

ORDINANCE NO. NS - 2460

AN ORDINANCE CREATING BEND MUNICIPAL CODE TITLE 18, ENVIRONMENT AND NATURAL RESOURCES, AND ADDING CHAPTER 18.10, RESIDENTIAL ENERGY PERFORMANCE RATING AND DISCLOSURE

Findings:

- A. This Ordinance creates Title 18 and Chapter 18.10, Residential Energy Performance Rating and Disclosure, of the Bend Municipal Code. The purpose of Chapter 18.10 is to provide information to homebuyers about residential building energy performance. This information is designed to enable more knowledgeable decisions about the full costs of operating homes and to motivate investments in home improvements that lower utility bills, reduce carbon emissions, and increase comfort, safety, and health for homeowners.
- B. To provide context for this new program, the 2021-2023 Council Goal Framework plan includes an environmental and climate goal to "Improve quality of life for more people in Bend by increasing equitable access to clear air, water and to a healthy environment. Implement solutions that fulfill the City's commitment to being good stewards of our natural environment, decreasing carbon emissions and mitigating the effects of climate change." This goal includes a strategy to implement the Bend Community Climate Action Plan (CCAP). To implement this goal and strategy the plan includes an action to review and consider implementing recommendations from the Environment and Climate Committee (ECC).
- C. The CCAP, adopted in 2019, created a roadmap to achieve the City of Bend's greenhouse gas reduction goals of 40% by 2030 and 70% by 2050. Energy in buildings contributes 54% of emissions in Bend, making it the largest area of opportunity for greenhouse gas reductions and a top priority for climate action. At 51% of the total greenhouse gas emissions in the community, residential energy use makes up the majority of energy use in Bend. Therefore, encouraging residential energy efficiency and renewable energy is critical achieving Bend's climate action goals.
- D. One of the key actions in the CCAP to promote residential energy efficiency is action EB3A: Develop a home energy score (HES) program that allows homes to be compared based on their energy use and energy efficiency, leveraging industry stakeholders, the U.S. Department of Energy (USDOE) standard home energy scoring tools, and industry best standards.
- E. The ECC was tasked with developing a recommended HES program as part of the FY21-23 Council Goal Work Plan. The ECC worked to develop the program for one year between November 2021 and October 2022 through a Home Energy Score Subcommittee that held five public meetings and presented to the Council Stewardship Subcommittee twice. Members of the ECC, City Staff and Earth Advantage also held an

Open House Question and Answer Session on August 1, 2022, with a presentation and opportunity for public questions and feedback by the person(s) best able to respond. The City also solicited feedback about the program from the public through an online form.

F. On October 13, 2022, the ECC voted unanimously to recommend that the Council adopt a HES program that requires obtaining and disclosing a home energy assessment for every home sold in Bend, using the USDOE Home Energy Score tool and leveraging the Oregon Department of Energy's (ODOE) partnership with the USDOE. The recommendation includes creating a low-income assistance program, limited exemptions from the requirement, and a compliance pathway for new construction.

G. The City Council agrees with the ECC that disclosure of information about building asset energy efficiency is important for consumer protection, especially when purchasing a building and considering the affordability and long-term cost of utilities. The Council agrees with the ECC recommendations to create a low-income program, with the proposed limited exceptions, and to include a compliance pathway for new construction.

H. The City Council further agrees that the benefits of mandatory energy efficiency disclosures include increases in price capitalization of energy efficiency and encouragement of energy-saving residential investments in the housing market, potentially shifting the market to favor energy efficient homes which may lead to reductions in carbon-intensive energy use.

I. In a recent study conducted by the Lawrence Berkeley National Laboratory of over 26,000 homes, which have used the DOE Home Energy program, findings demonstrated statistically significant results of improved energy efficiency, improved homeowner cash flow, correlation between a home's score and sales price and a reduction in the odds of a home loan going delinquent only when the HES assessment was required at the time of sale. From the study's abstract:

Energy-efficient homes save their occupants money through lower energy bills. These savings might be capitalized into higher home sale prices. They also improve the household's net cash flow, which might make households better able to pay mortgage debt. The U.S. Department of Energy (DOE)'s Home Energy Score (HES) assigns a 1-10 score to homes and estimates annual energy bills based on modeled energy consumption. In this paper we investigated the relationship between HES metrics and two housing market outcomes: home sale price and mortgage performance. **We found that the relationship was only statistically significant in places with a mandatory HES assessment at the time of sale.** Using a sample of 26,291 home sales that occurred after HES assessments, we found that a one-point increase in HES in these locations was associated with a 0.5% increase in sale price, and an increase in \$100 of estimated annual energy bills was associated with a 0.4% decrease. This magnitude of effect is consistent with estimated magnitudes of home sale

premiums for other green or energy-efficient home certifications in the literature. We also found that a one-point increase in HES was associated with a 5.5% reduction in the odds of a loan going 30 days delinquent if the loan originated after the assessment occurred. Similarly, we found that a \$100 decrease in estimated annual energy bills was associated with a 2.3% decrease in the odds of a loan going delinquent if it originated after the assessment occurred. Our results suggest that HES provides a valuable signal for housing market transactions in specific situations. [emphasis added]

<https://escholarship.org/uc/item/1nk4z84d>

J. A 2019 study from a E2e, a joint initiative of the Energy Institute at Haas at the University of California, Berkeley, the Center for Energy and Environmental Policy Research at the Massachusetts Institute of Technology, and the Energy Policy Institute at Chicago, University of Chicago, examined the effects of the Energy Conservation Audit and Disclosure ordinance in Austin, Texas. The study found that requiring home sellers to provide buyers with certified audits of residential energy efficiency increases price capitalization of energy efficiency and encourages energy-saving residential investments.

K. This data supports the ECC recommendation for a mandatory program because a voluntary program would not achieve the desired positive outcomes or the City's primary goals of reducing Bend's greenhouse gas emissions from residential energy use.

L. Based on research from other Oregon cities including Hillsboro, Portland and Milwaukie, the approximate cost is \$150-275 for a Residential Energy Performance Rating.

M. The number of home energy assessors licensed, trained and prepared to do a Residential Energy Performance Rating must be sufficient to meet the market demand for the number of daily home listings on the real estate market.

N. The Council recognizes that this is a new program and, with this in mind, the Council anticipates the need to evaluate the program to determine whether it is effective and remains in line with current and future Council goals and community priorities. Staff is directed to monitor the cost of home energy scores. If the cost of the Residential Energy Performance Rating becomes excessively burdensome, or the number of home energy assessors licensed, trained and prepared to do a Residential Energy Performance Rating is not sufficient to meet the market demand for the number of daily home listings, and therefore the turnaround time is unreasonably long, then staff is directed to bring the program back to Council so Council can consider whether to reevaluate the program.

O. The ECC worked to develop the program for one year between November 2021 and October 2022 with five public meetings and two presentations to the Council Stewardship Subcommittee. Members of the ECC, City Staff, the Oregon Department of Energy, and Earth Advantage also held an Open House Question and Answer Session

on August 1, 2022, with a presentation and opportunity for public questions and feedback. The City also solicited feedback about the program from the public through an online form. The City hosted a public comment session at the December 7, 2022 Council meeting.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. Title 18, Environment and Natural Resources, and a new Chapter 18.10, Residential Energy Performance Rating and Disclosure, are added to the Bend Municipal Code, as shown on the attached Exhibit A.
 - Section 2. All other provisions of Bend Municipal Code remain unchanged and in full effect.
 - Section 3. The effective date of this ordinance is July 1, 2023. The City Manager is directed to determine whether a sufficient number of assessors are available to run a successful residential energy performance rating program, and delay implementation if it is determined that property owners will be unable to get assessments within a reasonable time frame.

First Reading: December 7, 2022

Second reading and adoption by roll call vote: December 21, 2022

YES: Mayor Gena Goodman-Campbell NO: none
Mayor Pro Tem Anthony Broadman
Councilor Barb Campbell
Councilor Melanie Kebler
Councilor Megan Perkins
Councilor Stephen Sehgal

Attest:

Gena Goodman-Campbell, Mayor

Robyn Christie, City Recorder

Approved as to form:

Mary A. Winters

Exhibit A

DRAFT
Bend Code Update
November 28, 2022

Prepared by:
City of Bend Planning Division

Title 18

Environment and Natural Resources

Chapters:

18.10 Residential Energy Performance Rating and Disclosure.

Chapter 18.10

RESIDENTIAL ENERGY PERFORMANCE RATING AND DISCLOSURE

Sections:

- 18.10.010 Purpose.
- 18.10.020 Definitions
- 18.10.030 Administrative Rules
- 18.10.040 Applicability
- 18.10.050 Exemptions and Waivers
- 18.10.060 Expiration.
- 18.10.070 Enforcement and Penalties

18.10.010 Purpose.

The purpose of this chapter is to provide information to homebuyers about residential building energy performance. This information is designed to enable more knowledgeable decisions about the full costs of operating homes and to motivate investments in home improvements that lower utility bills, reduce carbon emissions, and increase comfort, safety, and health for homeowners.

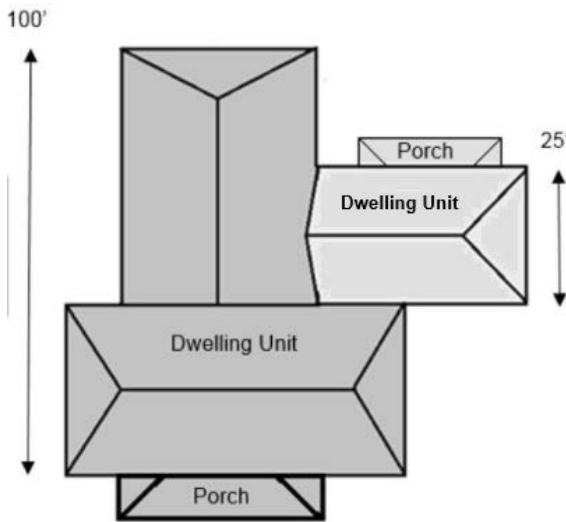
18.10.020 Definitions.

The following definitions apply in this Chapter:

Accessory dwelling unit means a small, secondary dwelling unit on a lot or parcel with a single-unit dwelling, a townhome, or a manufactured home as a primary use. See BDC 3.6.200.B, Accessory Dwelling Unit (ADU).

Attached means dwelling units attached by one of the following options as shown in the following figure. The shared or attached wall must be the wall of an enclosed interior space of a dwelling unit and may include the walls of attached garages, and does not include porches, patios, decks or stoops.

1. A dwelling unit must share a common wall for at least 25 percent of the length of another dwelling unit; or
2. The entire length of one elevation of a dwelling unit must be attached to another dwelling unit.



Covered building means any residential structure containing a single dwelling unit or manufactured dwelling, regardless of size, on its own lot or parcel, or any attached single dwelling unit, regardless of whether it is located on its own lot or parcel, where each unit extends from foundation to roof, such as an attached accessory dwelling unit (ADU), duplex, triplex, quadplex or townhouse. Covered building does not include detached accessory dwelling units, stacked condominiums or dwelling units where the unit does not extend from foundation to roof (ADUs can be stacked), or single dwelling units used solely for commercial purposes.

City Manager means the City Manager of the City or their authorized representative, designee, or agent.

Duplex means two attached dwelling units on one lot or parcel.

Energy means electricity, natural gas, propane, steam, heating oil, wood, or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

Homebuilder means an individual or business entity building new construction single dwelling unit housing or covered building to be listed for sale.

Home Energy Assessor means a person who is certified as a home energy assessor

by the Oregon Construction Contractors Board to determine home energy performance scores for residential dwelling units.

Home Energy Performance Report means the report prepared by a home energy assessor in compliance with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon Home Energy Score Standard. The Report must include the following information:

1. The Home Energy Performance Score and an explanation of the Score;
2. An estimate of the total annual energy used in the home in retail units of energy by fuel;
3. An estimate of the total annual energy generated by onsite solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;
4. An estimate of the total monthly or annual cost of energy purchased for use in the covered building in dollars, by fuel type, based on the current average annual retail residential energy price of the utility serving the covered building at the time of the report and the average annual energy prices of nonregulated fuels, by fuel type, as provided by the Oregon Department of Energy;
5. The current average annual utility retail residential energy price in dollars, by fuel type, and the average annual energy prices of nonregulated fuels, by fuel type, provided by the Oregon Department of Energy;
6. At least one comparison Home Energy Performance Score that provides context for the range of potential scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, or the same home with certain energy efficiency upgrades;
7. The name of the entity that assigned the Home Energy Performance Score and that entity's Oregon Construction Contractors Board license number if such a license is required by law;

8. The date the building energy assessment was performed;
9. For reports that meet all requirements of Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard, the statement "This report meets Oregon's Home Energy Performance Score standard" must be included on Home Energy Performance Reports; and
10. A disclaimer on the potential impacts of vegetation and exterior building features on energy efficiency, for example, "Trees and exterior building features may provide additional energy efficiency benefits to the building. Visit energy.gov to learn more."
11. A disclaimer on the potential for undisclosed energy efficient improvements and/or assets in the building, for example, "Additional energy efficient features may be present in the home and were not documented at time of Home Energy Score assessment."
12. Any additional Home Energy Performance Report or Home Energy Performance Score requirements as adopted by the Oregon Department of Energy.

Home Energy Performance Score means an asset rating that is based on physical inspection of the home or design documents used for the home's construction.

Home Energy Performance Score System means a system that incorporates building energy assessment software to generate a Home Energy Performance Score and Home Energy Performance Report. Examples of home energy performance score systems include, but may not be limited to, the U.S. Department of Energy Home Energy Score or the Home Energy Rating System (HERS).

Listed publicly for sale means listing the covered building for sale by printed advertisement internet posting, Regional Multiple Listing Service (RMLS) listing, or publicly displayed sign.

Manufactured dwelling means a residential trailer, mobile home, or manufactured

home meeting ORS 446.003(25) and designed to be used as a year-round residential dwelling. The manufactured dwelling is a structure that is constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities and that is being used for residential purposes.

Manufactured home means a single-unit residential structure, as defined in ORS 446.003(25)(a)(C), which includes a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the Manufactured Housing Construction and Safety Standards of 1974 (42 USC Section 5401 et seq.) as amended on August 22, 1981.

Mobile home means a manufactured dwelling that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

New home means a home constructed in the current or previous year.

Real estate listings means any public real estate listing of homes for sale in the city of Bend, by a property owner, representative of a property owner, or by a licensed real estate agent. Real estate listings include any printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Craigslist, Nextdoor and other social media platforms, Redfin, Zillow, Trulia and other third-party listing services.

Real estate listings are required to include the Home Energy Performance Score and the Home Energy Performance Report.

Residential trailer means a manufactured dwelling that was constructed prior to January 1, 1962.

Sale means the conveyance of title to real property as a result of the execution of a real property sales contract. 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.

Seller means any of the following:

1. Any individual, individuals or entity possessing title to a property that includes a covered building to be listed for sale, or
2. The association of unit owners responsible for overall management in the case of a condominium, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations of the covered building to be listed for sale.

Single-unit detached dwelling means a structure, or manufactured home, containing one dwelling unit with no structural connection to adjacent units.

Triplex means three attached dwelling units on one lot or parcel.

Quadplex means four attached dwelling units on one lot or parcel.

18.10.030 Administrative Rules.

Administrative Rules. The City Manager shall have the authority to establish administrative rules and regulations consistent with the provisions of this chapter for the purpose of interpreting, clarifying, carrying out, furthering, and enforcing the provisions of this chapter. A copy of such administrative rules and regulations shall be on file in the office of the City Recorder and be posted on the City website.

18.10.040 Applicability.

A. Energy Performance Report and Disclosure for Covered Buildings.

Prior to publicly listing any covered building for sale, the seller of a covered building, or the seller's designated representative, must:

1. Obtain a home energy performance report of such building from a state licensed home energy assessor, and;
2. Provide a copy of the home energy performance report:
 - a. To all licensed real estate agents working on the seller's behalf; and

- b. To prospective buyers who visit the home while it is listed publicly for sale; and
 - c. Maintain a copy of the home energy performance report available for review by City Manager upon request for quality assurance and evaluation of policy compliance.
 - 3. Include the Home Energy Performance Score in all real estate listings, including the Home Energy Performance Report if attachments are accepted by the listing service.
- B. Home Energy Performance Report for Identical Newly Built Covered Buildings. A single home energy performance report may be obtained and replicated for covered buildings constructed during the same time period and within the same land division. The dwelling units must be constructed using the identical floor plan and with identical features including, but not limited to, type and amount of insulation, windows, attic fans, heating and cooling systems, hot water heaters, and appliances.
- C. Pre-Construction Home Energy Score. If a dwelling unit is advertised for sale before it is fully constructed, it still requires a Home Energy Score. The Home Energy Score is generated based on design specifications and does not require an on-site inspection. The Report will note that it is a "pre-construction" assessment.
- D. Low Income Assistance Program. With funds as established in the City's budget, the City Manager will establish a program to provide payment of the cost of obtaining a Home Energy Performance Report for a covered building (whether by a grant to the seller, a direct payment to the assessor(s), or otherwise), provided that the seller meets eligibility criteria established by the City or other government entity. This section will be further defined by BC 4.10.030 Administrative Rules.

18.10.050 Exemptions and Waivers.

- A. The City Manager will exempt a seller from the requirements of this chapter if the seller submits documentation that the covered building will be sold through any of the following:

1. A trustee's sale;
 2. A deed-in-lieu of foreclosure sale; or
 3. Any pre-foreclosure sale in which seller has reached an agreement with the mortgage holder to sell the property for an amount less than the amount owed on the mortgage.
- B. The City Manager may exempt a seller from the requirements of this chapter after confirming that compliance would cause undue hardship for the seller under the following circumstances:
1. The covered building qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes;
 2. A court appointed receiver is in control of the covered building due to financial distress;
 3. The senior mortgage on the covered building is subject to a notice of default;
 4. The covered building has been approved for participation in Oregon Property Tax Deferral for Disabled and Senior Citizens, or equivalent program as determined by the City Manager; or
 5. The seller is otherwise unable to meet the obligations of this chapter as determined by the City Manager.

18.10.060 Expiration.

The Home Energy Score is valid for eight years after the assessment date, provided that no changes to mechanical systems, energy efficiency or square footage in the home has occurred. For purposes of this section, an assessment date is the date the assessment was completed.

18.10.070 Enforcement and Penalties.

- A. It is a violation of this chapter for any seller of a covered building to fail to comply with the requirements of this chapter or to misrepresent any material fact in a document required to be prepared or disclosed by this chapter. Violation of this chapter is subject to

the enforcement authority of BC Chapter 1.40, Civil Infractions. Violation is a Class A civil infraction subject to penalties, which include monetary fines.

B. Any seller of a covered building who does not comply with the provisions of this chapter will be subject to the following:

1. For a violation of this chapter, there will be a 15-day grace period where staff will notify the seller to come into compliance. If the notice of the violation is provided by mail, the 15-day grace period will begin three days after mailing the notice, and seven days after mailing outside the state of Oregon.
2. After 15 days, the City will issue written notice of violation to the seller, describing the violation and steps required to comply, as further set forth in BC Chapter 1.40, Civil Infractions, which includes pre-citation procedures for voluntary compliance.
3. If the violation is not remedied within 30 days after issue of a notice of violation or as specified in the notice, the City may issue a citation and assess a civil penalty of up to \$750. For every subsequent 45-day period during which the violation continues, the City may assess additional civil penalties of up to \$750.