sale upgrade policy as one of the four primary policy strategies to equitably decarbonize Berkeley's existing buildings. The proposed BESO amendments build on BESO's current requirements of energy disclosure at the time of sale and are coupled with upgrade requirements. Prior to BESO, from 1987-2015, Berkeley required prescriptive energy efficiency measures at time of sale through the Residential Energy Conservation Ordinance (RECO). The proposed BESO amendments increase resilience and can improve indoor air quality, comfort, health, and safety. They can also help new Berkeley homeowners prepare for the Bay Area Quality Management District's (BAAQMD) zero NOx emissions standard, which prohibits the sale and installation of NOx emitting gas-powered water heaters and furnaces, starting in 2027. Homeowners can install an electric heat pump early (which is a zero NOx appliance) or complete necessary electrical upgrades to ensure a seamless transition.

### Flexible Resilience Standard

The proposed amendments to BESO would **maintain the current assessment and disclosure requirements** and **establish a flexible resilience standard** that requires small residential building owners to complete upgrades from a **menu of options** when a property is sold. **Building owners can choose which upgrades to complete** that best fit with their preferences and building's conditions. Each upgrade measure will have a **corresponding credit value based on its emissions reductions and/or costs**. A building owner would need to complete one or more measures to meet the required **number of credits within two years of the sale**. The cost of compliance will vary, as a homeowner can choose which upgrades they want to complete. The proposed amendments would require **6 credits for full compliance**. Here's an initial list of measures and potential credits:

Measure	Credits*	Measure	Credits*
Heat Pump Water Heater	6 (Full)	Induction Range	2
Heat Pump HVAC	6 (Full)	Window Replacements	2
Knob + Tube Replacement	6 (Full)	Attic Insulation	2
Smart Panel	6 (Full)	Wall Insulation	2
Solar PV + Storage	6 (Full)	Floor Insulation	1-2
Panel Upgrade	4	Greywater System	1-2
Duct Sealing & Replacement	3	Air Sealing	1
Bi-Directional EV Charger	3	Prewiring & 240v Receptacles	½ per receptacle
EV Charger	2	*The credit values may be subject to change.	

Installing a heat pump water heater is the simplest and cheapest way to comply. Without rebates, the average purchase and installation cost of a heat pump water heater in Alameda County is ~\$6,800<sup>1</sup>. There are tax credits and rebates currently available to reduce this cost.

### **Escrow Deposit**

Similar to Berkeley's Private Sewer Lateral Program, a cash **deposit** to cover the cost of compliance will be held by the City through escrow and be **refunded in full once the upgrades are complete**. The deposit will be set at an amount equivalent to the minimum estimated cost of compliance.

### **Heat Pump Exemption Pathway**

**If a building has at least one electric heat pump system, then no additional upgrades are needed.** The proposed amendments include a heat pump exemption pathway that encourages homeowners to install a heat pump in advance of a home sale in order to meet full compliance. Currently, 5-7% of Berkeley homes would already qualify for this exemption, and more will become exempt as they transition to electric heat pumps.

### **Additional Exemptions and Support**

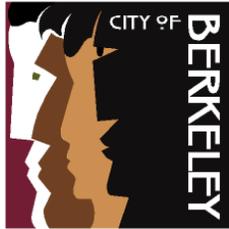
- **First-time Homebuyers** – First time homebuyers participating in an approved income-qualified first-time home buying program or down payment assistance program would be exempt from the flexible resilience standard.
- **Early Refund Exception** – Building owners may apply for an early refund of their deposited funds if they supply sufficient evidence, such as issued building permits and a contract for qualifying work, to show the upgrades will be completed.
- **High Home Energy Score Credit** – Buildings that have received a high Home Energy Score demonstrate a high level of energy efficiency and will receive bonus credits, reducing the number of upgrades needed to meet the standard.

### **Phase-In Timeline for Building Types:**

- **Phase I:** Single Family Homes, ADUs, Duplexes, Condominiums within 1-4 Unit buildings (approximately 700 homes/units each year) - expected implementation 2025
- **Phase II:** Triplexes and Fourplexes (approximately 50 buildings each year) - expected implementation 2027

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<sup>1</sup> Based on data through TECH Clean California: <https://techcleanca.com/>



Office of the City Manager

ACTION CALENDAR  
February 27, 2024

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jordan Klein, Director, Planning and Development Department  
Subject: Proposed Amendments to the Building Emissions Saving Ordinance (BESO)

RECOMMENDATION

Adopt first reading of an Ordinance amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.

SUMMARY

Berkeley's Building Emissions Saving Ordinance (BESO) is one of the City's main programs designed to reduce emissions from existing buildings. In 2015, BESO removed the mandatory prescriptive requirements required through Berkeley's Residential Energy Conservation Ordinance (RECO) and focused on an assessment-based approach at time of sale. Currently, BESO relies on building owners to voluntarily complete energy upgrades and take the necessary steps to decrease their building's emissions. However, few building owners completed the recommended upgrades under BESO's voluntary model. City Council amended BESO in 2020, including direction to staff to develop energy upgrade requirements for all building sizes for City Council's consideration. The proposed amendments to BESO, re-establishing requirements to make upgrades that increase resilience, alongside an assessment, are critical to achieving Berkeley's ambitious climate action and greenhouse gas (GHG) reduction goals (note that throughout this staff report and the BESO, "emissions savings" and "emissions reductions" are used interchangeably).

The proposed amendments to BESO would establish a flexible resilience standard that requires small residential building owners to complete upgrades from a menu of options when a property is sold. With the proposed time of sale requirements, building owners can choose which measures to complete to satisfy the requirements in order to accommodate building conditions and owner interests. For homes that haven't met compliance prior to sale, an escrow deposit will ensure that funds to cover the cost of the upgrades have been set aside so that the buyer can complete the upgrades. BESO upgrade requirements include a number of exemptions, including for first-time home buyers receiving federal assistance and for all-electric buildings and buildings that have at least one heat pump system.

The proposed time of sale requirements cover one to four-unit residential buildings including condominium units residing within a two to four-unit building and will be implemented in two phases beginning in 2025. Following the establishment of time of sale requirements, staff will develop proposed requirements for large buildings.

#### FISCAL IMPACTS OF RECOMMENDATION

Current staffing levels within the BESO program are sufficient to accommodate the proposed BESO amendments if updates are made to BESO's compliance software. Updates are needed to BESO's Online Application portal to incorporate the new workflows and application types, develop additional automations to reduce staff-time, and provide additional customer support options for building owners. One-time costs to upgrade BESO's compliance software will not exceed \$100,000.

Currently, the Finance Department allocates 0.5 FTE of an Accounting Office Specialist II to process escrow deposits for Berkeley's Private Sewer Lateral Program. BESO would require a similar process and an additional 0.5 FTE will likely be needed to process the increase in escrow deposits. Recovering this cost will be addressed through a new fee to obtain a BESO Certificate. This fee will be included an updated BESO fee structure that will be brought to Council within the next year.

#### *Fiscal Impacts on the Property Owner:*

The seller would maintain responsibility to complete the currently required BESO assessment, which costs an average of \$350 per dwelling unit. The cost to a buyer to complete upgrades varies depending on which upgrades are selected and the building characteristics and condition. The easiest and cheapest upgrade that meets compliance is to install a heat pump water heater, with a current average cost of \$6,800 in Alameda County. Additional rebates and tax credits are available to offset the costs of heat pump water heaters and many of the other applicable measures to reach compliance.

#### CURRENT SITUATION AND ITS EFFECTS

Expanding BESO to establish a flexible resilience standard for small residential buildings is in response to Council direction in the 2020 BESO Amendments<sup>1</sup>, and is a Strategic Plan Priority Project, advancing the City's goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

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<sup>1</sup> As per Building Emissions Saving Ordinance, BMC Chapter 19.81.040-060, amended on 12/15/20, "The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for [large, medium small and 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."

Berkeley's BESO has been one of the City's main programs to improve indoor air quality and reduce GHG emissions from existing buildings. Since BESO's adoption in 2015, more than 3,500 BESO assessments have been completed and more than 300 medium and large buildings have been regularly tracking and reporting their energy use. However, BESO has relied on voluntary uptake of the assessment recommendations to achieve Berkeley's climate action goals, and few building owners have acted. BESO includes an exemption pathway that allows building owners to complete energy upgrades in lieu of an assessment and only 2-3% of building owners have opted to complete energy upgrades. The proposed amendments to BESO, which would require upgrades designed to reduce emissions at the time of sale, are critical to achieving Berkeley's ambitious climate action and GHG reduction goals and its goals of improving public health and the resilience of its built environment.

There are several benefits to requiring buildings to complete upgrades when sold. Many new homeowners renovate soon after moving in and buyers can incorporate the cost of the upgrades into their budget when purchasing a home. By requiring buildings to complete upgrades that incentivize all-electric technologies or otherwise result in reductions in air pollution or GHG emissions, building owners can meet BESO compliance, decrease their building's emissions, and receive additional electrification benefits, such as better indoor air quality and increased comfort.

*Flexible Resilience Standard:*

The proposed amendments will establish a flexible resilience standard for small residential buildings based on a credit system. Building owners who have already taken steps to reduce emissions by installing a heat pump water heater or HVAC system would not be required to complete additional upgrades. The standard will be verified when a property is sold.

The flexible resilience standard will utilize a credit-based compliance system to ensure the greatest flexibility. Building owners can choose which measures to complete in order to accommodate the range of building conditions and owner interests. Each measure will have a corresponding credit value based on its emissions savings. Measures that contribute to resilience but don't directly reduce emissions will have their credit values based on cost. Bonus credits may be added to specific measures that provide additional health, safety, or equity benefits. Initial measures include:

- Heat Pump Water Heater
- Heat Pump HVAC
- EV Charging Station
- Bi-Directional EV Charger
- Induction Range
- Knob and Tube Replacement
- Panel Upgrade
- Pre-wiring & 240v Outlets
- Attic Insulation
- Wall Insulation
- Window Replacements
- Air Sealing
- Floor Insulation/Crawlspace Improvement
- Solar PV Installation
- Battery Storage Installation

- Smart Panel
- Duct Sealing/Replacement
- Greywater System

Staff will assemble a Technical Advisory Committee to establish guidelines for each measure, formalize the credits and scoring criteria, and vet new measures to include. See **Attachment 2** for the list of measures and example credits.

The cost of compliance will vary as a building owner can choose which measures to complete based on their home's conditions and priorities. Buyers may also recoup costs of some of the upgrades through their monthly utility bills as some compliance measures may have the ancillary impact of increasing their building's energy efficiency. Many of the measures align with current rebates or tax credits provided by Federal, State, and local programs, such as BayREN Home+, TECH Clean California, and the Inflation Reduction Act. For example, switching out a gas water heater for an electric heat pump is an easy and straightforward path to compliance. Without rebates, the average purchase and installation cost of a heat pump water heater in Alameda County is ~\$6,800<sup>2</sup>. Currently, a heat pump water heater installation is eligible for a \$2,000 Federal tax credit, a \$400 rebate from BayREN Home+, and a \$3,100 rebate from TECH Clean California. With these rebates, the average cost of installing a heat pump water heater can drop to ~\$1,300. See **Attachment 2** for additional compliance cost examples.

In the case where the building is not all-electric, does not have a heat pump, and has not met the requisite number of credits in the last five years, the buyer will have up to two years from the date of sale to make upgrades that comply with the flexible resilience standard.

If upgrades are needed, a monetary deposit to cover the cost of compliance will be held by the City through escrow, serving as an important compliance mechanism to assure that upgrades are completed. Funding for the deposit can be negotiated between a buyer and a seller. A similar escrow deposit process is used currently to enforce Berkeley Municipal Code Chapter 17.24, Abatement of Nonconforming/Substandard Sewer Laterals on Private Property. The deposit will be set at an amount equivalent to the minimum estimated cost of compliance.

The deposit will be refunded in full once the buyer meets the flexible resilience standard. The deposited funds will be forfeited and transferred to the City if the buyer does not complete the required upgrades before the expiration of the two-year deadline. The flexible resilience standard may be enforced by fines and penalties, as well as forfeiture of the escrow deposit.

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<sup>2</sup> Based on project installation data available through TECH Clean California: <https://techcleanca.com/public-data/>

An escrow deposit equivalent to the cost of the upgrades is an effective compliance mechanism to ensure upgrades are completed after the sale. It serves as a monetary incentive for buyers to complete the required upgrades in a timely manner in order to receive their deposit back. If upgrades are not completed the forfeited deposit will be used to reduce emissions in low-income homes, through such programs as the City's Climate Equity Fund or Just Transition Residential Electrification Program, further helping to guarantee emissions savings from BESO.

*All-Electric Building and Heat Pump System Exemptions:*

In order to increase the resilience of Berkeley homes and to reduce their GHG and air pollution emissions as soon as possible, the proposed amendments include a heat pump exemption pathway to encourage early compliance. Buildings where all units are completely served by at least one electric heat pump system would qualify for an exemption from any additional upgrades required by the flexible resilience standard.

Gas-based water heating and gas-based space heating are the two largest sources of emissions in Berkeley homes, and electrifying either one of these systems will yield significant reductions of GHG emissions. By providing a heat pump system exemption, building owners are incentivized to use currently available rebates to achieve BESO compliance and reduce their home's emissions well before they intend to sell. Based on data collected through BESO's Home Energy Score Assessments, it is estimated that 5-7% of Berkeley homes have at least one heat pump system and would already qualify for this exemption.

The minimum standard for the exemption will likely need to be increased over time to further decrease emissions from Berkeley's small residential buildings. Staff will monitor this exemption and propose an update along with requirements for large buildings for Council's consideration.

Additionally, because they have already substantially eliminated emissions, all-electric buildings that have electrified all building systems and appliances and capped all gas lines are exempt from the BESO assessment requirement and the flexible resilience standard.

*Covered Buildings and Phase-In:*

The proposed time of sale requirements will cover one to four-unit residential buildings including condominium units residing within a two to four-unit building. Condominiums were previously excluded from BESO, but these units tend to operate similarly to a single-family home and have access to the same rebates and incentives for completing energy upgrades. Each year around 2-3% of Berkeley's one to four-unit residential building stock is sold. The following approximate number of buildings/units would need to complete upgrades each year, assuming compliance hasn't already been met:

Building Type	Avg. # of Buildings Sold per Year	% of Annual Property Sales <sup>3</sup>
Single Family	600	61%
Duplex	60	6%
Condominiums (within 2-4 Unit Buildings)	30	3%
3-4 Units	50	5%

The proposed time of sale requirements will be implemented in two phases:

- Time of Sale Phase I - Single-family homes, ADUs, Duplexes, and Condominium units:** These buildings/units cover ~70% of Berkeley’s annual real estate sales and they are more likely to be owner occupied. Requirements for these buildings will take effect January 1, 2025.
- Time of Sale Phase II - Triplexes and Fourplexes:** These buildings are often rental properties and many have complex mix of shared and in-unit systems. Requirements for these buildings will take effect on January 1, 2027. The additional time will help ensure that staff have the capacity to adequately implement the program at a larger scale, and will also allow policy-makers time to consider whether to establish additional renter protections to mitigate any unintended consequences that may result from required construction projects.

BESO’s time of sale requirements will continue to exclude refinances, transfers due to inheritance, and partial transfers, such as a change in title due to marriage or divorce.

*Assessment Requirement:*

The current BESO assessment requirement will be maintained, requiring sellers of one to four-unit residential buildings to complete a comprehensive energy and electrification assessment prior to listing their building for sale. The assessment will confirm whether a building qualifies for an exemption, by having at least one heat pump system, or if the buyer needs to complete upgrades to meet the flexible resilience standard. If upgrades are required, the assessment will recommend which upgrades to prioritize based on a building’s conditions, list the current incentives for each upgrade, and provide clear instructions on how to achieve the required credits. The current ability to defer the assessment responsibility to the buyer will be eliminated to ensure the BESO compliance status of a property is communicated to all potential buyers when it’s listed for sale.

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<sup>3</sup> The remaining 25% of sales include vacant lots, commercial buildings, industrial buildings, 5+ unit multifamily buildings, and condominium units within a 5+ unit multifamily building.

*Additional Exemptions and Support:*

Many of BESO's current deferrals and exemptions will no longer be relevant to small residential buildings, such as a major renovation deferral, but new exemptions and support are proposed to help building owners comply with the upgrade requirements. Some exemptions and support opportunities for building owners include the following:

- **First-time Homebuyers** – First time home buyers participating in an approved income-qualified first-time home buying program or down payment assistance program would be exempt from the flexible resilience standard, because the additional costs of upgrade requirements could prevent these income-qualified buyers from purchasing in Berkeley. These owners will still receive the assessment and will be encouraged to apply for other income-qualified incentive programs to help improve the resilience of their new home.
- **Early Refund Exception** – Building owners may apply for an early refund of their deposited funds if they supply sufficient evidence, such as issued building permits and a contract for qualifying work, to show the upgrades will be completed.
- **High Home Energy Score Credit** – Buildings that demonstrate a high level of energy efficiency by receiving a high Home Energy Score will receive bonus credits so fewer upgrades will be needed to meet the standard. High scoring buildings are often smaller buildings with lower energy use and many have already completed several energy efficiency upgrades in the past.
- **Hardship Deferral** – A building owner may be eligible to defer the required upgrades past two years if experiencing financial hardship. Financial hardship may be demonstrated by participating in an energy assistance income qualified program, participating in a property tax postponement program, or providing other proof that they are not able to complete the required upgrades within two-years of the sale.

BACKGROUND

The development of time of sale energy upgrade requirements was recommended in the BESO evaluation completed in 2015, directed by Council in the 2020 BESO Amendments, and one of the four recommended strategies of Berkeley's Existing Building Electrification Strategy (BEBES) adopted by Council in 2021.

**Path to Requirements**

Prior to the passage of BESO in 2015, the City maintained time of sale requirements for residential buildings since 1987 through the Residential Energy Conservation Ordinance (RECO).

RECO played an important role in advancing building energy and water efficiency and reducing Berkeley's GHG emissions. The ordinance prescribed a list of basic energy and water saving measures that were required to be installed in residential buildings at the point of sale or during significant remodels.

In 2015, RECO was replaced by BESO in order to create a more individually tailored approach to energy upgrades and achieve deeper energy savings and further reduce emissions from existing buildings. RECO's prescriptive measures were out of date with building science, lacked flexibility, lagged behind the current Title 24 California Energy Code and did not align with rate-payer funded incentive programs. BESO removed the mandatory prescriptive requirements and, instead, focused on an assessment-based approach. BESO currently requires building owners to complete a comprehensive energy and electrification assessment which provides information on how to best upgrade their building to decrease energy, emissions and operating costs. By providing valuable information on energy savings opportunities as well as access to incentive and financing programs, the goal of BESO was to on-ramp building owners to local energy efficiency and electrification rebate programs, such as BayREN Home+. BESO relies on building owners to voluntarily complete energy upgrades and take the necessary steps to decrease their building's emissions.

In 2019, an evaluation of BESO was conducted by *Energy Solutions* to evaluate the outcomes of the program<sup>4</sup>. The evaluation assessed whether BESO was meeting its goals of being easy, affordable, and valuable, and identified ways to better align BESO with Berkeley's policy goals of electrification and community resilience. The evaluation concluded that mandatory energy upgrades are needed to achieve Berkeley's climate action goals and transition our buildings off fossil fuels.

Based on the BESO evaluation, Berkeley City Council amended BESO in 2020 to increase its effectiveness in decreasing building emissions, advancing Berkeley's goal to become fossil fuel free, and furthering the public health of Berkeley residents. The amendments further aligned BESO with the City's emissions reduction goals, streamlined requirements for small and medium-sized buildings, and directed staff to develop requirements for Council's consideration<sup>5</sup>.

In November 2021, Berkeley City Council adopted the Berkeley Existing Building Electrification Strategy (BEBES). BEBES provides a framework for the transition to all-electric buildings in a way that includes and benefits all residents, especially members of historically marginalized communities. One of the four primary electrification strategies identified in BEBES was to develop and implement time of sale energy upgrade requirements through BESO.

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<sup>4</sup> Staff Report regarding the Evaluation and Recommended Updates to the Building Energy Savings Ordinance (Special Council meeting of July 21, 2020)

<sup>5</sup> Ordinance No. 7,740–N.S. Amendments to the Building Emissions Saving Ordinance (Adopted December 15, 2020)

In January 2023, the City of Berkeley joined cities across the nation in the National Building Performance Standards (BPS) Coalition<sup>6</sup>, a nationwide group of state and local governments that have committed to inclusively design and implement equitable building performance standards and complementary programs and policies, working to advance legislation and/or regulation, with a goal of adoption by Earth Day 2024. The BESO upgrade requirements proposed here would meet the City's commitments to the National BPS Coalition by establishing a resilience standard for small residential buildings. The resilience standard would require buildings to complete one or more upgrades to achieve an emissions reduction and/or resilience target.

The proposed BESO requirements will also help prepare Berkeley building owners for the recent Bay Area Quality Management District (BAAQMD) ruling that will stop the sale and installation of gas-powered water heaters and furnaces, starting in 2027. In Spring 2023, the BAAQMD amended two Air District rules to support improvements to regional air quality and public health, Regulation 9 – Rule 4 (Rule 9-4) and 6 (Rule 9-6). Beginning in 2027, Rule 9-6 will only allow the sale and installation of zero NOx residential water heaters (75,000 BTU/hr or less) throughout the Bay Area. In 2029, Rule 9-4 will require zero NOx residential and commercial furnaces. Currently, no gas systems can meet a zero NOx standard and building owners will instead be required to install electric heat pumps. While this is a step forward for building electrification, there are some homes that need additional electrical upgrades to accommodate these all-electric systems. The proposed update will help new building owners prepare their homes for their future heat pump installations. When their gas systems fail, a replacement with an electric heat pump will be a simple and straightforward replacement. The proposed BESO requirements and BAAQMD's new ruling complement each other by having different trigger points (time of sale for BESO and time of replacement for BAAQMD Rules 9-4 and 9-6) but are both satisfied by installing heat pumps instead of new gas systems.

### Developing the Proposal

Based on extensive Community outreach, staff developed six objectives to guide the development of this proposal:

- **Accelerate building electrification and resilience upgrades** – Create upgrade requirements to reduce harmful emissions and increase resilience.
- **Promote early compliance** – Encourage building owners to complete the BESO upgrades as soon as possible, prior to selling their building.
- **Align with available resources** – Include requirements that are eligible for incentive programs or other resources to offset costs.
- **Ensure smooth sales process** – Align requirements and timelines with the selling/buying process.

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<sup>6</sup> National BPS Coalition Website: <https://nationalbpscoalition.org/>

- **Provide flexible compliance paths** – Allow owners to prioritize upgrades that improve the health, safety, and comfort of their building and maximize ease of compliance.
- **Ensure renters are protected** – Prevent additional burdens for renters while improving rental units.

These objectives provided the framework when working with partners and groups on the potential upgrade requirements.

*Technical Advisory Committee:*

Staff assembled a Technical Advisory Committee (TAC) in spring 2023 to provide expert input on energy upgrade requirements for small residential buildings to accelerate decarbonization in existing buildings. The Technical Advisory Committee included contractors, architects, BESO assessors, and building decarbonization experts from local, state, and federal organizations, such as PG&E, Ava Community Energy (formerly known as East Bay Community Energy or EBCE), California Energy Commission, Berkeley Lab, BayREN and the Building Decarbonization Coalition. Staff facilitated a series of meetings to discuss various policy components and develop a list of energy upgrade measures. Key takeaways from the TAC included:

- 81% of the TAC supported establishing a heat pump system as baseline compliance with the remaining 19% noting this was either too low or too high of a requirement.
- 85% of the TAC supported allowing building owners to choose which measures to complete, using a credit-based compliance system of potential energy upgrades, to provide maximum flexibility.
- In order to ensure that building owners can access rebates and incentives for energy upgrades, an ordinance can't require specific measures or technologies.

*Outreach and Engagement:*

In addition to the Technical Advisory Committee, staff engaged with a variety of partners and groups on the proposed requirements, including:

- Real Estate Professionals (including realtors and title company officers)
- Berkeley Rent Board's Ad Hoc Sustainability Committee
- Bridge Association of Realtors
- Berkeley Property Owners Association
- Berkeley Neighborhood Council
- Climate Advocacy Groups (including the Berkeley Climate Action Committee's Electrification Working Group, Sierra Club, Citizens Climate Lobby, and the League of Women Voters)

Staff also worked with the Environment and Climate Commission at various stages throughout the policy's development and presented the proposal to Council's Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee. At the Environment and Climate Commission's meeting on October 18, 2023, the Commission unanimously voted to approve the concept of a resilience standard for small residential buildings verified at time of sale as proposed in this action. The Commission suggested that staff consider future requirements for additional upgrades, and recommend that Council support staff in collaborating with the Rent Board and local and regional stakeholders.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The adoption of BESO was a key implementation action of the Climate Action Plan (CAP). Existing buildings are the second largest source of GHG emissions and account for 43% of GHGs in Berkeley's most recent emission inventory. Adopting the proposed BESO amendments would further Berkeley's environmental sustainability and climate goals, including becoming a Fossil Fuel Free City and Berkeley's Race to Zero commitment, pledging to decrease emissions by 60.5% from 2018 levels by 2030, being responsive to the Declaration of a Climate Emergency and Just Transition framework, and spurring high-road construction jobs in building electrification.

### RATIONALE FOR RECOMMENDATION

In order for Berkeley to achieve its climate action, GHG reduction, resilience, and public health goals, all buildings will need to transition off fossil fuels to clean electricity. Requiring buildings to complete upgrades at time of sale is one of the four primary strategies adopted by Council through Berkeley's Existing Building Electrification Strategy. Berkeley will not be able to achieve its GHG emissions reduction goals without adopting time of sale upgrade requirements for small residential buildings, which constitute 84% of Berkeley's building stock. BESO is one of the best tools for addressing emissions from existing buildings and the proposed amendments will further our ability to reach our goals. The upgrade requirements proposed will also help building owners comply with the upcoming BAAQMD regulations by switching to heat pumps early before their gas system burns out or by upgrading their home to ensure a seamless transition.

### ALTERNATIVE ACTIONS CONSIDERED

Staff explored a variety of energy upgrade requirement options. Extensive work was done with a Technical Advisory Committee to determine what upgrades were feasible for small residential buildings to complete at time of sale. It was recommended to utilize a flexible compliance pathway since each building needs a custom approach to electrification and there are limitations to requiring building owners install specific technologies or equipment.

Council could choose to take no action on this proposal and continue with BESO's voluntary uptake of energy upgrades. In this case, the City would not be able to comply

with its National BPS Coalition commitment and would fall further behind in meeting its climate action and resilience goals including commitments to become a Fossil Fuel-Free City, meet Race to Zero by reducing GHG emissions 60.5% from 2018 by 2030, and becoming carbon neutral by 2045.

CONTACT PERSON

Sarah Moore, Interim Manager, Office of Energy & Sustainable Development, 510-981-7494

Ammon Reagan, Community Services Specialist II, Office of Energy & Sustainable Development, 510-981-7416

Attachments:

- 1: Ordinance
- 2: Example Credits and Compliance Costs

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 19.81; BUILDING EMISSIONS SAVING

**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 Section 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 measures~~ will lower energy and water costs, transition buildings away from the use of fossil fuels, and 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 Section 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 or a unit within 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 resiliency, emissions savings, cost, or other measured benefit associated with a Resiliency 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.

**DF.** "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 Buildings1 to 4 Unit Residential Buildings.

~~MQ.~~ "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 solely of 1 to 4 ~~residential-~~ Dwelling Units, regardless of size. A single condominium unit within a 1 to 4 Unit Residential Building qualifies as a 1 to 4 Unit Residential Building unto itself.

~~QR.~~ "Small Building" means any building with less than 15,000 square feet of Gross Floor Area, excluding Single Family1 to 4 Unit Residential Buildings.

~~S.~~ ~~"Transfer" means the conveyance of title to real property, including 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 Section 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 Section 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 sSale; 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 Section 19.81.060 is amended to read as follows:

**19.81.060 – Single Family1 to 4 Unit Residential Buildings.**

A. *Resilience Standard.* When a unit within a 1 to 4 Unit Residential Building is transferred, or when an entire 1 to 4 Unit Residential Building is transferred, the entity being transferred shall achieve a required number of Credits, as determined by the Administrator, by undergoing Resilience Upgrades.

AB. *Energy Report.* Owners of Single Family1 to 4 Unit Residential Buildings and owners of a unit residing within a 1 to 4 Unit Residential Building 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 or unit for sSale; 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 property owner fails to complete the Energy Report an administrative fee shall be charged, which fee 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 one-year extension, with an opportunity for an additional one-year extension, to meet the requirements of BMC 19.81.060(C) if the Transferor and Transferee deposit funds with the City in an amount the Administrator determines to be sufficient to render compliance. The Transferor and Transferee must execute and deliver to the Administrator or her 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 Transferor and Transferee shall recoup their 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 and transferred to the City.

E. Appeals.

1. If deposit funds are forfeited and transferred 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 Transferor and Transferee of (i) the forfeiture and transfer 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 Transferor or Transferee may appeal the forfeiture and transfer.

a. An appeal shall be submitted to the City Manager 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 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 or affirm the decision of the prior review authority.

5. When acting on an appeal, the Hearing Officer will use the same decision-making criteria and shall make the same findings as the prior review authority.

6. 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, 2025 for 1 to 4 Unit Residential Buildings containing one or two residential units and units residing within a 1 to 4 Unit Residential Building.

2. January 1, 2027 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 purchasers 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 Section 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 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 supports Berkeley's commitment to become a Fossil Fuel Free City, ~~meet Race to Zero by reducing GHG emissions 60.5% from 2018 by 2030, and become carbon neutral 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 or unit that has electrified all building systems and appliances and capped all gas lines to the building or unit.

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~~ 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 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 Small or Medium building 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 where all units being transferred are completely served by at least one electric heat pump system or 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 their escrow deposit prior to completion of the Resilience Upgrades upon a showing that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that they 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 they 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 or of units within 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 may be 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, 2025.

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.

## ATTACHMENT 2 - EXAMPLE CREDITS AND COMPLIANCE COSTS

Measure	Credits <sup>1</sup>	Credit Criteria <sup>2</sup>
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

<sup>1</sup> The credit values are subject to change once vetted by the Technical Advisory Committee.

<sup>2</sup> Emissions saving values were estimated through California statewide cost-effectiveness studies completed by California Codes and Standards Reach Codes program for Single Family Residential Retrofits: <https://localenergycodes.com/content/resources>. Cost data was pulled from a variety of sources including: TECH Clean CA, BayREN Home+, Statewide Cost-Effectiveness studies, and analysis from the Building Electrification Institute

**Example Compliance Cost 1: Heat Pump Water Heater**

Measure	Credits	Average Cost	Source
Heat Pump Hot Water Heater	6	\$6,800	TECH Clean CA <sup>3</sup>
	<b>Total</b>	\$6,800	
*Includes the \$2,000 Federal Tax Credit, \$400 BayREN Home+ rebate, & \$3,100 TECH Clean CA rebate	<b>Total with Rebates</b>	\$1,300*	

**Example Compliance Cost 2: Electrification Ready**

Measure	Credits	Average Cost	Source
Panel upsizing and replacement	4	\$4,300	BEI Analysis <sup>4</sup>
240v outlet installation (oven, dryer, water heater, EV charger)	2	\$1,800	Statewide Cost-Effectiveness study <sup>5</sup>
	<b>Total</b>	\$6,100	

**Example Compliance Cost 3: Energy Efficiency Envelope Improvements**

Measure	Credits	Average Cost	Source
Attic Insulation	2	\$2,500	BayREN Home+ <sup>6</sup>
Air Sealing	1	\$1,500	Statewide Cost-Effectiveness study
Duct Sealing/Replacement	3	\$4,600	BayREN Home+
	<b>Total</b>	\$8,600	
*includes a BayREN Home+ \$1,000 attic insulation rebate & \$800 duct replacement rebate	<b>Total with Rebates</b>	\$6,800*	

<sup>3</sup> TECH Clean California Public Data for Alameda County: <https://techcleanca.com/public-data/data-visualizations/>

<sup>4</sup> The Building Electrification Institute (BEI) completed a measure cost analysis using E3's 2019 report "Residential Building Electrification in California" and updated based on local research for Berkeley's Existing Building Electrification Strategy

<sup>5</sup> California statewide cost-effectiveness studies completed by California Codes and Standards Reach Codes program for Single Family Residential Retrofits: <https://localenergycodes.com/content/resources>

<sup>6</sup> Data was provided by the BayREN Home+ for projects completed in Alameda County from 2020 to 2023



Planning and Development Department  
Office of Energy and Sustainable Development

## Berkeley's Building Emissions Saving Ordinance (BESO) Proposed Amendments

In December 2020, Berkeley City Council directed staff to recommend upgrade requirements for Berkeley's Building Emission Saving Ordinance (BESO) for Council's consideration. The following year, City Council adopted Berkeley's Existing Building Electrification Strategy (BEBES), which identified a time of sale upgrade policy as one of the four primary policy strategies to equitably decarbonize Berkeley's existing buildings. The proposed BESO amendments build on BESO's current requirements of energy disclosure at the time of sale and are coupled with upgrade requirements. Prior to BESO, from 1987-2015, Berkeley required prescriptive energy efficiency measures at time of sale through the Residential Energy Conservation Ordinance (RECO). The proposed BESO amendments increase resilience and can improve indoor air quality, comfort, health, and safety. They can also help new Berkeley homeowners prepare for the Bay Area Quality Management District's (BAAQMD) zero NOx emissions standard, which prohibits the sale and installation of NOx emitting gas-powered water heaters and furnaces, starting in 2027. Homeowners can install an electric heat pump early (which is a zero NOx appliance) or complete necessary electrical upgrades to ensure a seamless transition.

### Flexible Resilience Standard

The proposed amendments to BESO would **maintain the current assessment and disclosure requirements** and **establish a flexible resilience standard** that requires small residential building owners to complete upgrades from a **menu of options** when a property is sold. **Building owners can choose which upgrades to complete** that best fit with their preferences and building's conditions. Each upgrade measure will have a **corresponding credit value based on its emissions reductions and/or costs**. A building owner would need to complete one or more measures to meet the required **number of credits within two years of the sale**. The cost of compliance will vary, as a homeowner can choose which upgrades they want to complete. The proposed amendments would require **6 credits for full compliance**. Here's an initial list of measures and potential credits:

Measure	Credits*	Measure	Credits*
Heat Pump Water Heater	6 (Full)	Induction Range	2
Heat Pump HVAC	6 (Full)	Window Replacements	2
Knob + Tube Replacement	6 (Full)	Attic Insulation	2
Smart Panel	6 (Full)	Wall Insulation	2
Solar PV + Storage	6 (Full)	Floor Insulation	1-2
Panel Upgrade	4	Greywater System	1-2
Duct Sealing & Replacement	3	Air Sealing	1
Bi-Directional EV Charger	3	Prewiring & 240v Receptacles	½ per receptacle
EV Charger	2	*The credit values may be subject to change.	

Installing a heat pump water heater is the simplest and cheapest way to comply. Without rebates, the average purchase and installation cost of a heat pump water heater in Alameda County is ~\$6,800<sup>1</sup>. There are tax credits and rebates currently available to reduce this cost.

### **Escrow Deposit**

Similar to Berkeley's Private Sewer Lateral Program, a cash **deposit** to cover the cost of compliance will be held by the City through escrow and be **refunded in full once the upgrades are complete**. The deposit will be set at an amount equivalent to the minimum estimated cost of compliance.

### **Heat Pump Exemption Pathway**

**If a building has at least one electric heat pump system, then no additional upgrades are needed.** The proposed amendments include a heat pump exemption pathway that encourages homeowners to install a heat pump in advance of a home sale in order to meet full compliance. Currently, 5-7% of Berkeley homes would already qualify for this exemption, and more will become exempt as they transition to electric heat pumps.

### **Additional Exemptions and Support**

- **First-time Homebuyers** – First time homebuyers participating in an approved income-qualified first-time home buying program or down payment assistance program would be exempt from the flexible resilience standard.
- **Early Refund Exception** – Building owners may apply for an early refund of their deposited funds if they supply sufficient evidence, such as issued building permits and a contract for qualifying work, to show the upgrades will be completed.
- **High Home Energy Score Credit** – Buildings that have received a high Home Energy Score demonstrate a high level of energy efficiency and will receive bonus credits, reducing the number of upgrades needed to meet the standard.

### **Phase-In Timeline for Building Types:**

- **Phase I:** Single Family Homes, ADUs, Duplexes, Condominiums within 1-4 Unit buildings (approximately 700 homes/units each year) - expected implementation 2025
- **Phase II:** Triplexes and Fourplexes (approximately 50 buildings each year) - expected implementation 2027

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<sup>1</sup> Based on data through TECH Clean California: <https://techcleanca.com/>

# Building Emissions Saving Ordinance (BESO)

## Time of Sale Upgrade Requirements

June 3, 2024



# Background and Current BESO Requirements

# Residential Energy Conservation Ordinance (RECO)



- Started in 1987
- Required 10 minimal energy/water measures at point of sale or remodel
- Buyer to install within 12 months

## Lessons Learned

- One size doesn't fit all
- Wasn't getting to deep GHG reductions

Residential Energy Conservation Ordinance (RECO)  
 Chapter 19.16  
 Ordinance 6099-N.S.

**FORM A**  
 Certificate of Compliance

Escrow Closing date: \_\_\_/\_\_\_/\_\_\_    Address of Property: \_\_\_\_\_    Unit # \_\_\_\_\_

Title Company: \_\_\_\_\_    Escrow #: \_\_\_\_\_

Structure \_\_\_ of \_\_\_    Number of units: \_\_\_\_\_    (NOTE: Each structure requires a separate Form A)    Circle one:    PASS    FAIL

Acceptance of this form by the City deems the property to be in compliance with RECO (Ordinance 6099, BMC 19.16) It is given to property owners by the RECO inspector after a satisfactory RECO inspection. File this form with: City of Berkeley Building & Safety Division, 2120 Milvia St., Berkeley, CA 94704; Telephone 981-7440. A \$20 filing fee is required for each residential structure. The maximum required expenditure for meeting the requirements of this Ordinance is 0.75% of the final sale price for the property. See below.

KNOB & TUBE WIRING Notification <small>(Attach Electrician's safety inspection report, if applicable.)</small>	YES	NO	N/A
If Knob & Tube wiring is in the attic, has a licensed electrician inspected, signed & posted a safety notice in the attic?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RECO MEASURES:	Complete	Incomplete	N/A	Unit #
1. Ceiling insulation of minimum thermal resistance value R-30 installed .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
2. Furnace heating ducts sealed at plenum and all joints in heating duct system sealed with mastic and insulated to a minimum of R-3 .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
3. Hot water pipes in pumped, recirculating domestic water heating systems insulated to a minimum thermal resistance of R-3. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
4. All domestic storage water heaters insulated to a minimum total of R-12. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
5. All exposed hot and cold water pipes within at least 24 inches of water heater are insulated to a minimum thermal resistance of R-3, except within 6 inches of single-wall flue and one inch of a double walled flue .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
6. Installed low-flow faucet devices or fixtures with a maximum flow rate of 3 gallons/minute in all showers; a maximum of 2.75 gallons per minute in all sinks and lavatories; and a maximum of 4 gallons/minute in all other faucets .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
7. Installed toilet fixtures designed to use no more than 1.6 gallons per flush, or existing fixtures modified to reduce the amount of water used while ensuring correct operation. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
8. Approved weatherstripping must be installed on all exterior doors .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
9. Approved dampers, doors, or other devices to block air flow and reduce heat loss through chimneys are installed and working .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___
10. Multi-unit structure common area light fixtures have lamps of at least 25 lumens per watt .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	___

**NOTE:**  If any items are checked "INCOMPLETE" because the maximum required expenditure for this sale has been met, check here and attach itemized receipts for RECO measures (with an explanation, if necessary) and note the maximum required expenditure amount:

Final Sale Price \$ \_\_\_\_\_ X 0.0075 = \$ \_\_\_\_\_    City Inspector: \_\_\_\_\_    Date: \_\_\_\_\_

Seller/Owner: \_\_\_\_\_  
(Type/Print Name)

Seller/Owner: \_\_\_\_\_  
(SIGNATURE)

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Buyer: \_\_\_\_\_  
(Type/Print Name)

Buyer: \_\_\_\_\_  
(SIGNATURE)

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Inspector Name & Agency: \_\_\_\_\_    Date: \_\_\_/\_\_\_/\_\_\_

Inspection Fee paid by: \_\_\_\_\_    Amount paid: \$ \_\_\_\_\_

Filing Fee (\$20/structure) paid by: \_\_\_\_\_    Amount paid \$ \_\_\_\_\_

ORIGINAL: Building & Safety    Yellow: Owner    Pink: Inspector

# Zero-NOx Appliance Rule

Prohibits the sale and installation of **NEW** NOx emitting gas water heaters and furnaces

## No Gas Water Heating

- **2027** – Smaller buildings
- **2031** – Medium/large buildings

## No Gas Space Heating (HVAC)

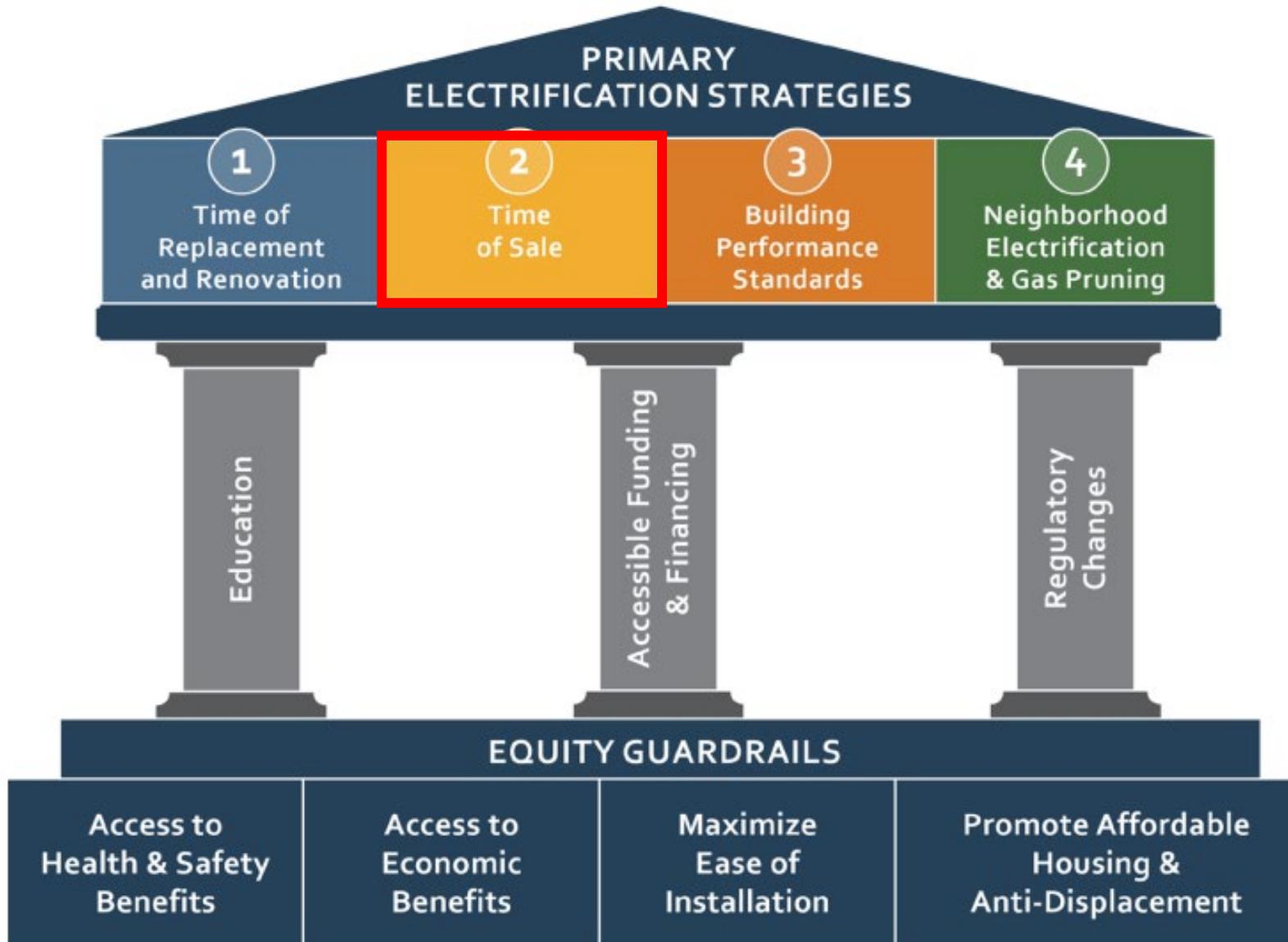
- **2029** – All buildings



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT



# Berkeley's Existing Building Electrification Strategy



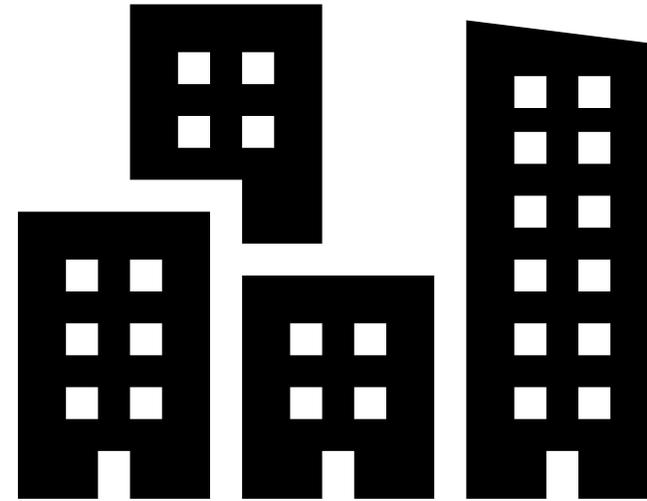
# Building Emissions Saving Ordinance (BESO)

## Time of Sale Program



Buildings **less** than  
25,000 sqft

## Large Building Program



Buildings **greater** than  
25,000 sqft



# Upgrade Requirements Timeline

## Small Residential: Time of Sale



- Develop policy recommendation



- Bring proposal to Council
- Prep for implementation



- Start implementation



- Start developing policy recommendation



## Medium/Large Buildings: Building Performance Standard (BPS)

# Current Time of Sale Program



- Requires an **energy/electrification assessment** prior to listing a building for sale.
  - Home Energy Score for Single family homes
  - Provides information to potential buyers
- Refers building owners into local incentive programs to complete voluntary upgrades



# Policy Objectives for Proposed Requirements

 Accelerate building electrification and resilience upgrades

 Promote early compliance

 Align with available resources

 Ensure smooth sales process

 Provide flexibility in required upgrades

 Ensure renters are protected

# Technical Advisory Committee



## Members:

- Building Decarbonization Experts
- BESO Assessors
- Architects
- Electrification Contractors
- Utilities
- Regional and State entities



# Outreach and Engagement



- Real Estate Community
  - Realtor Offices
  - Real Estate Professionals Webinar
  - Bridge Association of Realtors
- Berkeley Rent Board – Sustainability Committee
- Berkeley Neighborhoods Council
- City Green Building Coordination Team
- Berkeley Property Owners Association
- Community and Environmental Organizations
- Council Policy Sub-committee (FITES)
- Environment and Climate Commission



# Proposed Upgrade Requirements

# Overview of Proposed BESO Requirements

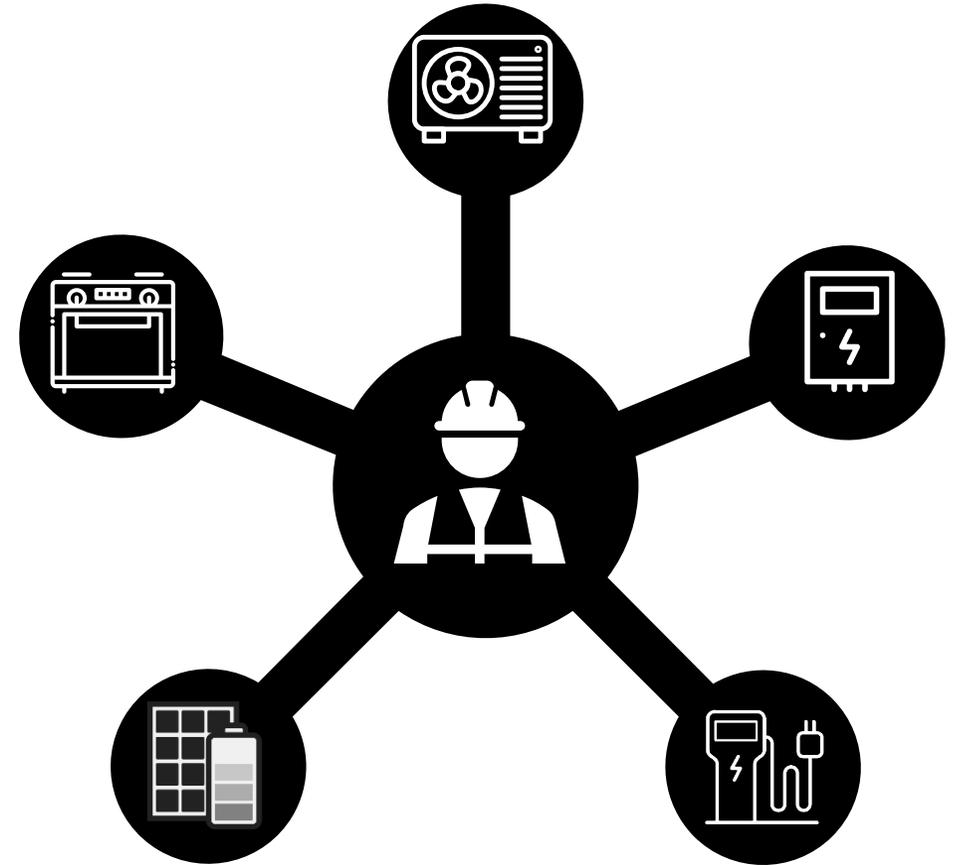
- Seller completes the BESO assessment
- Buyer completes the upgrade(s) within 2 years of the sale if compliance has not been met



# Flexible Resilience Standard



- **Upgrade requirements:**
  - List of possible upgrades
  - Each upgrade has a corresponding credit value
  - Buildings need to achieve minimum number of credits through upgrades
- **Credit value criteria:**
  - Emissions savings
  - Cost
  - Health, safety, resilience bonus
- **Rationale:**
  - Addresses range of building conditions
  - Owner can prioritize



# Potential Measures & Credits



## Credits Needed: 6

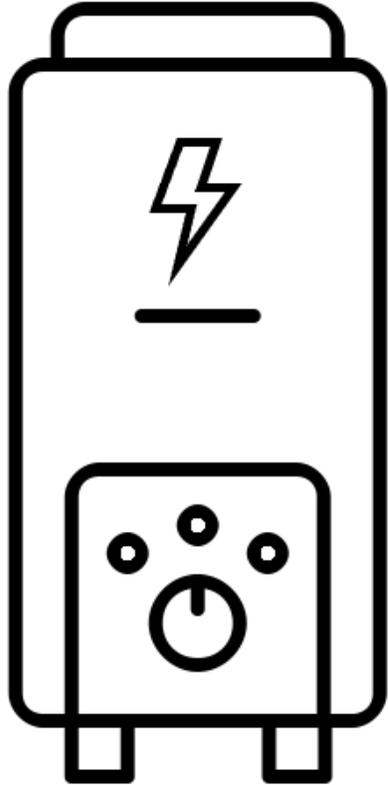
Measure	Credits*	Criteria
Heat Pump Water Heater	6	Emissions
Heat Pump HVAC	6	Emissions
Knob + Tube Replacement	6	Cost
Smart Panel	6	Cost
Solar PV + Storage	6	Cost
Panel Upgrade	4	Cost
Duct Sealing & Replacement	3	Emissions
Bi-Directional EV Charger	3	Cost
EV Charger	2	Cost

Measure	Credits*	Criteria
Induction Range	2	Emissions
Window Replacements	2	Emissions
Attic Insulation	2	Emissions
Wall Insulation	2	Emissions
Floor Insulation	1-2	Emissions
Greywater System	1-2	Cost
Air Sealing	1	Emissions
Prewiring & 240v receptacles	1/2 per receptacle	Cost

\*The credit values are subject to change once vetted by the Technical Advisory Committee



# Example Compliance Costs



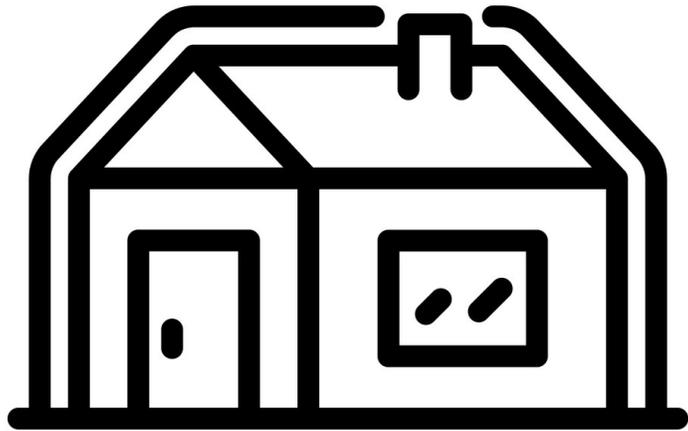
**Heat Pump  
Water Heater**

Measure	Credits	Average Cost	Available Incentives
Heat Pump Water Heater	6	\$6,800	Tax credit, TECH Clean CA, etc.
<b>Total</b>	<b>6</b>	<b>\$6,800</b>	<b>\$2,000+</b>

Average Cost after incentives:  
**\$4,800 or less**



# Example Compliance Costs



## Energy Efficiency & Envelope Improvements

Measure	Credits	Average Cost	Available Incentives
Attic Insulation	2	\$2,500	\$1,000
Air Sealing	1	\$1,500	n/a
Duct Sealing/Replacement	3	\$4,600	\$800
<b>Total</b>	<b>6</b>	<b>\$8,600</b>	<b>\$1,800</b>

Average Cost with incentives:

**\$6,800**



# Example Compliance Costs

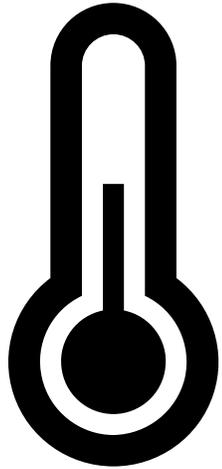


Measure	Credits	Average Cost	Available Rebate
Panel upsizing and replacement	4	\$4,300	n/a
240v outlet installation (oven, dryer, water heater, EV charger)	2	\$1,800	n/a
<b>Total</b>	<b>6</b>	<b>\$6,100</b>	<b>n/a</b>

**Electric Ready –  
Preparing for  
BAAQMD Compliance**

**Average Cost after rebates:  
\$6,100**

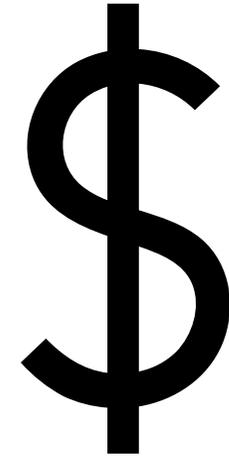
# Benefits to Homeowners



**Improve Comfort  
and Indoor Air  
Quality**



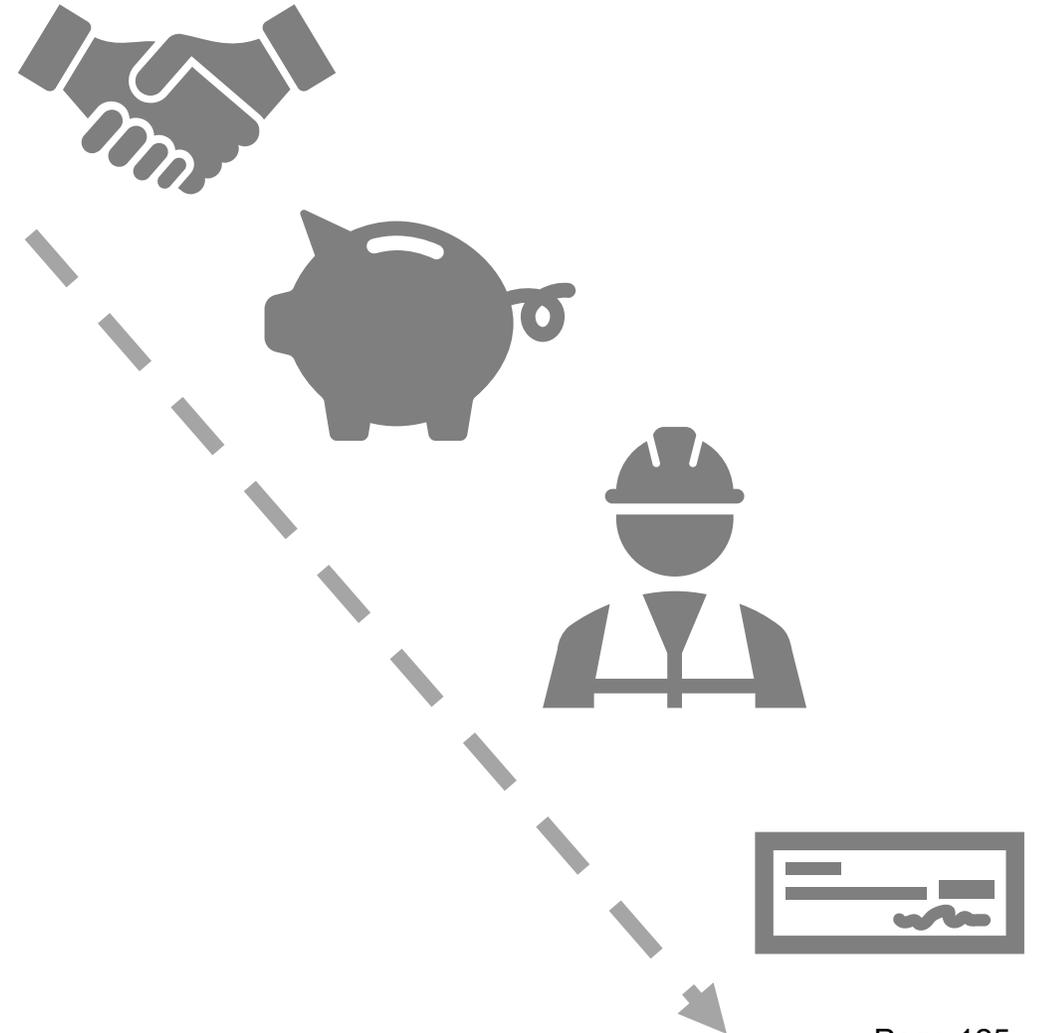
**Increase Safety**



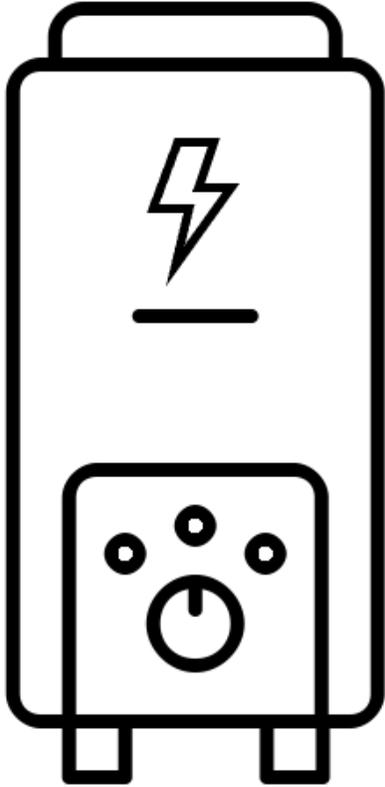
**Decrease utility  
costs**

# Utilize Escrow Deposit

- Deposit sent from escrow to City
- Buyer has up to 2 years to complete upgrades
- Refunded once property is compliant
- After 2-years the funds are forfeited to the City and could be used to help fund low-income electrification programs
- Operate similar to Private Sewer Lateral

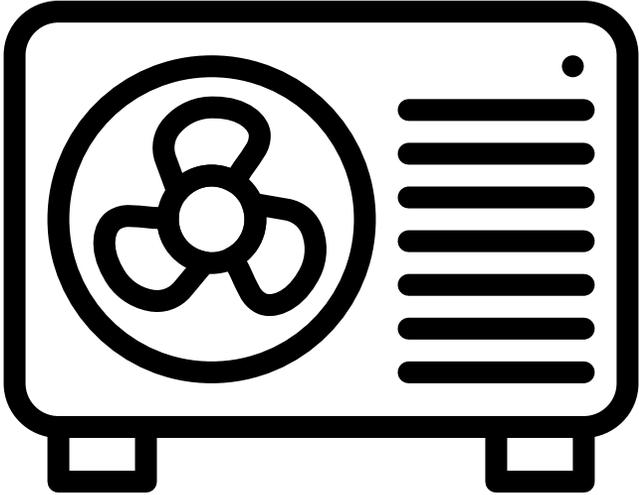


# Exemption Pathway: Heat Pump System



Water Heating

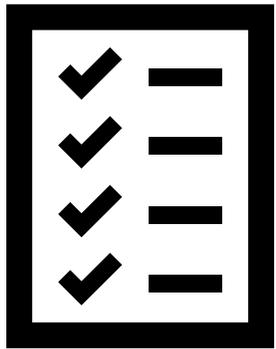
OR



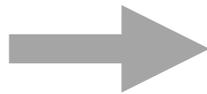
Space Heating/HVAC



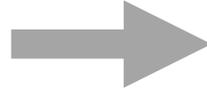
# Example: Home *doesn't* have a heat pump system



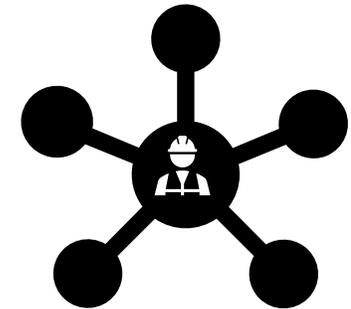
Seller completes assessment (Home Energy Score)



Home listed for sale

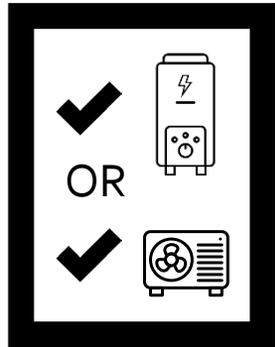


Funds to cover upgrades negotiated at closing through escrow deposit



Buyer completes upgrades to meet target credit requirement and utilizes escrow deposit

# Example: Home *has* a heat pump system



Seller completes assessment  
(Home Energy Score)



Home listed for  
sale



Fully Compliant, no  
upgrade needed

# Phase-in by Building Type



- **Phase I: Single-family, ADUs, Duplexes, Condos within 1-4 unit buildings**

- Expected implementation 2025
- Likely to be owner-occupied
- Bulk of sales

- **Phase II: 3-4 Units**

- Expected implementation 2027
- Likely to be rental properties
- Complex/shared systems
- Need to develop additional support systems



# Berkeley Sales Analysis



Building Type	Avg. # of Buildings Sold per Year	% of Sales
Single Family	600	61%
Duplex	60	6%
Condominiums (within 2-4 Unit Buildings)	30	3%
3-4 Units	50	5%
Not subject buildings (Commercial, larger Multifamily, industrial)	260	25%

# Proposed Exemptions/Support



- **BESO Exemptions:**
  - **All-electric homes** with permits showing capped gas line
  - **Refinances, partial and inheritance transfers**
  - Income qualified **First Time Home Buyers**
- **Support:**
  - **Offset assessment costs** for income qualified sellers
  - Credit for **High Home Energy Score**
  - Option to obtain **early refund**
  - **Hardship** extensions and deferrals



# September 9, 2020 – Berkeley Marina

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# Thank You!



## Ammon Reagan

BESO Program Coordinator

Office of Energy and Sustainable Development

[AREagan@BerkeleyCA.gov](mailto:AREagan@BerkeleyCA.gov)

## Sarah Moore

Manager

Office of Energy and Sustainable Development

[SMoore@BerkeleyCA.gov](mailto:SMoore@BerkeleyCA.gov)







Sophie Hahn  
Councilmember, District 5  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA, 94704  
(510) 981-7150 | shahn@berkeleyca.gov

03

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn (Author)  
Subject: First Year Free - Fill Empty Storefronts Act

RECOMMENDATION

Refer to the City Manager to (1) create and implement a First Year Free Program for Berkeley, modeled after San Francisco's successful program, for an initial period of 5 years and (2) study and report back to Council on other strategies to attract new businesses and fill empty storefronts.

SUMMARY STATEMENT

The COVID-19 pandemic had an unprecedented impact on Berkeley's small and local businesses. While Berkeley's business sector has progressed toward recovery, commercial vacancy rates remain high. To address similar challenges in San Francisco, a First Year Free program was established in 2021 to waive the cost of initial registration fees, license fees, first-year permits, and other fees for qualifying local businesses. More than 4,000 new businesses have already opened and taken advantage of the program.

To help fill empty storefronts and attract new, small businesses in Berkeley, this item directs the City Manager to create and implement a First Year Free program, modeled after San Francisco's successful 2021 program – for a period of 5 years – and study, implement, and/or recommend to the City Council other strategies to fill empty storefronts and foster a thriving small business environment in Berkeley.

BACKGROUND

America's small business sector has been struggling for several decades, decimated by the rise of Big Box, Chains, and e-commerce. Berkeley, which has been fortunate to retain many small businesses, has nevertheless been impacted by these trends. The arrival of big retail has thrown local economies into turmoil, leaving smaller and local businesses unable to compete with the scale of giant retail chains. The global shut down of commerce during the COVID-19 pandemic was another huge blow to small and locally owned retail and restaurants, precipitating enormous stress, and widespread closures.

The economic impacts of the pandemic have been significant and widespread. While businesses of all sizes were impacted, small businesses – which are more likely to struggle with financial fragility – faced the most uncertainty.

The public health crisis, lockdowns, and social distancing measures resulted in economic challenges that forced many owners to reckon with supply chain delays, loss of revenue, and closure. While the Small Business Association (SBA) did provide financial assistance including the Paycheck Protection Program (PPP), and various loan and grant programs, many small businesses were unable to access state and federal aid. Businesses in California also benefited from various state-level programs but a survey of small businesses in California found that women and minority-owned businesses struggled more during the recovery because they may not have received assistance in proportion to their acute need, loss of revenues, and impacts on business operations.<sup>1</sup>

During COVID's time of acute uncertainty, and following feedback from small business owners, conversations with the Director of Economic Development, the Chamber of Commerce, and various Business Improvement District leaders, Councilmember (then Vice Mayor) Hahn introduced an item to begin regular small business listening sessions, so Berkeley's small enterprises could more easily communicate with the Council, City, and Mayor.<sup>2</sup>

In March 2020, when the regional stay at home order was enacted, Berkeley took immediate steps to protect businesses impacted by the sharp decline in patronage, including a ban on evictions for both residential and commercial tenants. Council also established the Berkeley Relief Fund, which provided a down payment of \$3 million from the City in concert with a fundraising campaign from private donors and community members that raised \$1.5 million. *Through this generous local funding, 700 businesses received grants to pay rent, payroll, and other expenditures.*<sup>3</sup>

In April, the Berkeley City Council approved the creation of the Save Our Small (SOS) Business Loan Fund, introduced by Councilmember Hahn and based on an innovative proposal by faculty and students at the Haas School of Business at UC Berkeley to create a public-private partnership that could provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency. Thanks to the City's leadership, and with the expert guidance and advocacy of Haas School faculty, including Professors Adair Morse and Laura D. Tyson, the SOS Business Loan Fund was transformed to a statewide initiative announced as the California Rebuilding Fund.

For Berkeley's small businesses, nonprofits, and other eligible enterprises to take advantage of this now statewide opportunity, Councilmember Hahn referred to the City Manager to immediately engage in a robust outreach effort throughout Berkeley, focusing particularly on underserved small businesses and nonprofits, entrepreneurs in historically disenfranchised

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<sup>1</sup> Dani, L., Earle, J. S., & Min Lee, K. (2022, January). *Small Business in the time of COVID-19: A Survey of California's Small Businesses*. Economic Development Collaborative . <https://edcollaborative.com/wp-content/uploads/2022/01/COVID-19-Impact-on-California-Entrepreneurs-v2.pdf>

<sup>2</sup> Hahn, S. (2020, January 21). *Small Business Listening Sessions*. City of Berkeley. <https://berkeleyca.gov/sites/default/files/documents/2020-01-21%20Item%2035%20Small%20Business%20Listening%20Sessions.pdf>

<sup>3</sup> Arreguin, J. (2022, August 10). *The Big Impact of Berkeley's Small Businesses*. Mayor Jesse Arreguin. <https://www.jessearreguin.com/newsletters-2/2022/8/10/the-big-impact-of-berkeleys-small-businesses>

communities, and enterprises serving children.<sup>4</sup> Technical assistance from the City helped many businesses successfully apply for support as soon as the California Rebuilding Fund portal opened.

While Berkeley is fortunate to be home to some 5,000 small businesses and took many steps to support and protect local businesses during the pandemic, commercial spaces remain vacant at higher than pre-pandemic levels.<sup>5</sup> According to the 2023 Economic Dashboard, the citywide average vacancy rate was 8.1% as compared to the pre-pandemic rate of 5.4%.<sup>6</sup> Certain neighborhoods struggle more than others, with several Berkeley neighborhoods having vacancy rates in the double digits including South Berkeley, University, San Pablo, and the Downtown.

### Vacancy Rates by District, Calculated by Square Footage, 2018-2023

District	2018	2019	2020	2021	2022	2023
Downtown	3.1%	5.1%	9.9%	15.7%	11.9%	10.8%
Elmwood	7.3%	7.3%	10.9%	10.9%	7.7%	6.2%
North Shattuck	1.7%	0.7%	4.3%	4.3%	4.3%	1.9%
San Pablo	4.9%	4.6%	4.8%	7.9%	10.8%	15.5%
Solano	4.1%	2.6%	6.7%	4.4%	3.7%	2.6%
South Berkeley	9.7%	7.6%	10.1%	8.8%	11.8%	19.2%
Telegraph	7.9%	4.4%	17.2%	12.6%	8.5%	9.3%
University	11.0%	7.8%	11.0%	9.1%	12.8%	17.7%
Neighborhood Commercial (C-N)			7.3%	3.2%	2.3%	2.6%
West Berkeley	3.7%	5.8%	3.7%	4.7%	5.2%	2.2%
<b>Citywide Avg.</b>	<b>5.0%</b>	<b>5.4%</b>	<b>6.9%</b>	<b>8.3%</b>	<b>8.4%</b>	<b>8.1%</b>

Source: Berkeley OED

Even though the City worked diligently to provide small and local businesses with financial and technical support during the pandemic, many still struggle to recover and empty storefronts have proliferated; the First Year Free program directly addresses this challenge.

<sup>4</sup> Hahn, S. (2020, September 15). *Outreach and Technical Assistance for Berkeley Small Businesses Eligible to Participate in the California Rebuilding Fund*. City of Berkeley.

<https://berkeleyca.gov/sites/default/files/documents/2020-09-15%20Item%2027%20Outreach%20and%20Technical%20Assistance.pdf>

<sup>5</sup> Arreguin, J. (2022, August 10). *The Big Impact of Berkeley's Small Businesses*. Mayor Jesse Arreguin.

<https://www.jessearreguin.com/newsletters-2/2022/8/10/the-big-impact-of-berkeley-s-small-businesses>

<sup>6</sup> Berkeley Office of Economic Development. (2024, February 1). *2023 Economic Dashboard*. City of Berkeley.

<https://berkeleyca.gov/sites/default/files/documents/Economic%20Dashboard%202023.pdf>

### First Year Free

The First Year Free Program was created by San Francisco's Board of Supervisors and the Mayor to support and revive San Francisco's small businesses as the City recovered from the pandemic. The program waives the cost of initial registration fees, initial license fees, first-year permit, and other applicable fees for qualifying businesses. There is no paperwork to apply, as enrollment is automatic with the registration of a new business or location within the City. Since its inception, 8,349 businesses have enrolled and \$3.7 million in fees have been waived.<sup>7</sup>

Earlier this year, San Francisco decided to renew the program for a third year due to its popularity and success, with some 4,000 new businesses opening in the City as a result of the program.

To qualify for San Francisco's First Year Free program, the applicant must be a new business, or new location of a business, that begins on or after July 1, 2023 and:

- Have \$5,000,000 or less in estimated (or reported) San Francisco gross receipts; and
- Have a registered location that is for commercial use; and
- Not be a home-based business or a short-term rental

Only small businesses are eligible for the program; the program is not applicable to Formula Retail (chain store) locations. For qualifying businesses, the program waives: 1) the initial business registration fee (for new businesses only), 2) application, inspection and one-time permit fees, 3) initial license fees.

Andrea Becerra, who fell in love with cooking during the pandemic as she grieved the death of her father, is one of those new business owners. Once her small business outgrew her kitchen, the First Year Free program made it possible for her to open her first restaurant in the Mission – El Mil Amores.<sup>8</sup>

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<sup>7</sup> Sos, Z. (2024, September 21). *New Castro business touted as Success Story of SF's First Year Free Program*. KTVU FOX 2 San Francisco. <https://www.ktvu.com/news/new-castro-business-touted-success-story-sfs-first-year-free-program>

<sup>8</sup> Pena, L. (2024, February 16). *SF extends program that waived \$2.5M in fees to new businesses and ones struggling to stay open*. ABC7 San Francisco. <https://abc7news.com/sf-extends-first-year-free-program-small-business-permit-registration/14430751/>



Photo credit: Astrid Kane/The Standard<sup>9</sup>

As a result of the program, Ismel Deluna opened a new wellness center – Healing Cuts – providing haircuts and wellness services for the disability and LGBT community, operating out of the Castro.<sup>10</sup> Hailed as a success story, the owner explained that the First Year Free program played a significant role by allowing his small business to build a base while saving money on fees and permits, giving businesses a boost to start.



Photo credit: San Francisco Business Times<sup>11</sup>

<sup>9</sup> Kane, A. (2023a, June 25). *Mexican breakfast gets an upgrade at this restaurant in San Francisco's Mission District*. The San Francisco Standard. <https://sfstandard.com/2023/06/25/mexican-breakfast-gets-an-upgrade-at-this-restaurant-in-san-franciscos-mission-district/>

<sup>10</sup> Sos, Z. (2024, September 21). *New Castro business touted as Success Story of SF's First Year Free Program*. KTVU FOX 2 San Francisco. <https://www.ktvu.com/news/new-castro-business-touted-success-story-sfs-first-year-free-program>

<sup>11</sup> Bloomberg, S. (2024, June 6). *How the SF LGBT Center is empowering entrepreneurs*. San Francisco Business Times. <https://www.bizjournals.com/sanfrancisco/news/2024/06/06/business-of-pride-lgbt-center.html>

Small businesses often represent and reflect the communities they serve, filling gaps left behind by big business. They help foster stronger community relations, providing a place for people to not only shop but gather. They are unique, one of a kind, and important to a community's identity. Small businesses keep money in the local economy, create job opportunities, and can provide environmental benefits. They are an asset to our City and we should continue to create and support opportunities to expand and support the small and local business landscape.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

In addition to Berkeley's various pandemic-related programs, Berkeley's Office of Economic Development (OED) has helped finance small businesses through the Revolving Loan Fund and Resiliency Loan Program, lending a total of \$2,744,987 to 45 small businesses.<sup>12</sup>

Berkeley's OED also provides assistance to businesses, entrepreneurs, artists, and community organizations to access services and resources available to them. This includes connecting with local leaders, finding a business location, going green, navigating Berkeley's codes, receiving financing, recruiting talent, and more.<sup>13</sup>

The City has also developed a Business Resource Guide which includes information on starting and sustaining a successful business in Berkeley. The guide walks potential business owners through the key steps of launching a new business including creating a business plan, exploring financing options, establishing as a legal entity, and obtaining a business license and permits.

Furthermore, Berkeley's Strategic Plan includes the goal of fostering a dynamic, sustainable, and locally-based economy. Berkeley has taken many steps to cultivate a thriving local economy and a thriving small business sector, and this item supports those goals.

#### ACTIONS/ALTERNATIVES CONSIDERED

The City Manager should study San Francisco's program, consider what adjustments might need to be made for the Berkeley context, and implement a version of First Year Free that is supportive of the goal of attracting new businesses to Berkeley storefronts.

#### CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Councilmember Hahn discussed strategies for filling empty storefronts with the City Manager, who expressed interest in the First Year Free program. Staff also contacted the Berkeley Chamber of Commerce and the Downtown Berkeley Association for input.

#### RATIONALE FOR RECOMMENDATION

Berkeley's unique character is owed in large part to the presence of small and local businesses and not for profits and arts organizations. These enterprises are indispensable, contributing significantly to our economic and cultural vitality, stimulating the local economy, attracting tourism, and most importantly, fostering a sense of community.

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<sup>12</sup> Berkeley Office of Economic Development. (2024, February 1). *2023 Economic Dashboard*. City of Berkeley. <https://berkeleyca.gov/sites/default/files/documents/Economic%20Dashboard%202023.pdf>

<sup>13</sup> Berkeley Office of Economic Development. (2022, January). *Office of Economic Development Services*. City of Berkeley. <https://berkeleyca.gov/sites/default/files/2022-01/OED-Services-Brochure.pdf>

However, Berkeley's small and local businesses continue to face significant challenges due to inflation and rising costs, space constraints, and growing competition from online stores and chain retailers.

#### IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT

The City Manager should review studies and consult experts on best strategies to fill empty storefronts. Additionally, staff should consult with the City of San Francisco to better understand the program, details around implementation, marketing, and success. Consider how much revenue the City generates and stands to lose from waiving initial business registration fees, application, inspection and one-time permit fees, and initial license fees, as well as the short and long-term benefits in waiving those fees to get new businesses in place that will generate increased tax revenues over the long run.

#### ENVIRONMENTAL SUSTAINABILITY

While virtually all businesses have a carbon footprint, small and local businesses tend to have a much smaller impact on the climate than large corporations. According to TIME Magazine, while small and mid-sized businesses make up roughly 90% of businesses worldwide, most global emissions can be tracked to a small number of the world's largest companies.<sup>14</sup>

#### FISCAL IMPACTS

The First Year Free program will result in the City "not receiving" fees and taxes it would otherwise receive - if a new small business were to establish itself. Without that new business, however, there will be no fees and taxes at all. Backfilling of fees and taxes may be required if a tax or fee isn't part of the general fund; the City Manager will need to understand the "back end" implications of the policy and ensure departments collecting special/enterprise fees and taxes, if any, are made whole.

On the other side of the equation, the successful establishment of new businesses will generate additional tax revenues every year they are in business, and filling one empty storefront can have the beneficial impact of attracting additional businesses to nearby empty storefronts, creating a positive cycle of business health for areas particularly hard hit by vacancies.

It is exactly this positive feedback loop that First Year Free is trying to jump-start, with the cost of waiving fees and taxes in the first year to be offset by the benefits, including direct financial benefits to the City, of adding new businesses to our tax rolls and encouraging business health overall.

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<sup>14</sup> Kane, A. (2023a, June 25). *Mexican breakfast gets an upgrade at this restaurant in San Francisco's Mission District*. The San Francisco Standard. <https://sfstandard.com/2023/06/25/mexican-breakfast-gets-an-upgrade-at-this-restaurant-in-san-franciscos-mission-district/>

OUTCOMES AND EVALUATION

It is suggested that two years after the program is established, the City Manager undertakes a review – including but not limited to quantifying the number of new businesses established under the program, the costs of waiving taxes and fees, and the benefits to the City of the additional tax revenue from those new businesses. Other appropriate metrics can be used to further inform the study, and adjustments to the program considered for implementation by the City Manager.

CONTACT

Councilmember Hahn, (510) 981-7150