

ORDINANCE NO. O2025-001

Commented [AW1]: All red text in this version are Tumwater specific. Any red text is text that will be changed on a jurisdiction-specific basis.

AN ORDINANCE of the **City Council of the City of Tumwater**, Washington, adopting a Residential Energy Performance Rating and Disclosure Policy and adding a new chapter entitled Chapter 5.90 *Residential Energy Performance Rating and Disclosure* to Title 5 *Business Taxes, Licenses and Regulations*, as more particularly described herein.

WHEREAS, climate change has become a crisis posing a serious threat to the survival of the earth and humanity; and

WHEREAS, in 2018 the **City Council** adopted **Resolution No. R2018-015**, agreeing to common targets to reduce communitywide greenhouse gas emissions 45 percent below 2015 levels by 2030 and 85 percent below 2015 levels by 2050 to ensure that local communities do their part to keep the global average temperature rising more than 2 degrees Celsius above pre-industrial levels; and

WHEREAS, in 2021 the **City Council** adopted **Resolution No. 2021-001** accepting the *Thurston Climate Mitigation Plan (2020)* as a framework to guide future action addressing local sources of greenhouse gas emissions that contribute to global climate change; and

WHEREAS, in 2021 the **City Council** adopted **Resolution No 2021-002** declaring a climate emergency and support for mobilization of community and region wide efforts to mitigate climate change in order to provide a safe environment for future generations; and

WHEREAS, at the 2023 Thurston Climate Mitigation Collaborative (TCMC) Annual Retreat and subsequent Executive Committee meeting on June 26, 2023, the TCMC agreed to advance two regional initiatives for focused regional coordination in 2024: (1) design a Residential Energy Efficiency and Electrification Campaign and (2) develop a Home Energy Score Model Ordinance; and

WHEREAS, in 2023 the **City Council** approved an Interlocal Agreement among Thurston County and the cities of Lacey, Olympia, and Tumwater to support the implementation of the 2024 TCMC Regional Initiatives; and

WHEREAS, the TCMC has engaged the TCMC Community Advisory Workgroup, members of the public, and held four focus group discussions with key stakeholders to develop this proposed Ordinance; and

WHEREAS, the TCMC finds that for a home energy disclosure policy to be effective at reducing emissions and informing prospective homebuyers, jurisdiction's codes should be amended to include this requirement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

TMC Title 5 Business Taxes, Licenses and Regulations of the City Code is amended by to include **TMC Chapter 5.90 Residential Energy Performance Rating and Disclosure**.

Section 1. Purpose.

The purpose of the Residential Energy Performance Rating and Disclosure is to require that homebuyers be provided with information about residential building energy performance prior to the time of property purchase to enable more informed decisions about the full costs of operating dwelling units and to encourage investments in improvements that lower utility bills, reduce carbon emissions, and increase the comfort, safety, and health of building occupants. This disclosure is in addition to the minimum disclosures described in RCW 64.06.

Section 2. Definitions.

Certain terms, words and phrases shall, whenever used in this chapter, have the meanings defined in this section.

- A. "Director" means the director of the community development department of the city or their designee.
- B. "Energy" means electricity, natural gas, propane, heating oil, wood, or other fuel used for purposes of providing heating, cooling, lighting, water heating, or powering other end-uses in the building and related facilities.
- C. "Home energy performance report" means the report prepared by a registered home energy score assessor utilizing the reporting template provided by the director. 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 dwelling unit 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/or solar water heating systems in retail units of energy, by type of fuel displaced by the onsite generation;

4. An estimate of the total monthly or annual cost of energy purchased for use in the subject building in dollars by fuel type, based on the current average annual retail residential energy price of the utility serving the subject building at the time of the report and the average annual energy prices of nonregulated fuels by fuel type;
 5. The current average annual utility retail residential energy price in dollars by fuel type and the average annual energy prices by fuel type;
 6. At least one comparison home energy performance score that provides context for the range of potential scores. Examples of comparison dwelling units include, but are not limited to, a similar dwelling unit with Washington's average energy consumption, the same type of dwelling unit built to Washington energy code, or the same type of dwelling unit with certain energy efficiency upgrades;
 7. The date when the building energy assessment was performed;
 8. The name, contact information, and business license number for the registered home energy score assessor who completed the scoring; and
 9. Such other information as specified by the director.
- D. "Home energy score" means the U.S. Department of Energy's Home Energy Score which is an asset rating based on physical inspection of the dwelling unit or review of the design documents used for the dwelling unit's construction.
- E. "Real estate listing" means any real estate listed publicly for sale in the city by a property owner, representative of a property owner, or a licensed real estate agent. Real estate listings include any printed advertisement, internet posting, or publicly displayed sign, including Regional Multiple Listing Service, Craigslist, Nextdoor and other social media platforms, Redfin, Zillow, Trulia, and other third-party listing services.
- F. "Registered home energy score assessor" means a person who has a valid and up-to-date certification from the U.S. Department of Energy as a home energy score assessor and who is registered with the city to provide a home energy performance report. To be registered with the city, a person must meet all registration requirements established by the director.
- G. "Sale" means the conveyance of title to real property because 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

Commented [AW2]: The jurisdiction will maintain a list of all registered home energy score assessors operating within the jurisdiction boundaries.

Commented [AW3]: To become a registered assessor the company/person must have: 1. business license to operate in the jurisdiction, 2. proof of HES assessor certification, 3. participation agreement signed. The participation agreement language includes commitment to quality assurance.

Commented [AW4R3]: We're exploring a way to make this process more efficient by vetting at one jurisdiction only and communicating that vetting, similar to how uber and lyft is managed in the County right now.

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.

- H. "Seller" means any of the following: any individual or entity possessing title to real property that includes a subject 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.
- I. "Subject Buildings" means single-family detached dwellings, duplexes, triplexes, quadplexes, cottage housing, townhouses, and attached accessory dwelling units as defined in **TMC Chapter 18.04**.

Section 3. Authority of the Director.

- A. The director shall administer and enforce this chapter's provisions.
- B. The director shall adopt rules and regulations, procedures, and forms to implement this chapter's provisions.

Section 4. Home Energy Score Rating and Disclosure for Subject Buildings.

Prior to publicly listing any dwelling unit(s) of a subject building for sale, the seller of the dwelling unit shall:

- A. Obtain a home energy performance report for the dwelling unit(s) of the subject building from a registered home energy score assessor;
- B. Include the home energy score in all real estate listings and contact information to request the home energy performance report;
- C. Append the home energy performance report when attachments are accepted by the listing service;
- D. Provide a copy of the home energy performance report to all the following:
 - 1. All licensed real estate agents working on the seller's behalf; and
 - 2. Prospective homebuyers while the subject building is listed publicly for sale; and
- E. Maintain a copy of the home energy performance report available for review by the director upon request for quality assurance and evaluation of policy compliance.
- F. New construction of subject buildings, at or prior to the time of the first sale.

Commented [AW5]: Staff is waiting to hear back about if online resources provided by DOE National Service providers can do this for us without the administrative burden of this falling on the jurisdiction.

Commented [AW6]: Developers shared that newly constructed homes are built to a higher energy code standard and should be exempt, but buildings could be vested under older building codes and built in 2024 or later.

Commented [AW7R6]: Exempting new construction prevents prospective buyers from comparing the energy performance and cost of new and existing homes. For that reason, new construction is included within this draft ordinance.

1. The home energy score may be generated from either design specifications or an on-site inspection.
2. A single home energy performance report may be obtained and replicated for subject buildings constructed within the same land division using identical design specifications with identical features including, but not limited to, floorplan, type and amount of insulation, windows, attic fans, heating and cooling systems, hot water heaters, and appliances.

Section 5. Exemptions and Waivers.

- A. Subject buildings on federal land or tribal land shall be exempt from the requirements outlined in Section 4. .
- B. The director shall exempt a seller from the requirements of this chapter if the seller submits documentation that the subject building will be sold through of any of the following:
 1. A trustee's sale;
 2. A deed-in-lieu of foreclosure sale;
 3. Any pre-foreclosure sale in which the seller has reached an agreement with the mortgage holder to sell the property for an amount less than the amount owed on the mortgage; or
 4. 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.
- C. 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 subject 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 subject building due to financial distress;
 3. The senior mortgage on the subject building is subject to a notice of default; or
 4. The seller is otherwise unable to meet the obligations of this chapter as determined by the director.

Commented [AW8]: This is optional language to be included if a jurisdiction has tribal or federal land within its boundaries.

Commented [BM9]: Do the exemptions below cover those items listed in the definition of "sale" that are not a "sale"?

[...]

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

Section 6. Expiration

The home energy score is valid for eight years after the assessment date (including new construction assessments as described in Section 4.F.), provided that no changes to mechanical systems, building envelope, energy efficiency or square footage in the home has occurred. For the purposes of this section, an assessment date is the date the assessment was completed.

Section 7. Violation.

It is a violation of this chapter for any person to fail to comply with the requirements of this chapter or to misrepresent any material fact in a document required to be prepared or disclosed by this chapter.

OPTIONAL LANGUAGE FOR JURISDICTION CONSIDERATION ABOUT FINES IN PROCESS.

Commented [AW10]: Different jurisdictions have different fine schedules that define what value of fines would be acceptable. This optional piece is still in process.

Section 8. Limitation of liability.

- A. This chapter is not intended to create any class of persons to be benefited or protected nor to create any reliance relationship between the city and property owners, land purchasers, their successors, occupants, or users of structures built with or without a permit, or any other persons.
- B. This chapter is not intended to create any duty running in favor of particular persons.
- C. The obligations to comply with the provisions of this chapter are upon the property owner and their agents.
- D. Acts or omissions to act by the city, its officials, or employees, under this chapter shall not create any liability on the part of the city or its officials or employees.
- E. This chapter is not intended to create a warranty of home energy performance, and functions to provide disclosures only. This chapter is not part of an agreement between a seller and buyer.

Section 9. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerk errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 10. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 11. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 12. Effective Date. This ordinance shall become effective on May 1, 2026, after passage, approval and publication as provided by law.

ADOPTED this day of , 20 .

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:

Effective Date:

DRAFT

