

**Exhibit A**

**DRAFT**  
**Bend Code Update**  
**August 8, 2022**

Prepared by:

City of Bend Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in ~~strikethrough~~ typeface is proposed to be deleted

\*\*\*Indicates where text from the existing code has been omitted because it will remain unchanged.

**Title 4**

**Environment and Natural Resources**

**Chapters:**

**4.10 Residential Energy Performance Rating and Disclosure.**

**Chapter 4.10**

**RESIDENTIAL ENERGY PERFORMANCE RATING AND DISCLOSURE**

Sections:

4.10.010 Purpose.

4.10.020 Definitions.

4.10.030 Administrative Rules.

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4.10.050 Exemptions and Waivers.

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**4.10.010 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 home owners.

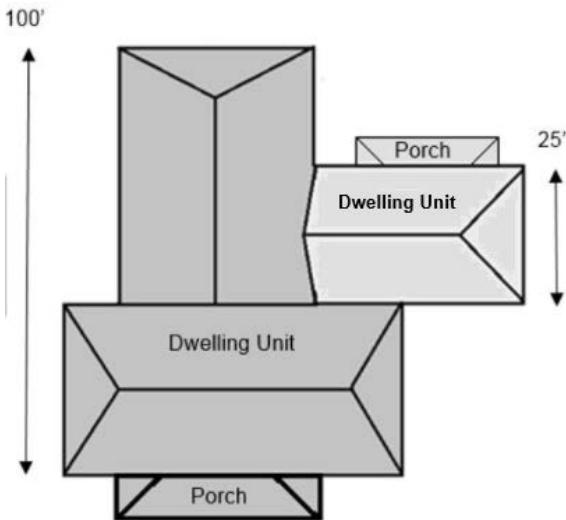
**4.10.020 Definitions.**

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](http://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 Ppervformance 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 or entity possessing title to a property that includes a covered building, 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.

**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.

#### **4.10.030 Administrative Rules.**

A. 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.

#### **4.10.040 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. To the extent that City funds are available, the City Manager may 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 has been deemed eligible to participate in a low income assistance program offered by the City or other government entity. This section will be further defined by BC 4.10.030 Administrative Rules.

#### **4.10.050 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 responsible party is otherwise unable to meet the obligations of this chapter as determined by the City Manager.

#### **4.10.060 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.

#### **4.10.070 Enforcement and Penalties.**

- A. It is a violation of this chapter for any person in charge of property 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. For purposes of this Chapter, a person in charge of property means the seller of the subject property. 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 person in charge of property 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 person in charge of property 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 of the notice, and seven days after mailing outside the State.
  2. After 15 days, the City will issue written notice to the person in charge of property, describing the violation and steps required to comply, as further set forth in BC Chapter 1.40, Civil Infractions.
  3. If the violation is not remedied within 30 days after issue of written notice, the City may 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.