

ORDINANCE No.

Require disclosure of energy performance ratings for residential single family buildings when listed for sale to promote transparency in housing costs and reduction in local carbon emissions (Ordinance; add Code Chapter 17.108)

The City of Portland ordains:

Section 1. The Council finds:

1. The world's leading scientists consistently conclude that climate change caused by human emission of greenhouse gases is among the most significant problems facing the world today and potentially poses the greatest economic, environmental, and social challenge of the 21st century.
2. The immediate economic benefits of climate solutions are often significant, including energy efficiency savings and job creation, while long term climate stabilization can prevent irreparable harm from catastrophic impacts of climate change.
3. The State of Oregon has established a goal to reduce greenhouse gas emissions to 75 percent below 1990 levels by 2050.
4. The City of Portland established a goal to reduce carbon emissions 80 percent below 1990 levels by 2050 (Resolution No. 36548), and the 2009 Climate Action Plan (Resolution No. 36748) and 2015 Climate Action Plan (Resolution No. 37135) include a 2030 Objective to reduce the total energy use of all buildings built before 2010 by 25 percent.
5. Buildings are the largest source of carbon emissions in Portland, and the 2009 and 2015 Climate Action Plans included actions to require energy performance disclosure for residential and commercial buildings.
6. In 2015, City of Portland established a requirement for commercial energy performance reporting. Ordinance No. 187095. By April 2017, 80 percent of Portland's commercial building square footage will be publicly reporting energy performance.
7. Voluntary programs to support the use of home energy ratings have been in place since 2008, and, while they have helped establish an industry trained and able to provide performance ratings, have resulted in fewer than two percent of Portland homes with energy scores.

NOW, THEREFORE, the Council directs:

- a. Title 17 of the City Code is amended by adding Chapter 17.108 Residential Energy Performance Rating and Disclosure as set forth in Exhibit A attached to this ordinance.
- b. The Bureau of Planning and Sustainability will develop solutions to cover the upfront costs of policy compliance for homeowners who qualify for exemptions.
- c. Bureau of Planning and Sustainability will meet with stakeholders, including AARP, Elders into Action and other groups representing potentially vulnerable homeowners, to discuss how best to implement exemptions to City Code Title 17.108.

- d. No fewer than two months prior to the effective date of the City Code Chapter 17.108, the Bureau of Planning and Sustainability will report to City Council on proposed solutions to cover the costs of program compliance for homeowners who qualify for exemptions and how best to implement those exemptions.
- e. No fewer than two months prior to the effective date of the City Code Chapter 17.108, the Bureau of Planning and Sustainability will report back to City Council on the market readiness for policy implementation, including but not limited to the number of home energy assessors licensed, trained and prepared to meet the market demand for the number of daily home listings on the real estate market.
- f. Within 30 months after the effective date of the City Code Chapter 17.108, the Bureau of Planning and Sustainability will report back to City Council on results of a program evaluation of the disclosure of single family residential energy performance information, including but not limited to accuracy of disclosed information, rates of compliance, other program impacts and recommendations for ongoing review.

Section 2. The amendments to Title 17 set forth in Exhibit A attached to this ordinance shall be effective on and after January 1, 2018. In anticipation of the effective date of the code amendment, the Director of the Bureau of Planning and Sustainability, acting through her authorized designees, shall undertake to exercise the rulemaking authority described in Section 17.108.030 to adopt rules for the timely implementation of the code amendments, including publication of proposed rules, public review and comment and adoption of final rules.

Passed by the Council:

Mayor Charlie Hales
Prepared by: Kyle Diesner
Date Prepared: November 3, 2016

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

Chapter 17.108 Residential Energy Performance Rating and Disclosure

17.108.010 Purpose. The purpose of this Chapter is to provide information to homebuyers about residential building energy performance. This information is designed to enable more knowledgeable decisions about the full costs of operating homes and to motivate investments in home improvements that lower utility bills, reduce carbon emissions, and increase comfort, safety and health for home owners. This Chapter shall be known as the Home Energy Score Program.

17.108.020 Definitions. For purposes of Chapter 17.108 the following terms shall be understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter shall have their commonly understood meanings.

- A. **“Accessory Dwelling Unit”** means a second dwelling unit created on a lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than, the house, attached house, or manufactured home. The unit includes its own independent living facilities including provision for sleeping, cooking, and sanitation, and is designed for residential occupancy by one or more people, independent of the primary dwelling unit.
- B. **“Administrative Rule”** means the rules promulgated under Section 17.108.030 of Chapter 17.108.
- C. **“Asset Rating”** means a numerical value calculated by a home energy performance score system. The asset rating is an easy-to-produce rating designed to help homeowners and homebuyers gain useful information about a house's energy performance and recommendations on cost-effective energy efficiency improvements. For existing houses, the asset rating is produced based on an in-house assessment that can be completed in less than an hour. For new houses, the asset rating may be produced based on design documents for the house.
- D. **“Covered Building”** means any residential structure containing a single dwelling unit or house, regardless of size, on its own lot. “Covered building” also includes attached single dwelling unit, regardless of whether it is located on its own lot, where each unit extends from foundation to roof, such as a row house, attached house, common-wall house, duplex, or townhouse. “Covered building” does not include detached accessory dwelling units or manufactured dwellings. “Covered building” also does not include single dwelling units used solely for commercial purposes.
- E. **“Director”** means the Director of the Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.
- F. **“Energy”** means electricity, natural gas, propane, steam, heating oil, wood or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

- G. **“Homebuilder”** means an individual or business entity building new construction single dwelling unit housing within the City of Portland to be listed for sale.
- H. **“Home Energy Assessor”** means a person who is certified as a home energy assessor by the Oregon Construction Contractors Board to determine home energy performance scores for residential dwelling units.
- I. **“Home Energy Performance Report”** means the report prepared by a home energy assessor in compliance with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon Home Energy Score Standard. The Report must include the following information:
1. The home energy performance score and an explanation of the score;
 2. An estimate of the total annual energy used in the home in retail units of energy, by fuel type;
 3. An estimate of the total annual energy generated by on-site solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;
 4. An estimate of the total monthly or annual cost of energy purchased for use in the covered building in dollars, by fuel type, based on the current average annual retail residential energy price of the utility serving the covered building at the time of the report and the average annual energy prices of non-regulated fuels, by fuel type, as provided by the Oregon Department of Energy;
 5. The current average annual utility retail residential energy price in dollars, by fuel type, and the average annual energy prices of non-regulated fuels, by fuel type, provided by the Oregon Department of Energy and used to determine the costs described in Subsection 17.108.020.I.4 of this section;
 6. At least one comparison home energy performance score that provides context for the range of possible scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon’s average energy consumption, the same home built to Oregon energy code, and the same home with certain energy efficiency upgrades;
 7. The name of the entity that assigned the home energy performance score and that entity’s Construction Contractors Board license number if such a license is required by law;
 8. The date the building energy assessment was performed; and
 9. For reports that meet all requirements of Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon’s Home Energy Performance Score Standard, the statement “This report meets Oregon’s Home Energy Performance Score standard” must be included on home energy performance reports.
- J. **“Home Energy Performance Score”** means an asset rating that is based on physical inspection of the home or design documents used for the home’s construction.
- K. **“Home Energy Performance Score System”** means a system that incorporates building energy assessment software to generate a home energy performance score and home energy performance report. Examples of home energy performance score systems include, but may

not be limited to, the U.S. Department of Energy Home Energy Score, the Energy Performance Score (EPS) or the Home Energy Rating System (HERS).

- L. **“House”** means a detached dwelling unit located on its own lot.
- M. **“Listed publicly for sale”** means listing the covered building for sale by printed advertisement, internet posting, or publicly displayed sign.
- N. **“Manufactured Dwelling”** means a dwelling unit constructed off of the site which can be moved on the public roadways. Manufactured dwellings include residential trailers, mobile homes, and manufactured homes.
- O. **“Manufactured Home”** means a manufactured dwelling constructed after June 15, 1976 in accordance with federal manufactured housing construction and safety standards (HUD code) in effect at the time of construction.
- P. **“Mobile Home”** means a manufactured dwelling constructed between January 1, 1962, and June 15, 1976, in accordance with the construction requirements of Oregon mobile home law in effect at the time of construction.
- Q. **“Real estate listings”** means any public real estate listing of homes for sale in the City of Portland. “Real estate listings” include listing a home for sale by a property owner or by a licensed real estate agent. “Real estate listings” include any printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services. “Real estate listings” are required to include the Home Energy Performance Score and the Home Energy Performance Report.
- R. **“Residential Trailer”** means a manufactured dwelling constructed before January 1, 1962, which was not constructed in accordance with federal manufactured housing construction and safety standards (HUD code), or the construction requirements of Oregon mobile home law.
- S. **“Sale”** means the conveyance of title to real property as a result of the execution of a real property sales contract. “Sale” does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.
- T. **“Seller”** means any of the following:
 - 1. Any individual or entity possessing title to a property that includes a covered building, or
 - 2. The association of unit owners responsible for overall management in the case of a condominium or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations, or

17.108.030 Authority of Director to Adopt Rules. The Director is authorized to administer and enforce provisions of this Chapter.

A. The Director is authorized to adopt administrative rules, procedures, and forms to implement the provisions of this Chapter.

1. Any rule adopted pursuant to this section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor's Portland Policy Documents repository.
3. Notwithstanding Subsections 17.108.030.A.1 and .2 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any interim rule adopted by the Director shall be effective for a period no longer than one year after the date that the interim rule is adopted. Within 5 business days of the adoption of an interim rule, the Director shall provide notice of the rule, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments. At a minimum, notice will be provided to the following:
 - a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,
 - b. District Coalitions recognized by the City Office of Neighborhood Involvement, and
 - c. Persons on the list maintained by the Director of parties interested in the Home Energy Score Program.

B. The Director may temporarily suspend or modify the requirements of this Chapter based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The Director's determination to temporarily suspend or modify shall be filed as a report with the City Council. The Director's determination shall be effective after the Council has accepted the report.

17.108.040 Energy Performance Rating and Disclosure for Covered Buildings. Prior to publicly listing any covered building for sale, the seller of a covered building, or the seller's designated representative, shall:

- A. Obtain a home energy performance report of such building from a state licensed home energy assessor, and;
- B. Provide a copy of the home energy performance report:
 - 1. To all licensed real estate agents working on the seller's behalf; and
 - 2. To prospective buyers who visit the home while it is listed publicly for sale; and
 - 3. To the Director for quality assurance and evaluation of policy compliance.
- C. Include the Home Energy Performance Score in all real estate listings, including the Home Energy Performance Report if attachments are accepted by the listing service.

17.108.050 Exemptions and Waivers.

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

- C. The Director may exempt a seller from the requirements of this Chapter where the Director determines that compliance with the requirements of Section 17.108.040 would cause undue hardship under any of the following circumstances:
1. The low-income qualified seller demonstrates household income is at or below 60 percent of median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area,
 2. The low-income qualified seller has been approved for participation in Oregon Low-Income Home Energy Assistance Program,
 3. The low-income qualified seller has been approved for participation in Free and Reduced Price Meals through Oregon Department of Education, or
 4. The low-income qualified seller is otherwise unable to meet the obligations of this Chapter as determined by the Director.
- D. The Director may provide a waiver from the requirements of this Chapter for homebuilders or sellers using scoring products that are not compliant with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard. The waiver will allow homebuilders or sellers currently using Energy Performance Scores (EPS) or Home Energy Rating System (HERS) to temporarily continue the use of these asset rating tools.

17.108.060 Enforcement and Penalties.

- A. It shall be a violation of this Chapter for any person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter.
- B. Any building owner or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter shall be subject to:
1. Upon the first violation, the Director may issue a written warning notice to the entity or person, describing the violation and steps required to comply.
 2. If the violation is not remedied within 90 days after issue of written warning notice, the Director may assess a civil penalty of up to \$500. For every subsequent 180-day period during which the violation continues, the Director may assess additional civil penalties of up to \$500.

17.108.070 Right of Appeal and Payment of Assessments.

After being issued a written warning notice of a first violation, any person receiving a subsequent notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in

accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.