



CITY COUNCIL AGENDA REPORT

Meeting Date: December 12, 2019

From: Adrienne Etherton, Sustainability Management Analyst

Subject: Addition to BMC Title 15 (Building Efficiency Program)

Recommendation

Adopt Ordinance No. 644, waiving second reading, amending Title 15 of the Brisbane Municipal Code adding a Chapter establishing the Building Efficiency Program.

Background

This ordinance was introduced at the regular City Council meeting held on November 21, 2019. Staff was directed to make revisions clarifying that condominium buildings are not covered, and to research an exemption for historical buildings.

Discussion

Three changes were made to the final version of the ordinance; first, the entire chapter and all of its subsections have been renumbered from 15.83 to 15.77 to remove the conflict with the chapter introduced as ordinance 643. The remaining two changes addressed below were completed after consultation with the City Attorney and with California Energy Commission staff.

Section 15.77.030.C (“applicability”) has been revised as follows:

C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; **condominium projects as defined in California Civil Code §§ 4125 and 6542**; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

The purpose of this second change is to specifically note the exclusion of condominiums from this ordinance.

Section 15.77.040.T (“definitions”) has been revised as follows:

T. “Multifamily Property” means any multifamily building that contains two or more residential living units, ~~as defined in section 4125 or 6542 of the California Civil Code~~. This includes high-rise buildings (10 or more stories), mid-rise buildings (5 to 9 stories), or low-rise buildings (1 to 4 stories).

The purpose of this third change is to remove unnecessary and repetitive references to Civil Code definitions that might mistakenly lead some stakeholders to the conclusion that condominium projects are covered under the ordinance.

Ordinance Application to Historical Buildings

Staff investigated the application of the ordinance to historical buildings in the City of Brisbane and the potential for an exemption, and does not recommend any changes to the ordinance for a number of reasons:

1. The statewide program does not exempt historic buildings from reporting and disclosure. The city's program seeks to align with the statewide program to receive a local exemption from the CEC that will avoid duplicative reporting requirements for some buildings. From our past conversations with CEC staff we understand that if Brisbane exempted historic buildings in our ordinance, it would not meet their minimum requirements for a local exemption; therefore, many buildings would be required to report to both the city and state programs.

2. The ordinance does not require any building to undergo any specific modification that would alter the exterior aesthetic or historic attributes of the building. The first requirement of the ordinance is benchmarking and self-reporting the annual energy and water use of the building, which has no physical impact on the building. The subsequent "Beyond Benchmarking" phase requires building energy and water auditing. After auditing, buildings have a choice of three options: retro-commissioning, a green lease agreement, or one energy and one water retrofit from a list of approved measures. Of the currently proposed energy and water retrofit options, almost all are to internal building systems that would not alter the exterior aesthetic or historic attributes. Furthermore, the owner may choose any option from the list, or request approval to perform any measure not on the list identified through the audit or retro-commissioning processes, easily allowing them to avoid impacts to historical attributes.

3. The only registered historic building in the city is the Roundhouse, which would not be covered by the ordinance since it is not an occupied building.

4. Of the seven historic buildings identified in the 1994 General Plan Addendum "Existing and Planned Parks, Recreation, Historic and Cultural Resources," all of these buildings appear to be below the 10,000 square foot threshold of the ordinance, with the sole exception of the Machinery & Equipment Building at 3401 Bayshore Blvd, which our records indicate is 10,000 sqft.

Attachments

1. Final version Ordinance No. 644
2. City Council Agenda Report of November 21, 2019
3. City Attorney



Randy Breault, Public Works Director



Clay Holstine, City Manager

ORDINANCE NO. 644

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 15.77 TO THE BRISBANE MUNICIPAL CODE
CONCERNING THE BUILDING EFFICIENCY PROGRAM**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.77 is hereby added to the Brisbane Municipal Code to read as follows:

§15.77.010 - Authority.

The Department of Public Works through the Director or the Director's designee shall have the authority to enforce this chapter.

§15.77.020 - Purpose.

This Chapter implements the goals of the City's Climate Action Plan and related California legislation by lowering the environmental impact of existing buildings through reductions in greenhouse gas (GHG) emissions, energy, and water consumption. Owners and/or tenants of identified public and private properties will initially be required to complete annual building energy and water benchmarking. Subsequently, these owners/tenants will be required to demonstrate compliance with contemporary best energy and water performance standards by following either a performance pathway that allows the submittal of documentation confirming the building is already highly efficient, or a prescriptive pathway that requires an energy audit and retro-commissioning or retrofit of base building systems.

It is the intent of this Chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).

§15.77.030 - Applicability.

A. This Chapter shall apply to all property, including existing buildings on such property, that is:

1. City owned property and the building has a Gross Floor Area of 2,000 square feet or more, provided, however, any City owned property that has a building with a Gross Floor

Area less than 10,000 square feet is not subject to the requirements of Sections 15.77.060, 15.77.070, or 15.77.080 of this Chapter; or

2. Privately owned property and the building has a Gross Floor Area of 10,000 square feet or more; or
 3. Property owned by any other governmental agency that is required to comply with the City's building codes under California Government Code Section 53090, et seq., or successor legislation, and the building has a Gross Floor Area of 10,000 square feet or more.
- B. The reporting requirements of this Chapter (Sections 15.77.050, 15.77.060, 15.77.070, or 15.77.080) are not required for buildings with a Gross Floor Area of less than 10,000 square feet, except when a meter serves multiple buildings, all owned by the same property owner, and the buildings in total have a Gross Floor Area of 10,000 square feet or more.
- C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; condominium projects as defined in California Civil Code §§ 4125 and 6542; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

§15.77.040 - Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

- A. "Base Building Systems" means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:
1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.
 2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

B. “Baseline Year” means the calendar year that a building shall use as its past energy and water usage year when comparing to its “reporting data year” usage. For the first Beyond Benchmarking cycle, the baseline year is the calendar year of 2020 (the first year of mandatory benchmarking data), reported in 2021. In subsequent Beyond Benchmarking cycles, the baseline year resets to the calendar year reported in the previous Beyond Benchmarking cycle. The following table reflects the data and baseline years for a Commercial property during the first three Beyond Benchmarking cycles:

Due Date	Reporting Data Year	Baseline Year
May 1, 2023	Calendar year 2022	Calendar year 2020
May 1, 2028	Calendar year 2027	Calendar year 2022
May 1, 2033	Calendar year 2032	Calendar year 2027

C. “Benchmarking Report” means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.

D. “Commercial Property” means a property that is defined by ENERGY STAR Portfolio Manager with the exception of the property types listed on Portfolio Manager as Multifamily or Manufacturing/Industrial Plants. Commercial property includes warehouses and distribution centers.

E. “Covered Building” means the current definition of “Covered Building” as set forth in State Regulations.

F. “Decarbonized Building” means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.

G. “Demand Flexibility” means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.

H. “Department” means the City of Brisbane’s Department of Public Works.

I. “Disclosable Buildings” means the most current definition of “Disclosable Buildings” as set forth in State Regulations that have 10,000 square feet or more of Gross Floor Area.

- J. “Distributed Energy Resources (DER)” means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.
- K. “Energy” means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.
- L. “Energy Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.
- M. “ENERGY STAR® Portfolio Manager” means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.
- N. “ENERGY STAR® Certified” means a building which has earned an ENERGY STAR® Score of 75 or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings Nationwide and the data has been verified by a professional engineer or registered architect.
- O. “ENERGY STAR® Score” means a number ranging from 1 to 100 assigned by the US EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the US EPA's ENERGY STAR® Portfolio Manager.
- P. “Energy Use Intensity” (EUI) as defined by the US EPA means all energy consumption divided by the Gross Floor Area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the US EPA’s ENERGY STAR® Portfolio Manager.
- Q. “Grid-Interactive Efficient Building (GEB)” means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
- R. “Gross Floor Area” means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not

fully enclosed should not be included in the Gross Floor Area. Gross Floor Area for a Commercial Property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross Floor Area for an Industrial Property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross Floor Area for a Multifamily Property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

- S. "Industrial Property" means a property that is defined by ENERGY STAR® Portfolio Manager as a Manufacturing/Industrial building used for producing, manufacturing, or assembling goods and includes but is not limited to a main production area that has high-ceilings and contains heavy equipment used for assembly line production.
- T. "Multifamily Property" means any multifamily building that contains two or more residential living units. This includes high-rise buildings (10 or more stories), mid-rise buildings (5 to 9 stories), or low-rise buildings (1 to 4 stories).
- U. "Qualified Auditor" means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing audits and to certify audit reports required by this Chapter. A Qualified Auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two or more years of auditing experience and possesses one or more of the following certifications:
 - 1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;
 - 2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);
 - 3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);
 6. Professional Engineer (PE) registered in the State of California;
 7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or
 8. Additional qualified certifications as the Director of the Department deems appropriate.
- V. “Qualified Retro-Commissioning Professional” means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this Chapter. A Qualified Retro-Commissioning Professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two or more years of commissioning or retuning experience and possesses one or more of the following certifications:
1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
 2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;
 3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
 4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
 5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
 6. Certified Professional certified by the National Environmental Balancing Bureau (NEBB);
 7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 8. Professional Engineer (PE) registered in the State of California; or
 9. Additional qualified certifications as the Director of the Department deems appropriate.
- W. “Retro-Commissioning” means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

- X. “Retro-Commissioning Measures” means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.
- Y. “Retrofit Measures” means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.
- Z. “Solar Thermal System” means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including but not limited to heating water, providing process heating, space heating, absorption cooling and any combination of such applications.
- AA. “Solar Photovoltaic” means a technology that uses a semiconductor to convert sunlight directly into electricity.
- BB. “Stationary Battery Electric Storage System (BESS)” means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.
- CC. “US EPA Water Score” means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the US EPA's ENERGY STAR®; Portfolio Manager.
- DD. “Water Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.
- EE. “Water Use Intensity” (WUI) as defined by the US EPA means all water consumption divided by the Gross Floor Area. (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.).

§15.77.050 – Annual Energy and Water Benchmarking, and Self-Reporting.

- A. Annual Energy and Water Benchmarking and Self-Reporting. For every building subject to this Chapter, the property owner shall annually submit to the Department an energy and water benchmarking report according to the schedule set forth in Section 15.77.100.

B. Owner and Tenant Responsibilities. For every building subject to this Section 15.77.050 that has non-residential tenants, the property owner shall request from its non-residential tenants and the utility companies that serve the building the information necessary related to paragraphs 1 and 2 of subsection C of this Section 15.77.050 to satisfy the requirements of this Section. Utility companies shall provide aggregated whole building data for buildings with three or more non-residential tenant accounts and shall provide the aggregated tenant-authorized information for buildings with less than three non-residential tenants.

1. The property owner of a building with one or two non-residential tenants in which the tenant(s) holds the utility account shall by February 1 of each calendar year, beginning in 2021, request the tenant(s) to authorize the utility companies that serve the tenant's space to provide to the property owner the energy and water use data for the tenant space. Within 30 days of the tenant's receipt of such request, the tenant shall authorize the utility companies to release the energy use data for the tenant space to the property owner. After the tenant provides to the property owner an authorization form and the property owner provides such form to a utility company, the utility company shall provide to the property owner energy and water use data for tenant space including any area that the tenant subleases.
2. A tenant's failure to provide the authorization to the utility companies subjects the tenant to the penalty provisions of this Chapter.
3. A tenant's failure to provide the authorization to the utility companies does not relieve the property owner's benchmarking obligations under this Chapter but such obligation may be satisfied by a partial building benchmarking report as approved by the Director.
4. If by reason of a lease or otherwise, a single tenant has assumed complete management and control of a building, the property owner and the tenant may agree in writing and inform the Director that the tenant will assume full responsibility for the obligations of the property owner under this Chapter.
5. Nothing in this Chapter shall be construed to permit a property owner to use tenant utility usage data for purposes other than compliance with the benchmarking report requirements. Nor shall the reporting requirements of this Chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

C. Energy and Water Benchmarking Report. The energy and water benchmarking report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total energy and water consumed by the whole building for the entire calendar year being reported. The energy and water benchmarking report shall, at a minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this Chapter, including but not limited to:
 - a. Property address;
 - b. Gross Floor Area;
 - c. Property type;
 - d. Year built;
 - e. Number of stories;
 - f. Weekly operating hours;
 - g. Number of workers on main shift;
 - h. Number of computers;
 - i. Space use types and corresponding Gross Floor Areas;
 - j. Covered parking garage information (if applicable);
 - k. Information about buildings that share a meter with the building subject to this Chapter;
 - l. Any other reasonable information about energy consuming assets connected to the meter that affect the energy use intensity of the building;
 - m. Any other information required for an ENERGY STAR® Score as defined by the EPA;
 - n. The ENERGY STAR® Portfolio Manager contact information fields for the individual or entity responsible for the benchmarking report (either the service provider, owner, tenant, or building data administrator);
 - o. Custom field for an electricity energy provider;
 - p. If the property owner is seeking an exemption, the property notes field in ENERGY STAR® Portfolio Manager shall include a brief description of the reason for seeking an exemption; and
 - q. Information on any non-residential tenants, including the tenant's name, contact information, and Gross Floor Area leased, and whether each tenant provided needed data as required by Section 15.77.050.B.1.
2. Energy and Water Benchmarking Information. Information necessary to benchmark energy and water usage, including, at a minimum, the following data:
 - a. The ENERGY STAR® Score for the building, where available;
 - b. The weather-normalized site and source EUI in kBtu per square foot per year for the building;
 - c. The site and source EUI in kBtu per square foot per year for the building;

- d. The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ENERGY STAR® Portfolio Manager;
- e. Indoor water use, indoor water use intensity, outdoor water use (monthly when available), and total water use;
- f. Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable;
- g. Monthly grid purchased electricity, natural gas, and other fuel and water consumption (monthly when available) and dollar amounts (when available);
- h. Monthly Electricity Use – Generated from Onsite Renewable Systems and Used Onsite (kWh) - mandatory if applicable and seeking a performance pathway for compliance;
- i. Annual Maximum Demand (kW) if available; and
- j. Annual Maximum Demand date if available.

D. Quality Check of Benchmarking Report Submission.

The property owner or the owner's authorized representative shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager, and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the benchmarking report to the Department.

E. Exemptions from Benchmarking Report Submission.

- 1. For each reporting cycle, a property owner may request an exemption from submitting a benchmarking report and the Department shall determine whether an exemption under this subsection applies to a building. A property owner may appeal a determination that a building is not exempt as set forth in section 15.77.125.
- 2. All Disclosable Properties must submit at a minimum the descriptive information in all subparagraphs set forth in paragraph 1 of subsection C of this Section, even if energy and water consumption are not disclosed.
- 3. A property owner shall not be required to file a full benchmarking report with energy data for a reporting year if any of the following conditions apply:
 - a. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building was not issued for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.

- b. If the building were vacant for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.
- c. If the building did not receive energy or water services for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.
- d. If a demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department, the building is exempt from benchmarking reporting and this Section 15.77.050.

F. Publication of Limited Summary Data.

The Department shall make the following information, as reported by property owners, available to the public on the City’s website, and update the information at least annually; provided, however, for properties with one or two non-residential tenants, such tenant(s) may elect to not have the information made available to the public:

- 1. Summary statistics on overall compliance with this Chapter;
- 2. Summary statistics on overall energy and water consumption of buildings subject to this Chapter derived from the aggregation of annual benchmarking reports; and
- 3. For each building subject to this Chapter:
 - a. Property address, year built, Gross Floor Area, and property use type;
 - b. Monthly and/or annual summary statistics for the whole building derived from the submitted benchmarking report, including all information required under subsection C of this Section 15.77.050 ; and
 - c. The status of compliance with the requirements of this Chapter.

§15.77.060 – Beyond Benchmarking: Pathways for Demonstrating and Increasing Energy and Water Performance.

- A. Compliance with Beyond Benchmarking requirements shall be demonstrated in one of two methods: a Performance Path or a Prescriptive Path. Criteria for the Performance Path are described in Section 15.77.070 and apply to Disclosable Properties of any size. Criteria for the Prescriptive Path are described in 15.77.080 and are specific to a building's Gross Floor Area.
- B. Exemption from Beyond Benchmarking Requirements. For each reporting cycle, a building may request an exemption to comply with this Section 15.77.060 and the Department shall determine whether an exemption under this section applies. A property owner may appeal the Department's determination that a building is not exempt under this section following the procedures set forth in section 15.77.125. Any property owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Department in the exemption determination. Any exemption granted does not extend to past or future submittals. A property owner shall not be required to file an energy and water audit report for a reporting year if the building was exempt from the benchmarking requirements in section 15.77.050 E and any of the following conditions apply:
1. A demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department.
 2. If the building is intended for sale within the scheduled compliance deadline and the property owner has conducted a real estate appraisal within one calendar year of the reporting deadline, only a copy of the appraisal summary report is required;
 3. If the building was recently constructed and received a certificate of occupancy within the last five years of the scheduled compliance deadline, the property owner shall report in the following compliance cycle.
 4. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building had not been issued for more than half of the calendar year required to be audited, the property owner shall report in the following compliance cycle.
 5. If 50% or more of the Gross Floor Area of the building was not occupied for more than half of the calendar year required to be benchmarked, only an Asset Score Full as set forth in subsection B of Section 15.77.080 is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.
 6. If the building did not receive energy or water services for the more than half of the calendar year required to be audited, only an Asset Score Full is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.

§15.77.070 – Beyond Benchmarking Performance Path

- A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the Department in such a form as required by the Department that demonstrates the following:
1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy; or has achieved one (1) or more of the energy standards and one (1) or more of the water standards as set forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.
 2. Energy Standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) Existing Buildings Operations and Maintenance Certification; or Qualified Auditor or Retro-Commissioning Professional certified at least at least one (1) of the following:
 - a. The building has received an ENERGY STAR Score of 80 or greater from the US EPA; or
 - b. The building has improved its ENERGY STAR Score by twenty (20) points or more relative to its performance during the baseline year; or
 - c. The building has a weather normalized site GHG Intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated mean for that property type; or
 - d. The building has reduced its weather normalized site GHG Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
 3. If a building has installed one or more of the following distributed energy resources (DERs):
 - a. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two following options satisfy the solar photovoltaic measure:
 - i. A minimum amount of solar photovoltaic capacity of 5 kilowatts per Brisbane Municipal Code Section 15.82.050; or
 - ii. Sufficient capacity must be installed to offset equal to or greater than 20% of their annual electricity consumption, as calculated by ENERGY STAR Portfolio Manager, or otherwise determined by the City Department.

- b. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
 - c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
 - d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.
4. Water Standards: A Qualified Auditor or Qualified Retro-commissioning Professional has certified at least one (1) of the following:
- a. The building has received a US EPA Water Score of 80;
 - b. The building has improved its US EPA Water Score by twenty (20) points or more relative to its performance during the baseline year;
 - c. The building has reduced its Water Use Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
- B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® Performance Verification Report for that reporting year. If the building only meets one (1) of the standards, the property owner shall submit a Performance Verification Report for the satisfactory standard and shall comply with this section by completing one (1) of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of section 15.77.080.
- C. After the establishment of a DOE-recognized standard for a water auditor, the Director may adopt the qualifications of the DOE-recognized standard with modifications as the Director deems to be appropriate.

§15.77.080 - Beyond Benchmarking Prescriptive Path.

- A. If a building does not meet performance standards set forth in 15.77.070, a property owner shall meet the requirements of this Chapter through one (1) of two (2) alternative means:

1. For properties between 10,000 and 39,999 square feet:
 - a. Conducting an Asset Score Full Report described in Section 15.77.080 B; and either
 - b. Performing Retro-Commissioning described in Section 15.77.080 D; or
 - c. Adopting Improvement Measures described in subsection F of Section 15.77.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.77.080.

 2. For properties 40,000 square feet and more:
 - a. Conducting a minimum of an ASHRAE audit Level II Audit described in Section 15.77.080 B (Level III audits are also acceptable); and either
 - b. Performing Retro-Commissioning described in Section 15.77.080 D; or
 - c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.77.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.77.080.
- B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:
1. Energy Auditing. Energy audits required by this Chapter shall meet or exceed either the Department of Energy (DOE) Asset Score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The DOE Audit Template shall be used to transmit data to the City for compliance with Energy Auditing and Retro-commissioning. The City will publish an Audit Template on the Building Energy Asset Score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.77.080 A describes the applicability of each of the following audit standards based on Gross Floor Area:
 - a. Asset Score Full
 - i. Collect Building Data: Use the Data Collection Form “Full” Input Mode version to gather information about the building’s physical characteristics.
 - ii. Review the Data Collection Priority Map to help focus on the most important building data given the building’s use type and climate zone.
 - iii. Enter the data on the Audit Template supplied on the DOE Asset Score website for the Brisbane Building Efficiency Program

 - b. ASHRAE Level II Audit

- i. Energy audits required by this Chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor.
 2. Water Auditing. Water audits shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The water audit of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.
- C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a Qualified Auditor, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of subsection 15.77.080 B and shall include, at a minimum, the following:
 1. The date(s) that the audit and retro-commissioning were performed;
 2. Identifying information on the auditor and retro-commissioning provider;
 3. Information on the base building systems and equipment;
 4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;
 5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
 6. Functional performance testing reports;
 7. Operational training conducted;
 8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;
 9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;
 10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;

11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;
12. Inventory of existing, planned or desired water systems and equipment; and
13. Acknowledgment that an Asset Score Full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The Department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process) once the Standard has been voted and approved by ASHRAE. These activities shall be conducted under the direct supervision of a Qualified Retro-commissioning Professional. The retro-commissioning of base building systems shall include, at a minimum, the following:
 - a. Heating, ventilation, air conditioning (HVAC) systems and controls
 - b. Indoor lighting systems and controls;
 - c. Exterior lighting systems and controls;
 - d. Water heating systems;
 - e. Renewable energy systems;
 - f. Stationary electric battery storage systems;
 - g. Electric vehicle charging equipment; and
 - h. Demand flexibility systems.
2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Retro-commissioning Professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.

E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a Qualified Retro-commissioning Professional, shall

be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of Subsection 15.77.080 D and shall include, at a minimum, the following:

1. The date(s) that the retro-commissioning was performed;
2. Identifying information on the retro-commissioning provider;
3. Information on the base building systems and equipment;
4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;
5. Functional performance testing reports; and
6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this Chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures - one energy-related measure and one water-related measure listed below - were completed and by submitting an Improvement Measures Report within the time set forth in Section 15.77.100.

1. Energy-Related Improvement Measures

a. Energy Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the Department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

- i. Space heating and cooling
- ii. Ventilation
- iii. Building envelope measures such as insulation, air sealing and window upgrades
- iv. Water heating
- v. Lighting
- vi. Cooking
- vii. Refrigeration
- viii. Office equipment and computing
- ix. Other loads

b. Distributed Energy Resource Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will

continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

- i. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- ii. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- iii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way that is currently operational.
- iv. Electric Vehicle (EV) Charging Infrastructure. Electric Vehicle Charging Infrastructure has been installed on the building site.
- v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

2. Water-Related Improvement Measures

- a. Water Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:
 - i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;
 - ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;
 - iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;
 - iv. Installation of insulation on all hot water pipes in accessible building locations;
or

- v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. Improvement Measures Report. A report of the Improvement Measures implemented shall be submitted to the Department and maintained by the property owner as required in Section 15.77.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the Improvement Measures were implemented;
2. Identifying information on the person implementing the Improvement Measures;
3. Information on the Base Building Systems and equipment; and
4. A list of all Improvement Measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. Green Lease Attestation. A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a “green lease”). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;
2. Operational clauses that support overall energy and water reductions on the property; and
3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this Chapter.

I. Required Submittal to the Department.

1. For each building subject to this Chapter, the property owner shall submit to the Department an Energy and Water Audit and Report as described in Section 15.77.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.77.100.
2. For each building subject to this Chapter, the property owner shall submit to the Department, in accordance with the schedule set forth in Section 15.77.100, one of the following:
 - a. An Energy and Water Retro-Commissioning Report as described in Section 15.77.080 E;
 - b. An Improvement Measures Report as described in Section 15.77.080 G; or

c. A Green Lease Attestation as described in Section 15.77.080 H.

§15.77.090 - Record Maintenance.

The property owner shall maintain records related to benchmarking, audits and retro-commissioning, including, but not limited to, the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of six years. When the building is sold, the records shall be given to the new property owner.

§15.77.100 - Schedule for Compliance.

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the Department an annual benchmarking report in compliance with Section 15.77.050 according to the following schedule:

1. For properties owned by the City with a gross floor area of 2,000 square feet or more, the City must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2020.
2. For all other properties subject to this Chapter, the property owner must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.77.060 once every five years, based on the federal Unique Building Identifier (UBID) which will be published on the City website for each building subject to this Chapter under Section 15.77.060.

1. For commercial - May 15, 2023
2. For industrial and multifamily - May 15, 2024
3. For any newly constructed commercial or multifamily buildings receiving a certificate of occupancy after May 15, 2018, or industrial buildings after May 15, 2019, the property owner shall comply with Sections 15.77.060, 15.77.070 and/or 15.77.080 at the time of the next reporting cycle corresponding to the property type (e.g. 2028 or 2029).

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in Subsection 15.77.060 B, a property owner shall complete the audits and retro-commissioning within five years of a building's compliance due date.

- D. Early Compliance Pilots. The City may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.77.100.
- E. Time Extensions. A property owner may be granted up to three extensions of sixty days each to file any submittal required by this Chapter provided satisfactory proof is made to the Department that one of the following conditions applies:
1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:
 - a. The property is under the control of a court-appointed receiver as a result of financial distress;
 - b. The property is owned by a financial institution as a result of borrower default;
 - c. The property has been acquired by a financial institution via deed in lieu of foreclosure;
 - d. The property is encumbered by a senior mortgage subject to a notice of default;
 - e. The property is an asset subject to probate proceedings;
 - f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued Organizational Clearance Certificate and, where the property owner is a limited partnership, provide a Supplemental Clearance Certificate.
 2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the Department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this Chapter.
 3. Fifty percent or more of the Gross Floor Area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.
- F. Notification. For buildings with compliance dates of May 1, 2021 or later, the Department shall notify the property owner at least three months prior to the due dates specified in subsections A and B of this Section 15.77.100.

§15.77.110 - Penalties for Violation.

The violation of any provisions of this Chapter shall constitute an infraction and the City shall enforce this Chapter as set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such enforcement

actions are cumulative and shall be in addition to any other enforcement remedies specified under the Code or under other law.

§15.77.115 - Declaration of Public Nuisance.

Any building operating contrary to the provisions of this Chapter and any use of property or of a building operated or maintained contrary to the provisions of this Chapter are declared to be public nuisances. The City Attorney may undertake the necessary proceedings to abate and/or enjoin the operation or use of any such property or building. The remedies provided by this Section shall be in addition to any other remedy or remedies or penalties provided in this Chapter, this Code or any other law.

§15.77.120 - Fees.

By Council resolution, the City may impose fees to cover the cost of the Department's review of submittals required by this Chapter and any other costs to administer this Chapter. Such fees may include, but not be limited to, an annual benchmarking disclosure compliance fee and an audit and retro-commissioning fee.

§15.77.125. - Appeals.

- A. As to any matter arising under this Chapter, any person may appeal to the Director any decision, determination, order, requirement or other action of the Department in which the Director has not been directly involved ("the Department Decision"). Any such appeal shall be in writing and filed with the City Clerk within 15 days after the action giving rise to the appeal. The Director shall decide the appeal within 30 days.
- B. Any person dissatisfied with the Director's decision concerning the Department Decision may appeal to the City Manager by filing such appeal with the City Clerk within 10 days after the Director's decision concerning the Department's Decision.
- C. The City Manager shall consider the appeal within 30 days and may affirm, reverse or modify the Director's decision concerning the Department Decision. The decision of the City Manager shall be final.

§15.77.130. - Disclosure of Data Provided to the City.

Data provided to the City under this Chapter are public records as defined in the California Public Records Act.

SECTION 2: Adoption of this Ordinance does not require environmental review because it represents general policy making that would not result in a direct or indirect physical change in the environment and therefore it is not a project under the California Environmental Quality Act. CEQA Guidelines, Section 15378 (b)(2).

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Madison Davis, Mayor

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas C. McMorrow, Interim City Attorney



CITY COUNCIL AGENDA REPORT

Meeting Date: November 21, 2019

From: Adrienne Etherton, Sustainability Management Analyst

Subject: Introduction of Draft Ordinance 644 Establishing the Brisbane Building Efficiency Program

Community Goal

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability.

Purpose

Establish the Brisbane Building Efficiency Program (BBEP) to reduce the environmental impact of existing commercial buildings through annual energy and water benchmarking, auditing, retro-commissioning and/or retrofits.

Recommendation

Adopt Ordinance No. 644.

Background

The commercial building sector represents approximately 30% of the City of Brisbane's greenhouse gas (GHG) emissions, the second-largest sector after transportation, according to the city's latest community emissions inventory in 2015. The City's Climate Action Plan, adopted by the City Council in September 2015, identified a program to address emissions from existing buildings as a high-priority climate strategy.

The State of California and cities around the country and world have adopted building benchmarking laws encouraging or requiring building owners to report their energy, and sometimes water, usage to the local jurisdiction annually. Often, these laws include public posting of some portion of the reported data; this market transparency drives energy and water efficiency for current owners and tenants, and provides insights into the cost of operating buildings for potential buyers or lessees, further driving market actions to reward the most efficient buildings. Newer efforts go "beyond benchmarking" to require building audits, retro-commissioning, or efficiency improvements.

In addition to climate benefits, efficient buildings cost less to operate, are more valuable and marketable, and increase the health and productivity of occupants. The data provided to local governments improves understanding of the local building stock, emissions tracking, climate action and resiliency planning, and marketing of existing or development of new targeted programs to further reduce energy and water use and decarbonize the building sector.

Discussion

The Building Efficiency Program would require that owners, or tenants in certain cases, perform annual energy and water benchmarking of commercial, industrial and multi-family buildings 10,000 square foot or larger beginning in 2021. The Beyond Benchmarking phase would begin in 2023 for commercial properties, and 2024 for industrial and multi-family properties, with compliance requirements in five-year cycles. The compliance documentation aligns with the latest State and Federal energy tools and standards, and includes sensible exemptions.

Beyond Benchmarking includes two pathways, the Performance Path and the Prescriptive Path. The Performance Path recognizes new or already high-performing buildings, with several options to demonstrate compliance. The Prescriptive Path begins with building energy and water audits to uncover opportunities for building improvements; audits are streamlined for buildings over 10,000 square feet, and traditional for buildings larger than 40,000 square feet. The Prescriptive Path offers flexibility in selecting either retrofit, retro-commissioning, or green lease opportunities in the five-year cycle following submission of the audit report.

This ordinance builds upon best practices from similar ordinances around the state and country, but is unique and innovative in a number of ways:

- It extends participation requirements to tenants in some cases, easing concerns of owners with rental agreements that provide control to lessees, while also providing both tenants and owners recourse through exemptions, extensions, hardships and appeals.
- The green lease compliance option is the first of its kind and encourages owners and tenants to share data and building improvement costs and benefits.
- Due to its prevalent local footprint, Brisbane's program includes industrial buildings, which are typically exempt in other jurisdictions.
- Looking to the future, properties are asked to report on current or planned distributed energy resources: on-site solar, energy storage, electric vehicle charging, grid-connected efficient buildings, and decarbonized buildings. The program provides recognition on the Performance Path for being early adopters of these technologies, and includes them as eligible Improvement Measures for the Prescriptive Path.

Staff and consultants performed a wide range of community outreach, including two public workshops in the spring, two in-depth technical webinars, and several one-on-one meetings with property owners representing over two million square feet, roughly 30% of the covered building square footage. The Planning Commission, Open Space and Ecology Committee, and Economic Development Subcommittee were consulted and provided their input and approval. In addition, a webpage dedicated to the program (brisbaneca.org/building-efficiency-program) hosts event slides and notes, and an email distribution list invited local building owners and other stakeholders to participate throughout the process. A summary of outreach events is included as Attachment 3.

Feedback received through the outreach process was incorporated into the ordinance, almost without exception. Representatives from the local business community reported familiarity with similar ordinances in other locations, or that they knew this was “the right thing to do” and the ordinance would just be the nudge they needed to do so. Others inquired about the costs of compliance, in particular building audits. Audit costs vary widely by building size and auditor, making cost estimation difficult, however staff and consultant research puts estimates for the streamlined audits required for smaller buildings at ~\$600-2,000, while standard audits required for buildings over 40,000 square feet are estimated at \$0.10-15 per square foot. Audit costs are typically offset by acting on cost-effective improvements they suggest which often have payback periods of or in under a year and result in significant long-term savings. In addition, the Performance Path and other exemptions provide numerous opportunities for buildings to avoid these costs.

Fiscal Impact

A \$200,000 Climate Protection Grant from the Bay Area Air Quality Management District is funding the creation of this ordinance and its implementation, including administrative and technical build-out as well as community outreach and trainings, over the next 9-12 months. After conclusion of the grant, current sustainability staff will conduct program management; additional supporting resources are expected to be necessary in the first few years, details to be determined in the implementation phase. Non-compliance penalties may partially offset program expenses, and the ordinance retains the option for the City Council to set administrative fees.

Measure of Success

Creation of the Building Efficiency Program leading to more energy- and water-efficient commercial, industrial and multi-family buildings in the City of Brisbane, reductions in local greenhouse gas (GHG) emissions, higher-value buildings, and improved data access and transparency for decision-makers and current and future building owners and tenants.

Attachments

1. Draft City Ordinance 644
2. Compliance Pathways flowchart
3. BBEP Outreach Summary



Randy Breault, Public Works Director



Clay Holstine, City Manager

ORDINANCE NO. 644

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 15.83 TO THE BRISBANE MUNICIPAL CODE
CONCERNING THE BUILDING EFFICIENCY PROGRAM**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.83 is hereby added to the Brisbane Municipal Code to read as follows:

§15.83.010 - Authority.

The Department of Public Works through the Director or the Director's designee shall have the authority to enforce this chapter.

§15.83.020 - Purpose.

This Chapter implements the goals of the City's Climate Action Plan and related California legislation by lowering the environmental impact of existing buildings through reductions in greenhouse gas (GHG) emissions, energy, and water consumption. Owners and/or tenants of identified public and private properties will initially be required to complete annual building energy and water benchmarking. Subsequently, these owners/tenants will be required to demonstrate compliance with contemporary best energy and water performance standards by following either a performance pathway that allows the submittal of documentation confirming the building is already highly efficient, or a prescriptive pathway that requires an energy audit and retro-commissioning or retrofit of base building systems.

It is the intent of this Chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).

§15.83.030 - Applicability.

- A. This Chapter shall apply to all property, including existing buildings on such property, that is:
1. City owned property and the building has a Gross Floor Area of 2,000 square feet or more, provided, however, any City owned property that has a building with a Gross

Floor Area less than 10,000 square feet is not subject to the requirements of Sections 15.83.060, 15.83.070, or 15.83.080 of this Chapter; or

2. Privately owned property and the building has a Gross Floor Area of 10,000 square feet or more; or
 3. Property owned by any other governmental agency that is required to comply with the City's building codes under California Government Code Section 53090, et seq., or successor legislation, and the building has a Gross Floor Area of 10,000 square feet or more.
- B. The reporting requirements of this Chapter (Sections 15.83.050, 15.83.060, 15.83.070, or 15.83.080) are not required for buildings with a Gross Floor Area of less than 10,000 square feet, except when a meter serves multiple buildings, all owned by the same property owner, and the buildings in total have a Gross Floor Area of 10,000 square feet or more.
- C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.

§15.83.040 - Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

- A. "Base Building Systems" means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:
1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.
 2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

- B. “Baseline Year” means the calendar year that a building shall use as its past energy and water usage year when comparing to its “reporting data year” usage. For the first Beyond Benchmarking cycle, the baseline year is the calendar year of 2020 (the first year of mandatory benchmarking data), reported in 2021. In subsequent Beyond Benchmarking cycles, the baseline year resets to the calendar year reported in the previous Beyond Benchmarking cycle. The following table reflects the data and baseline years for a Commercial property during the first three Beyond Benchmarking cycles:

Due Date	Reporting Data Year	Baseline Year
May 1, 2023	Calendar year 2022	Calendar year 2020
May 1, 2028	Calendar year 2027	Calendar year 2022
May 1, 2033	Calendar year 2032	Calendar year 2027

- C. “Benchmarking Report” means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.
- D. “Commercial Property” means a property that is defined by ENERGY STAR Portfolio Manager with the exception of the property types listed on Portfolio Manager as Multifamily or Manufacturing/Industrial Plants. Commercial property includes warehouses and distribution centers.
- E. “Covered Building” means the current definition of “Covered Building” as set forth in State Regulations.
- F. “Decarbonized Building” means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.
- G. “Demand Flexibility” means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.
- H. “Department” means the City of Brisbane’s Department of Public Works.
- I. “Disclosable Buildings” means the most current definition of “Disclosable Buildings” as set forth in State Regulations that have 10,000 square feet or more of Gross Floor Area.

- J. “Distributed Energy Resources (DER)” means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.
- K. “Energy” means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.
- L. “Energy Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.
- M. “ENERGY STAR® Portfolio Manager” means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.
- N. “ENERGY STAR® Certified” means a building which has earned an ENERGY STAR® Score of 75 or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings Nationwide and the data has been verified by a professional engineer or registered architect.
- O. “ENERGY STAR® Score” means a number ranging from 1 to 100 assigned by the US EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the US EPA's ENERGY STAR® Portfolio Manager.
- P. “Energy Use Intensity” (EUI) as defined by the US EPA means all energy consumption divided by the Gross Floor Area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the US EPA’s ENERGY STAR® Portfolio Manager.
- Q. “Grid-Interactive Efficient Building (GEB)” means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
- R. “Gross Floor Area” means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not

fully enclosed should not be included in the Gross Floor Area. Gross Floor Area for a Commercial Property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross Floor Area for an Industrial Property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross Floor Area for a Multifamily Property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

- S. "Industrial Property" means a property that is defined by ENERGY STAR® Portfolio Manager as a Manufacturing/Industrial building used for producing, manufacturing, or assembling goods and includes but is not limited to a main production area that has high-ceilings and contains heavy equipment used for assembly line production.
- T. "Multifamily Property" means any multifamily building that contains two or more residential living units, as defined in section 4125 or 6542 of the California Civil Code. This includes high-rise buildings (10 or more stories), mid-rise buildings (5 to 9 stories), or low-rise buildings (1 to 4 stories).
- U. "Qualified Auditor" means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing audits and to certify audit reports required by this Chapter. A Qualified Auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two or more years of auditing experience and possesses one or more of the following certifications:
 - 1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;
 - 2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);
 - 3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);
 6. Professional Engineer (PE) registered in the State of California;
 7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or
 8. Additional qualified certifications as the Director of the Department deems appropriate.
- V. “Qualified Retro-Commissioning Professional” means an individual whose job duties do not regularly occur at the Property, who possesses such qualifications as determined by the Department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this Chapter. A Qualified Retro-Commissioning Professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two or more years of commissioning or retuning experience and possesses one or more of the following certifications:
1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
 2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;
 3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
 4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
 5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
 6. Certified Professional certified by the National Environmental Balancing Bureau (NEBB);
 7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
 8. Professional Engineer (PE) registered in the State of California; or
 9. Additional qualified certifications as the Director of the Department deems appropriate.
- W. “Retro-Commissioning” means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

- X. “Retro-Commissioning Measures” means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.
- Y. “Retrofit Measures” means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.
- Z. “Solar Thermal System” means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including but not limited to heating water, providing process heating, space heating, absorption cooling and any combination of such applications.
- AA. “Solar Photovoltaic” means a technology that uses a semiconductor to convert sunlight directly into electricity.
- BB. “Stationary Battery Electric Storage System (BESS)” means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.
- CC. “US EPA Water Score” means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the US EPA's ENERGY STAR®; Portfolio Manager.
- DD. “Water Audit” means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.
- EE. “Water Use Intensity” (WUI) as defined by the US EPA means all water consumption divided by the Gross Floor Area. (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.).

§15.83.050 – Annual Energy and Water Benchmarking, and Self-Reporting.

- A. Annual Energy and Water Benchmarking and Self-Reporting. For every building subject to this Chapter, the property owner shall annually submit to the Department an energy and water benchmarking report according to the schedule set forth in Section 15.83.100.

B. Owner and Tenant Responsibilities. For every building subject to this Section 15.83.050 that has non-residential tenants, the property owner shall request from its non-residential tenants and the utility companies that serve the building the information necessary related to paragraphs 1 and 2 of subsection C of this Section 15.83.050 to satisfy the requirements of this Section. Utility companies shall provide aggregated whole building data for buildings with three or more non-residential tenant accounts and shall provide the aggregated tenant-authorized information for buildings with less than three non-residential tenants.

1. The property owner of a building with one or two non-residential tenants in which the tenant(s) holds the utility account shall by February 1 of each calendar year, beginning in 2021, request the tenant(s) to authorize the utility companies that serve the tenant's space to provide to the property owner the energy and water use data for the tenant space. Within 30 days of the tenant's receipt of such request, the tenant shall authorize the utility companies to release the energy use data for the tenant space to the property owner. After the tenant provides to the property owner an authorization form and the property owner provides such form to a utility company, the utility company shall provide to the property owner energy and water use data for tenant space including any area that the tenant subleases.
2. A tenant's failure to provide the authorization to the utility companies subjects the tenant to the penalty provisions of this Chapter.
3. A tenant's failure to provide the authorization to the utility companies does not relieve the property owner's benchmarking obligations under this Chapter but such obligation may be satisfied by a partial building benchmarking report as approved by the Director.
4. If by reason of a lease or otherwise, a single tenant has assumed complete management and control of a building, the property owner and the tenant may agree in writing and inform the Director that the tenant will assume full responsibility for the obligations of the property owner under this Chapter.
5. Nothing in this Chapter shall be construed to permit a property owner to use tenant utility usage data for purposes other than compliance with the benchmarking report requirements. Nor shall the reporting requirements of this Chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

C. Energy and Water Benchmarking Report. The energy and water benchmarking report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total energy and water consumed by the whole building for the entire calendar year being reported. The energy and water benchmarking report shall, at a minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this Chapter, including but not limited to:
 - a. Property address;
 - b. Gross Floor Area;
 - c. Property type;
 - d. Year built;
 - e. Number of stories;
 - f. Weekly operating hours;
 - g. Number of workers on main shift;
 - h. Number of computers;
 - i. Space use types and corresponding Gross Floor Areas;
 - j. Covered parking garage information (if applicable);
 - k. Information about buildings that share a meter with the building subject to this Chapter;
 - l. Any other reasonable information about energy consuming assets connected to the meter that affect the energy use intensity of the building;
 - m. Any other information required for an ENERGY STAR® Score as defined by the EPA;
 - n. The ENERGY STAR® Portfolio Manager contact information fields for the individual or entity responsible for the benchmarking report (either the service provider, owner, tenant, or building data administrator);
 - o. Custom field for an electricity energy provider;
 - p. If the property owner is seeking an exemption, the property notes field in ENERGY STAR® Portfolio Manager shall include a brief description of the reason for seeking an exemption; and
 - q. Information on any non-residential tenants, including the tenant's name, contact information, and Gross Floor Area leased, and whether each tenant provided needed data as required by Section 15.83.050.B.1.
2. Energy and Water Benchmarking Information. Information necessary to benchmark energy and water usage, including, at a minimum, the following data:
 - a. The ENERGY STAR® Score for the building, where available;
 - b. The weather-normalized site and source EUI in kBtu per square foot per year for the building;
 - c. The site and source EUI in kBtu per square foot per year for the building;

- d. The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ENERGY STAR® Portfolio Manager;
- e. Indoor water use, indoor water use intensity, outdoor water use (monthly when available), and total water use;
- f. Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable;
- g. Monthly grid purchased electricity, natural gas, and other fuel and water consumption (monthly when available) and dollar amounts (when available);
- h. Monthly Electricity Use – Generated from Onsite Renewable Systems and Used Onsite (kWh) - mandatory if applicable and seeking a performance pathway for compliance;
- i. Annual Maximum Demand (kW) if available; and
- j. Annual Maximum Demand date if available.

D. Quality Check of Benchmarking Report Submission.

The property owner or the owner's authorized representative shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager, and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the benchmarking report to the Department.

E. Exemptions from Benchmarking Report Submission.

- 1. For each reporting cycle, a property owner may request an exemption from submitting a benchmarking report and the Department shall determine whether an exemption under this subsection applies to a building. A property owner may appeal a determination that a building is not exempt as set forth in section 15.83.125.
- 2. All Disclosable Properties must submit at a minimum the descriptive information in all subparagraphs set forth in paragraph 1 of subsection C of this Section, even if energy and water consumption are not disclosed.
- 3. A property owner shall not be required to file a full benchmarking report with energy data for a reporting year if any of the following conditions apply:
 - a. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building was not issued for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.83.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.83.050 are not required to be reported.

- b. If the building were vacant for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.83.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.83.050 are not required to be reported.
- c. If the building did not receive energy or water services for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.83.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.83.050 are not required to be reported.
- d. If a demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department, the building is exempt from benchmarking reporting and this Section 15.83.050.

F. Publication of Limited Summary Data.

The Department shall make the following information, as reported by property owners, available to the public on the City’s website, and update the information at least annually; provided, however, for properties with one or two non-residential tenants, such tenant(s) may elect to not have the information made available to the public:

- 1. Summary statistics on overall compliance with this Chapter;
- 2. Summary statistics on overall energy and water consumption of buildings subject to this Chapter derived from the aggregation of annual benchmarking reports; and
- 3. For each building subject to this Chapter:
 - a. Property address, year built, Gross Floor Area, and property use type;
 - b. Monthly and/or annual summary statistics for the whole building derived from the submitted benchmarking report, including all information required under subsection C of this Section 15.83.050 ; and
 - c. The status of compliance with the requirements of this Chapter.

§15.83.060 – Beyond Benchmarking: Pathways for Demonstrating and Increasing Energy and Water Performance.

- A. Compliance with Beyond Benchmarking requirements shall be demonstrated in one of two methods: a Performance Path or a Prescriptive Path. Criteria for the Performance Path are described in Section 15.83.070 and apply to Disclosable Properties of any size. Criteria for the Prescriptive Path are described in 15.83.080 and are specific to a building's Gross Floor Area.
- B. Exemption from Beyond Benchmarking Requirements. For each reporting cycle, a building may request an exemption to comply with this Section 15.83.060 and the Department shall determine whether an exemption under this section applies. A property owner may appeal the Department's determination that a building is not exempt under this section following the procedures set forth in section 15.83.125. Any property owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Department in the exemption determination. Any exemption granted does not extend to past or future submittals. A property owner shall not be required to file an energy and water audit report for a reporting year if the building was exempt from the benchmarking requirements in section 15.83.050 E and any of the following conditions apply:
1. A demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department.
 2. If the building is intended for sale within the scheduled compliance deadline and the property owner has conducted a real estate appraisal within one calendar year of the reporting deadline, only a copy of the appraisal summary report is required;
 3. If the building was recently constructed and received a certificate of occupancy within the last five years of the scheduled compliance deadline, the property owner shall report in the following compliance cycle.
 4. If a Certificate of Occupancy or Temporary Certificate of Occupancy for the building had not been issued for more than half of the calendar year required to be audited, the property owner shall report in the following compliance cycle.
 5. If 50% or more of the Gross Floor Area of the building was not occupied for more than half of the calendar year required to be benchmarked, only an Asset Score Full as set forth in subsection B of Section 15.83.080 is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.
 6. If the building did not receive energy or water services for the more than half of the calendar year required to be audited, only an Asset Score Full is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.

§15.83.070 – Beyond Benchmarking Performance Path

- A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the Department in such a form as required by the Department that demonstrates the following:
1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy; or has achieved one (1) or more of the energy standards and one (1) or more of the water standards as set forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.
 2. Energy Standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) Existing Buildings Operations and Maintenance Certification; or Qualified Auditor or Retro-Commissioning Professional certified at least at least one (1) of the following:
 - a. The building has received an ENERGY STAR Score of 80 or greater from the US EPA; or
 - b. The building has improved its ENERGY STAR Score by twenty (20) points or more relative to its performance during the baseline year; or
 - c. The building has a weather normalized site GHG Intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated mean for that property type; or
 - d. The building has reduced its weather normalized site GHG Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
 3. If a building has installed one or more of the following distributed energy resources (DERs):
 - a. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two following options satisfy the solar photovoltaic measure:
 - i. A minimum amount of solar photovoltaic capacity of 5 kilowatts per Brisbane Municipal Code Section 15.82.050; or
 - ii. Sufficient capacity must be installed to offset equal to or greater than 20% of their annual electricity consumption, as calculated by ENERGY STAR Portfolio Manager, or otherwise determined by the City Department.

- b. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
 - c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
 - d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.
4. Water Standards: A Qualified Auditor or Qualified Retro-commissioning Professional has certified at least one (1) of the following:
- a. The building has received a US EPA Water Score of 80;
 - b. The building has improved its US EPA Water Score by twenty (20) points or more relative to its performance during the baseline year;
 - c. The building has reduced its Water Use Intensity by at least twenty percent (20%) relative to its performance during the baseline year.
- B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® Performance Verification Report for that reporting year. If the building only meets one (1) of the standards, the property owner shall submit a Performance Verification Report for the satisfactory standard and shall comply with this section by completing one (1) of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of section 15.83.080.
- C. After the establishment of a DOE-recognized standard for a water auditor, the Director may adopt the qualifications of the DOE-recognized standard with modifications as the Director deems to be appropriate.

§15.83.080 - Beyond Benchmarking Prescriptive Path.

- A. If a building does not meet performance standards set forth in 15.83.070, a property owner shall meet the requirements of this Chapter through one (1) of two (2) alternative means:

1. For properties between 10,000 and 39,999 square feet:
 - a. Conducting an Asset Score Full Report described in Section 15.83.080 B; and either
 - b. Performing Retro-Commissioning described in Section 15.83.080 D; or
 - c. Adopting Improvement Measures described in subsection F of Section 15.83.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.83.080.

 2. For properties 40,000 square feet and more:
 - a. Conducting a minimum of an ASHRAE audit Level II Audit described in Section 15.83.080 B (Level III audits are also acceptable); and either
 - b. Performing Retro-Commissioning described in Section 15.83.080 D; or
 - c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.83.080; or
 - d. Adopting a Green Lease as described in subsection H of Section 15.83.080.
- B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:
1. Energy Auditing. Energy audits required by this Chapter shall meet or exceed either the Department of Energy (DOE) Asset Score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The DOE Audit Template shall be used to transmit data to the City for compliance with Energy Auditing and Retro-commissioning. The City will publish an Audit Template on the Building Energy Asset Score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.83.080 A describes the applicability of each of the following audit standards based on Gross Floor Area:
 - a. Asset Score Full
 - i. Collect Building Data: Use the Data Collection Form “Full” Input Mode version to gather information about the building’s physical characteristics.
 - ii. Review the Data Collection Priority Map to help focus on the most important building data given the building’s use type and climate zone.
 - iii. Enter the data on the Audit Template supplied on the DOE Asset Score website for the Brisbane Building Efficiency Program

 - b. ASHRAE Level II Audit

- i. Energy audits required by this Chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 “Standard for Commercial Building Energy Audits” and shall be performed under the direct supervision of a Qualified Auditor.
 2. Water Auditing. Water audits shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Auditor or Qualified Retro-commissioning Professional. The water audit of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.
- C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a Qualified Auditor, shall be maintained by the property owner as required in Section 15.83.090. The report shall meet the requirements of subsection 15.83.080 B and shall include, at a minimum, the following:
 1. The date(s) that the audit and retro-commissioning were performed;
 2. Identifying information on the auditor and retro-commissioning provider;
 3. Information on the base building systems and equipment;
 4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;
 5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
 6. Functional performance testing reports;
 7. Operational training conducted;
 8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;
 9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;
 10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;

11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;
12. Inventory of existing, planned or desired water systems and equipment; and
13. Acknowledgment that an Asset Score Full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The Department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process) once the Standard has been voted and approved by ASHRAE. These activities shall be conducted under the direct supervision of a Qualified Retro-commissioning Professional. The retro-commissioning of base building systems shall include, at a minimum, the following:
 - a. Heating, ventilation, air conditioning (HVAC) systems and controls
 - b. Indoor lighting systems and controls;
 - c. Exterior lighting systems and controls;
 - d. Water heating systems;
 - e. Renewable energy systems;
 - f. Stationary electric battery storage systems;
 - g. Electric vehicle charging equipment; and
 - h. Demand flexibility systems.
2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the Department directs the use of the latest version of ASHRAE Standard 230 the Existing Building Commissioning Process (EBCx Process), and under the direct supervision of a Qualified Retro-commissioning Professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:
 - a. Potable water distribution systems;
 - b. Landscape irrigation systems;
 - c. Water reuse systems; and
 - d. Water features.

E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a Qualified Retro-commissioning Professional, shall

be maintained by the property owner as required in Section 15.83.090. The report shall meet the requirements of Subsection 15.83.080 D and shall include, at a minimum, the following:

1. The date(s) that the retro-commissioning was performed;
2. Identifying information on the retro-commissioning provider;
3. Information on the base building systems and equipment;
4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;
5. Functional performance testing reports; and
6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this Chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures - one energy-related measure and one water-related measure listed below - were completed and by submitting an Improvement Measures Report within the time set forth in Section 15.83.100.

1. Energy-Related Improvement Measures

a. Energy Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the Department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

- i. Space heating and cooling
- ii. Ventilation
- iii. Building envelope measures such as insulation, air sealing and window upgrades
- iv. Water heating
- v. Lighting
- vi. Cooking
- vii. Refrigeration
- viii. Office equipment and computing
- ix. Other loads

b. Distributed Energy Resource Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will

continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

- i. Solar Photovoltaic. An on-site solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- ii. Stationary Electric Storage. An on-site stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- iii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way that is currently operational.
- iv. Electric Vehicle (EV) Charging Infrastructure. Electric Vehicle Charging Infrastructure has been installed on the building site.
- v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

2. Water-Related Improvement Measures

- a. Water Efficiency Improvement Measures will be provided by the Department six months before the compliance deadline on the City website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:
 - i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;
 - ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;
 - iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;
 - iv. Installation of insulation on all hot water pipes in accessible building locations;
or

- v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. Improvement Measures Report. A report of the Improvement Measures implemented shall be submitted to the Department and maintained by the property owner as required in Section 15.83.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the Improvement Measures were implemented;
2. Identifying information on the person implementing the Improvement Measures;
3. Information on the Base Building Systems and equipment; and
4. A list of all Improvement Measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. Green Lease Attestation. A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a “green lease”). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;
2. Operational clauses that support overall energy and water reductions on the property; and
3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this Chapter.

I. Required Submittal to the Department.

1. For each building subject to this Chapter, the property owner shall submit to the Department an Energy and Water Audit and Report as described in Section 15.83.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.83.100.
2. For each building subject to this Chapter, the property owner shall submit to the Department, in accordance with the schedule set forth in Section 15.83.100, one of the following:
 - a. An Energy and Water Retro-Commissioning Report as described in Section 15.83.080 E;
 - b. An Improvement Measures Report as described in Section 15.83.080 G; or

c. A Green Lease Attestation as described in Section 15.83.080 H.

§15.83.090 - Record Maintenance.

The property owner shall maintain records related to benchmarking, audits and retro-commissioning, including, but not limited to, the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of six years. When the building is sold, the records shall be given to the new property owner.

§15.83.100 - Schedule for Compliance.

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the Department an annual benchmarking report in compliance with Section 15.83.050 according to the following schedule:

1. For properties owned by the City with a gross floor area of 2,000 square feet or more, the City must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2020.
2. For all other properties subject to this Chapter, the property owner must complete and submit the initial Benchmarking Report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.83.060 once every five years, based on the federal Unique Building Identifier (UBID) which will be published on the City website for each building subject to this Chapter under Section 15.83.060.

1. For commercial - May 15, 2023
2. For industrial and multifamily - May 15, 2024
3. For any newly constructed commercial or multifamily buildings receiving a certificate of occupancy after May 15, 2018, or industrial buildings after May 15, 2019, the property owner shall comply with Sections 15.83.060, 15.83.070 and/or 15.83.080 at the time of the next reporting cycle corresponding to the property type (e.g. 2028 or 2029).

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in Subsection 15.83.060 B, a property owner shall complete the audits and retro-commissioning within five years of a building's compliance due date.

- D. Early Compliance Pilots. The City may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.83.100.
- E. Time Extensions. A property owner may be granted up to three extensions of sixty days each to file any submittal required by this Chapter provided satisfactory proof is made to the Department that one of the following conditions applies:
1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:
 - a. The property is under the control of a court-appointed receiver as a result of financial distress;
 - b. The property is owned by a financial institution as a result of borrower default;
 - c. The property has been acquired by a financial institution via deed in lieu of foreclosure;
 - d. The property is encumbered by a senior mortgage subject to a notice of default;
 - e. The property is an asset subject to probate proceedings;
 - f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued Organizational Clearance Certificate and, where the property owner is a limited partnership, provide a Supplemental Clearance Certificate.
 2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the Department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this Chapter.
 3. Fifty percent or more of the Gross Floor Area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.
- F. Notification. For buildings with compliance dates of May 1, 2021 or later, the Department shall notify the property owner at least three months prior to the due dates specified in subsections A and B of this Section 15.83.100.

§15.83.110 - Penalties for Violation.

The violation of any provisions of this Chapter shall constitute an infraction and the City shall enforce this Chapter as set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such enforcement

actions are cumulative and shall be in addition to any other enforcement remedies specified under the Code or under other law.

§15.83.115 - Declaration of Public Nuisance.

Any building operating contrary to the provisions of this Chapter and any use of property or of a building operated or maintained contrary to the provisions of this Chapter are declared to be public nuisances. The City Attorney may undertake the necessary proceedings to abate and/or enjoin the operation or use of any such property or building. The remedies provided by this Section shall be in addition to any other remedy or remedies or penalties provided in this Chapter, this Code or any other law.

§15.83.120 - Fees.

By Council resolution, the City may impose fees to cover the cost of the Department’s review of submittals required by this Chapter and any other costs to administer this Chapter. Such fees may include, but not be limited to, an annual benchmarking disclosure compliance fee and an audit and retro-commissioning fee.

§15.83.125. - Appeals.

- A. As to any matter arising under this Chapter, any person may appeal to the Director any decision, determination, order, requirement or other action of the Department in which the Director has not been directly involved (“the Department Decision”). Any such appeal shall be in writing and filed with the City Clerk within 15 days after the action giving rise to the appeal. The Director shall decide the appeal within 30 days.
- B. Any person dissatisfied with the Director’s decision concerning the Department Decision may appeal to the City Manager by filing such appeal with the City Clerk within 10 days after the Director’s decision concerning the Department’s Decision.
- C. The City Manager shall consider the appeal within 30 days and may affirm, reverse or modify the Director’s decision concerning the Department Decision. The decision of the City Manager shall be final.

§15.83.130. - Disclosure of Data Provided to the City.

Data provided to the City under this Chapter are public records as defined in the California Public Records Act.

SECTION 2: Adoption of this Ordinance does not require environmental review because it represents general policy making that would not result in a direct or indirect physical change in the environment and therefore it is not a project under the California Environmental Quality Act. CEQA Guidelines, Section 15378 (b)(2).

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Madison Davis, Mayor

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas C. McMorrow, Interim City Attorney

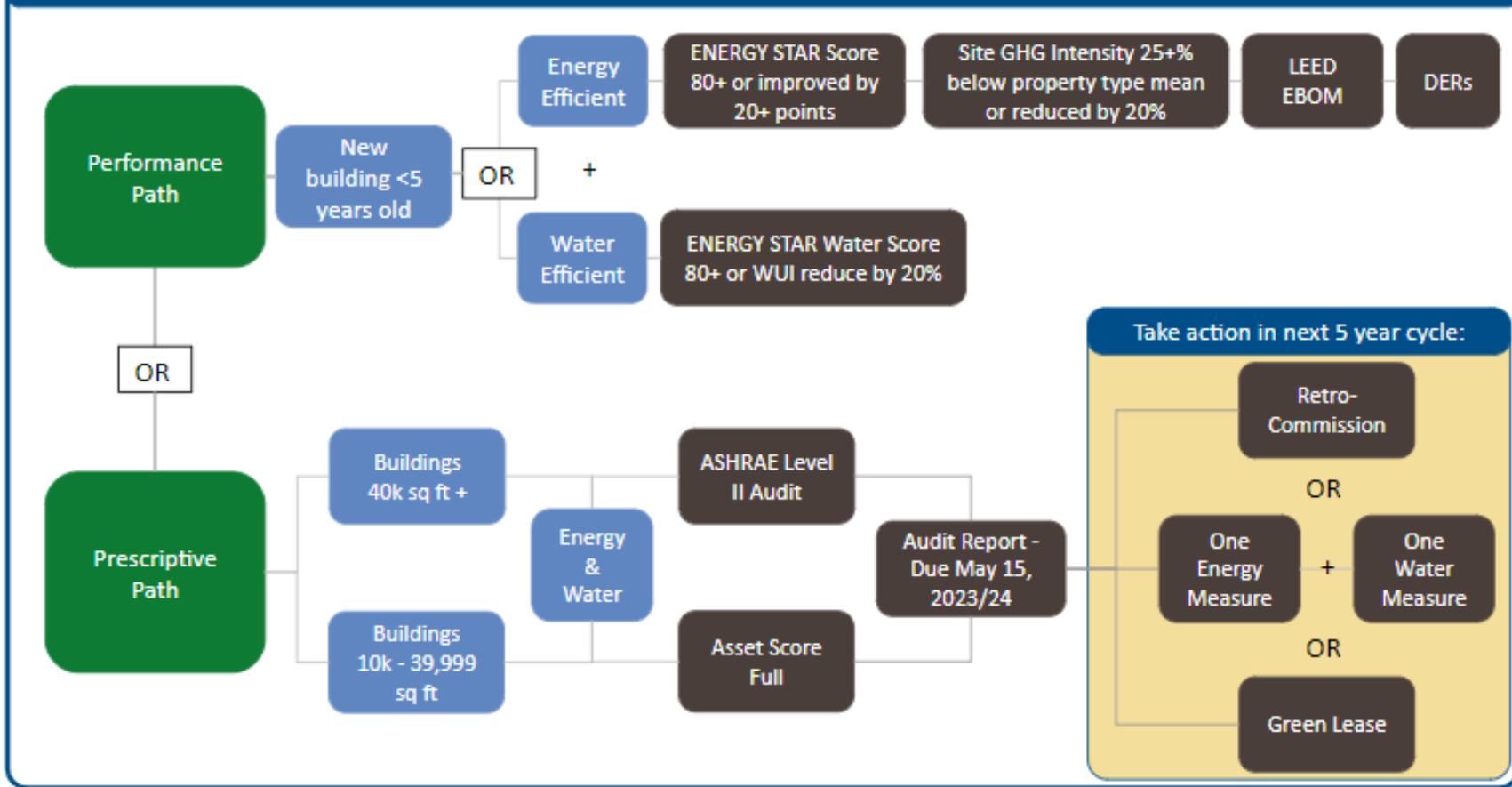


Proposed Brisbane Building Efficiency Program

Compliance Pathways

Annual Benchmarking beginning 2021 - 10,000 sq ft or more

Beyond Benchmarking - every 5 years beginning: 2023 for commercial, 2024 industrial + residential



Want to learn more? Visit www.brisbaneca.org/building-efficiency-program or contact Adrienne Etherton: aetherton@brisbaneca.org or 415.508.2118

Brisbane Building Efficiency Program Outreach

- **Workshop 1: April 9, 2019 1:00 - 2:30 PM at Mission Blue Center**
 - 27 attendees, representing: City of Brisbane, The Energy Coalition, Menlo Spark, City of Berkley, BiRite, SFSU, Verdafero, California Energy Commission (CEC), Western Allied, Ecology Action, San Mateo County Office of Sustainability, Marble Company, Bay Area Air Quality Management District (BAAQMD), PG&E, CHC Hydro
- **Workshop 2: June 12, 2019 6:00 - 7:30 PM at the DoubleTree Hotel**
 - 17 attendees, representing: City of Brisbane, The Energy Coalition, Verdafero, Sustainable San Mateo County, UPC, CEC, Cal Hydro, SSF Genesis, Pacific Northwest National Lab (PNNL)
- **Webinars**
 - Benchmarking Primer: June 6, 2019 10:00 - 11:00 AM
 - Audits Deep Dive: July 18, 2019 10:00 - 11:00 AM
- **Staff “1-on-1” meetings/calls with:**
 - Local building owners: Prologis, UPC, BiRite, FW Spencer, Phase 3
 - CEC, City of San Jose, Verdani Partners, Institute for Market Transformation
- **Study Session on draft ordinance: August 29, 2019 12:30-2:30 PM**
 - Economic Development Subcommittee: Councilmembers Karen Cunningham and Cliff Lentz
 - Open Space and Ecology Committee (OSEC) Climate Action Plan Subcommittee: Glenn Fieldman, Barbara Ebel, Ross Dykes
 - City Staff: City Manager Clay Holstine, Economic Development Director Mitch Bull, Public Works Director Randy Breault, Public Works Deputy Director Karen Kinser, Sustainability Management Analyst Adrienne Etherton, Administrative Management Analyst Angel Ibarra
 - Consultant: Marc Costa, Director of Policy & Planning, The Energy Coalition
- **Planning Commission: September 12, 2019 7:30 PM**
 - Commissioners present: Gomez, Gooding, Mackin, Patel
- **Open Space and Ecology Committee: September 18, 2019 6:30 PM**
 - Members present: Salmon, Rogers, Dykes, Ankenbruck, Fieldman, Ebel
- **OSEC Climate Action Plan Subcommittee: November 7, 2019 3:00 PM**
- **Economic Development Subcommittee: November 8, 2019 11:00 AM**

A. Background

At its November 21, 2019, meeting, the City Council considered Draft Ordinance 644. If enacted, staff reported that the draft ordinance would “establish the Brisbane Building Efficiency Program (BBEP) to reduce the environmental impact of existing commercial buildings through annual energy and water benchmarking, auditing, retro-commissioning and/or retrofits.”¹

Draft Ordinance 644 includes a separate “Purpose” clause stating, in relevant part, “It is the intent of this Chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).”²

During public comments on Draft Ordinance 644, a concern was raised as to whether the language of the draft ordinance would clearly exempt condominiums from its coverage as reported in the Staff Report.

State regulations implementing AB 802 (2015) energy efficiency benchmarking and performance reporting requirements are found in California Code of Regulations Title 20, Division 2, Chapter 4, Article 9. Those regulations specifically provide an exemption from applicability for condominium projects:

CCR §1681(c) Covered Building: Any structure used or intended to support or shelter any use or occupancy, *other than a condominium project as described in section 4125 or 6542 of the California Civil Code*, that received Energy from a Utility during the period for which Energy use data is requested, and has (1) no residential Utility Accounts, or (2) five or more Active Utility Accounts of any one Energy type, at least one of which is residential. Two or more Covered Buildings on the same parcel, campus, or site that are served by one common Energy meter without submetering, such that their Energy use cannot be tracked individually, shall be considered one Covered Building.

(emphasis added)

B. City Council’s Concern

Notwithstanding the exemption of condominium projects from CCR §1681(c), and therefore from proposed Draft Ordinance 644, the City Council directed staff to (1) determine if state law defines the term “condominium project” and (2) draft language for Council consideration that would amend the draft ordinance to directly state that condominiums are exempt from the ordinance.

1. Condominium Project

State law defines a “condominium project” in California Civil Code sections 4125 and 6542. These definitions are the same and are provided here for reference:

¹ City Council Agenda Report, Introduction of Draft Ordinance 644, p. 1 (November 21, 2019) (the “Staff Report”).

² *Id.* at p. 4, see proposed Section 15.83.020. – Purpose.

(a) A “condominium project” means a real property development consisting of condominiums.

(b) A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof.

(c) The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support.

(d) An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

2. Draft Exemption Language

Draft Ordinance 644 defines its applicability in section 15.83.030 - Applicability. Subsection C. thereof provides a list of the facilities that are excluded from application of the draft ordinance. The term “condominium project” can be amended into the subsection to clearly state that condominium projects, as defined in applicable state law, are exempt from Draft Ordinance 644. The proposed amendment appears in bold underline here:

C. This Chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four or fewer dwellings; **condominium projects as defined in California Civil Code §§ 4125 and 6542**; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this Chapter, as determined by the Department.