



AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 16.40 ADOPTING RESIDENTIAL ENERGY PERFORMANCE RATING AND DISCLOSURE REQUIREMENTS.

WHEREAS, the Milwaukie Climate Action Plan ([CAP](#)) calls for net-zero emissions from electricity by 2035 and net-zero emissions from all building energy types by 2040, and includes "Adopt a commercial and residential building energy score program based on the City of Portland's program" as a climate action; and

WHEREAS, according to the [2016 Milwaukie Greenhouse Gas Inventory](#), building energy is the largest source of sector-based emissions in Milwaukie, with residential building emissions comprising 18% of all sector-based emissions; and

WHEREAS, disclosure of information about building asset energy efficiency is important for consumer protection, especially when purchasing a building and considering the affordability and long-term cost of utilities; and

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

Now, Therefore, the City of Milwaukie does ordain as follows:

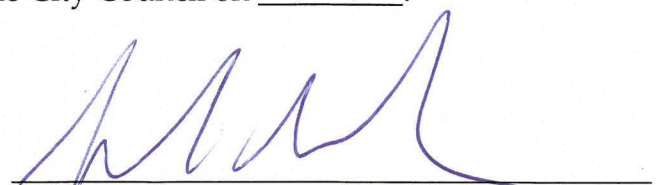
Section 1. The Milwaukie Municipal Code (MMC) is amended by adding a new CHAPTER 16.40 Residential Energy Performance Rating and Disclosure Requirements, to read as shown on the attached Exhibit A.

Section 2. This ordinance shall take effect on October 1, 2020.

Read the first time on 1/21/20, and moved to second reading by 5:0 vote of the City Council.

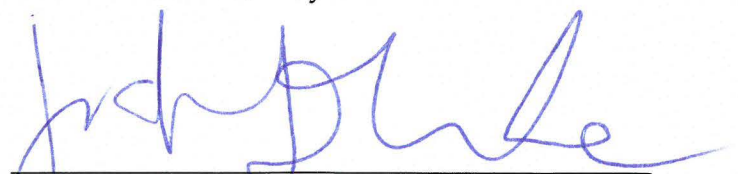
Read the second time and adopted by the City Council on 1/21/20.

Signed by the Mayor on 1/21/20.


Mark F. Gamba, Mayor

ATTEST:


Scott S. Stauffer, City Recorder


Justin D. Gericke, City Attorney

Chapter 16.40 Residential Energy Performance Rating and Disclosure **(REVISED 1/21/2020)**

16.40.010 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.

16.40.020 Definitions.

For purposes of this Chapter and any rules adopted under this chapter, the following terms have the following meanings.

“Accessory dwelling unit” means a second dwelling on a lot with a single-family detached dwelling. The accessory dwelling unit is incidental to, and smaller than, the primary dwelling on the lot. The accessory dwelling unit may be in a portion of the primary structure on the lot or contained in its own structure apart from the primary structure. The accessory dwelling unit includes its own independent living facilities including provisions for sleeping, cooking, and sanitation and is designed for residential occupancy by one or more people independent of the primary dwelling unit.

“Covered Building” means any residential structure containing a single dwelling unit or house, regardless of size, on its own lot, or any 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, manufactured dwellings, stacked condominiums or dwelling units where the unit does not extend from foundation to roof, or single dwelling units used solely for commercial purposes.

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

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

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

“Home Energy Assessor” means a person who is certified as a home energy assessor by the Oregon Construction Contractors Board to determine home energy performance scores for residential dwelling units.

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

1. The home energy performance score and an explanation of the score;
2. An estimate of the total annual energy used in the home in retail units of energy by fuel type;

3. An estimate of the total annual energy generated by onsite solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;
4. An estimate of the total monthly or annual cost of energy purchased for use in the covered building in dollars, by fuel type, based on the current average annual retail residential energy price of the utility serving the covered building at the time of the report and the average annual energy prices of nonregulated fuels, by fuel type, as provided by the Oregon Department of Energy;
5. The current average annual utility retail residential energy price in dollars, by fuel type, and the average annual energy prices of nonregulated fuels, by fuel type, provided by the Oregon Department of Energy;
6. At least one comparison home energy performance score that provides context for the range of potential scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, or the same home with certain energy efficiency upgrades;
7. The name of the entity that assigned the home energy performance score and that entity's Oregon Construction Contractors Board license number if such a license is required by law;
8. The date the building energy assessment was performed;
9. For reports that meet all requirements of Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard, the statement "This report meets Oregon's Home Energy Performance Score standard" must be included on home energy performance reports; and
10. A disclaimer on the potential impacts of vegetation and exterior building features on energy efficiency, for example, ""Trees and exterior building features may provide additional energy efficiency benefits to the building. Visit energy.gov to learn more."
11. A disclaimer on the potential for undisclosed energy efficient improvements and/or assets in the building, for example, "Additional energy efficient features may be present in the home and were not documented at time of Home Energy Score assessment."
12. Any additional "Home Energy Performance Report" or "Home Energy Performance Score" requirements as adopted by the Oregon Department of Energy

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

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

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

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

EXHIBIT A

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

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

“New home” means a home constructed in the current or previous year

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

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

“Sale” means the conveyance of title to real property as a result of the execution of a real property sales contract. Sale does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.

“Seller” means any of the following: Any individual or entity possessing title to a property that includes a covered building, the association of unit owners responsible for overall management in the case of a condominium, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations

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

16.40.030 Authority of City Manager.

- A. The City Manager is authorized to administer and enforce this chapter’s provisions.
- B. The City Manager is authorized to adopt procedures and forms to implement this chapter’s provisions.

16.40.040 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, must:

- 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

C. Maintain a copy of the home energy performance report available for review by City Manager upon request for quality assurance and evaluation of policy compliance.

D. 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.

116.40.050 Exemptions and Waivers.

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

1. A trustee's sale;
2. A deed-in-lieu of foreclosure sale; or
3. Any pre-foreclosure sale in which seller has reached an agreement with the mortgage holder to sell the property for an amount less than the amount owed on the mortgage.

B. The City Manager may exempt a seller from the requirements of this chapter after confirming that compliance would cause undue hardship for the seller under the following circumstances:

1. The covered building qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes;
2. A court appointed receiver is in control of the covered building due to financial distress;
3. The senior mortgage on the covered building is subject to a notice of default;
4. The covered building has been approved for participation in Oregon Property Tax Deferral for Disabled and Senior Citizens, or equivalent program as determined by the City Manager; or
5. The responsible party is otherwise unable to meet the obligations of this chapter as determined by the City Manager.

C. To the extent that city funds are available, the City Manager may exempt a seller from the assessment fee when the seller participates in the Milwaukie Home Energy Score Low-Income Assistance program by demonstrating household income that is at or below 80 percent of median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area;

16.40.060 Enforcement and Penalties.

A. It is 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 does not comply with the provisions of this chapter will be subject to the following:

1. Upon the first violation, the City Manager 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 30 days after issue of written warning notice, the City Manager may assess a civil penalty of up to \$500. For every subsequent 90-day period during which the violation continues, the City Manager may assess additional civil penalties of up to \$500.

EXHIBIT A

C. The City may use the provisions of Milwaukie Municipal Code Chapter 1.08 to enforce this chapter.