

ORDINANCE 8279

AN ORDINANCE AMENDING CHAPTER 10-7.7, "COMMERCIAL AND INDUSTRIAL ENERGY EFFICIENCY," B.R.C. 1981, TO CLARIFY REGULATION OF LARGE INDUSTRIAL CAMPUSES RELATED TO ENERGY USAGE AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Chapter 10-7.7, "Commercial and Industrial Energy Efficiency," B.R.C. 1981, is amended to read as follows:

Chapter 7.7 – Commercial and Industrial Energy Efficiency

10-7.7-1. – Scope.

(a) Scope. The provisions of this chapter apply to building owners or tenants of the following:

- (1) Any commercial or industrial building with at least 20,000 square feet of floor area.
- (2) All commercial or industrial portions of any mixed-use building where a total of at least 20,000 square feet of floor area is devoted to any commercial or industrial use.
- (3) Any commercial or industrial building with at least 10,000 square feet of floor area for which an initial building permit was issued on or after January 31, 2014.
- (4) Any commercial or industrial building with 5,000 square feet or more of floor area that is owned by the City of Boulder; ~~Provided, however, no building with less than 10,000 square feet of floor area shall be subject to the provisions of Sections 10-7.7-3, "Energy Assessment," or 10-7.7-5, "Retrocommissioning," B.R.C. 1981.~~
- (5) ~~Provided, however, no report shall be required in the first twelve months after issuance of an initial certificate of occupancy.~~

(b) Exemptions. Owners of the following buildings are exempt from the requirements of this chapter:

- (1) Any building, regardless of size, which has minimal energy use, because the building is unlit and has no heating or cooling systems.
- (2) Any building ~~with~~ upon proof of financial hardship.

10-7.7-2. - Rating and Reporting Requirement.

(a) Any owner subject to this chapter shall rate and report ~~their~~ its building's's energy use in a manner prescribed by the city manager on the following schedule; ~~The city manager may grant a reasonable extension as may be necessary.~~

- (1) Any building with 5,000 or more square feet owned by the city of Boulder by May 1, 2016 and on or before May 1 of each year thereafter.
- (2) Any building with 50,000 or more square feet of floor area by August 1, 2016 and on or before June 1 of each year thereafter.
- (3) Any building with at least 10,000 square feet of floor area for which an initial building permit was issued on or after January 31, 2014 by August 1, 2016 and on or before June 1 of each year thereafter.
- (4) Any building with 30,000 or more square feet of floor area, but less than 50,000 square feet of floor area by June 1, 2018 and on or before June 1 of each year thereafter.
- (5) Any building with 20,000 or more square feet of floor area, but less than 30,000 square feet of floor area by June 1, 2020 and on or before June 1 of each year thereafter.
- (b) No report shall be required in the first twelve months after issuance of an initial certificate of occupancy.
- (c) The city manager may grant an owner a reasonable extension of time to comply with this section upon proof of technical difficulties or financial hardship.
- (db) Owners of buildings in a large industrial campus the following buildings are exempt from the rating and reporting requirements:
- ~~(1) Any buildings in a large industrial campus.~~ Such buildings are subject to the provisions of Section 10-7.7-8, "Large Industrial Campus," B.R.C. 1981, as well as all other sections unless specifically exempted.
- ~~(2) Any building whose owner applies for and receives a special exemption from the city manager.~~
- (ee) Any owner who is unable to complete a report due to a tenant's refusal to provide requested information shall input alternative values provided by the city manager.
- (df) All owners shall maintain and make available for inspection by the city manager, all required records for a period of three years.
- (eg) If an owner subject to this ordinance transfers its building, then aAt the time any building subject to this ordinance is transferred of such transfer, that ownerseller shall provide to the buyer-transferee all information necessary for the buyer-transferee to rate and report for the entire year.

10-7.7-3. - Energy Assessment.

- (a) Any owner subject to the reporting requirements of this chapter shall conduct an energy assessment within three years of the first reporting requirement and at least once every ten years thereafter, except for owners of the following buildings:
- (1) Any building with a current U.S. Environmental Protection Agency ENERGY STAR certification;
- (2) Any building with a current Leadership in Energy and Environmental Design Building Operations and Maintenance certification from the U.S. Green Building Council;
- (3) Any building whose owner can demonstrate to the city manager a pattern of significant and consistent improvements in energy efficiency or greenhouse gas emissions;

- 1 (4) Any building whose owner can demonstrate to the city manager that the owner
2 conducted an equivalent energy assessment within ten years of the first deadline for
3 energy assessments, and implemented the cost-effective actions that were
4 recommended;
- 5 (5) Any buildings in a large industrial campus. Such buildings are subject to the provisions
6 of Section 10-7.7-8, "Large Industrial Campus," B.R.C. 1981; or
- 7 ~~(6) Any other building whose owner applies for and receives a special exemption from the~~
8 ~~city manager.~~
- 9 (b) The energy assessment shall be conducted by a qualified professional energy assessor, as
10 defined by the city manager in adopted city manager rules.
- 11 (c) The owner shall provide to the city manager a summary of the energy assessment report
12 along with a statement of which recommendations from the assessment will be implemented
13 and in what timeframe.
- 14 (d) The city manager may establish rules regarding the recovery by owners from tenants of
15 costs associated with energy assessments.

10-7.7-4. - Required Lighting Upgrades.

- 16 (a) Within five years of the first reporting requirement, each owner shall:
- 17 (1) Replace or upgrade any interior ~~or exterior~~ lighting fixtures as necessary to meet
18 ~~identified as not meeting the~~ lighting power allowances for interior ~~and exterior~~
19 ~~lighting, set forth established in the current version of the International Energy~~
20 ~~Conservation Code~~ 2017 City of Boulder Energy Conservation Code.
- 21 (2) Replace or upgrade any exterior lighting fixtures as necessary to meet lighting power
22 allowances for exterior lighting established in the 2012 International Energy
23 Conservation Code.
- 24 (23) Comply with the requirements for automatic time switch control devices, occupancy
25 sensors, and exterior lighting controls as necessary to meet the, ~~set forth in the current~~
~~version of the International Energy Conservation Code~~ 2017 City of Boulder Energy
Conservation Code.
- (3) ~~Comply with the maximum allowed wattage for internally illuminated exit signs, set~~
~~forth in the current version of the International Energy Conservation Code.~~
- (4) Provide to the city manager a summary of any actions taken pursuant to this subsection.
The city manager may grant an owner a reasonable extension of time in which to
comply with this section upon proof of technical difficulties or financial hardship.
- (b) The owner of any building meeting any of the following requirements shall not be required
to comply with subsection (a):
- (1) Any building with a current U.S. Environmental Protection Agency's ENERGY STAR
certification;
- (2) Any building with a current Leadership in Energy and Environmental Design Building
Operations and Maintenance certification from the U.S. Green Building Council;
- (3) Any building whose owner can demonstrate to the city manager a pattern of significant
and consistent improvements in energy efficiency or reduction of greenhouse gas
emissions;

(4) Any buildings in a large industrial campus. Such buildings are subject to the provisions of Section 10-7.7-8, "Large Industrial Campus," B.R.C. 1981; or

(5) Any ~~other~~ building whose owner can demonstrate that certain requirements cannot be completed in a cost-effective manner, applies for and receives a special exemption from the city manager.

(c) The city manager may establish rules regarding the recovery by owners from tenants of costs associated with lighting upgrades.

10-7.7-5. – Retrocommissioning.

(a) Within five years of the first reporting requirement, and every ten years thereafter, each owner shall:

(1) Conduct retrocommissioning.

(2) Provide to the city manager a summary of the retrocommissioning report and report any actions taken pursuant to this subsection.

(b) Within two years from the retrocommissioning report submittal, the owner shall implement any retrocommissioning measure identified in the retrocommissioning report as likely to produce energy and maintenance savings in a two-year period in excess of the cost of implementing the measure, less the value of any rebates.

(c) The retrocommissioning shall be conducted by a retrocommissioning professional, as defined by the city manager.

(d) The city manager may establish rules regarding the recovery of costs associated with retrocommissioning.

(e) The owner of any building meeting any of the following requirements shall not be required to comply with subsections (a), (b) or (c):

(1) Any building with a current U.S. Environmental Protection Agency's ENERGY STAR certification;

(2) Any building with a current Leadership in Energy and Environmental Design Building Operations and Maintenance certification from the U.S. Green Building Council;

(3) Any building whose owner can demonstrate to the city manager a pattern of significant and consistent improvements in energy efficiency or greenhouse gas emissions;

(4) Any buildings in a large industrial campus where multiple buildings are served by single meters. Such buildings are subject to the provisions of Section 10-7.7-8, "Large Industrial Campus," B.R.C. 1981; or

(5) Any ~~other~~ building whose owner can demonstrate by providing a report from a qualified retrocommissioning and energy assessment professional that the building would not benefit from a retrocommissioning study because there are no retrocommissioning measures identified as likely to produce energy and maintenance savings in a two-year period in excess of the cost of implementing the measure, less the value of any rebates, applies for and receives a special exemption from the city manager.

(f) The city manager may grant an owner a reasonable extension of time in which to comply with this section upon proof of technical difficulties or financial hardship.

1 **10-7.7-6. – Disclosure.**

- 2 (a) This section applies to any owner and tenant, including those within a “Large Industrial
3 Campus.”
4 (b) Any owner subject to provisions of this chapter shall provide to any tenant a copy of any
5 energy report or energy assessment within sixty days of receipt by the owner.
6 (c) Any tenant of an owner subject to the provisions of this chapter shall, within 30 days of a
7 request, provide to the owner any information that cannot otherwise be acquired by the
8 owner and that is needed to comply with the provisions of this chapter.

7 **10-7.7-7. – Confidentiality.**

- 8 (a) This section applies to any owner and tenant, including those within a “~~L~~arge ~~I~~ndustrial
9 ~~C~~ampus.”
10 (b) Any owner submitting information to the city manager that includes trade secrets, privileged
11 or confidential commercial information, and ~~who~~ claimings confidentiality over such
12 information shall specifically identify such confidential information and provide a statement
13 of the manner in which public disclosure would cause substantial harm to the owner’s
14 competitive position. Any information submitted without such a statement may be
15 disclosed publicly. Inefficient energy usage alone will not be considered confidential
16 commercial information.
17 (c) A claim of confidentiality under this section constitutes a representation to the city manager
18 that the owner has a reasonable and good faith belief that the subject document or
19 information is not presumed to be open for inspection, and is, in fact, confidential under
20 applicable law, including the Colorado Open Records Act.
21 (d) The city manager is authorized to enter into an agreement with any owner who, pursuant to
22 this ~~C~~hapter, submits information to the city that includes trade secrets, privileged or
23 confidential commercial information, and ~~who~~ claims confidentiality over such information.
24 Pursuant to the agreement, the dissemination of any such confidential information shall be
25 limited to three staff members, employed by the city, of the city manager’s choosing.
(e) The city manager is authorized to enter into a nondisclosure agreement with any owner who
entered into an agreement pursuant to 10-7.7-7(d), which nondisclosure agreement shall
address the following subjects:
(1)~~i~~. Sealing of confidential information submitted pursuant to this ~~C~~hapter;
(2)~~ii~~. Handling of confidential information by the city;
(3)~~iii~~. Treatment of requests from the public to inspect such confidential information;
(4)~~iv~~. Compliance with the Colorado Open Records Act.

23 **10-7.7-8. - Large Industrial Campus.**

- 24 (a) The owner of a large industrial campus shall on or before June 1, 2016 and on or before
25 June 1 in each year thereafter submit to the city manager the following information:

- 1 (1) A written narrative description, which will be ~~publically~~publicly disclosed, including
2 the following:
- 3 (A) The industrial campus energy usage reduction goals and emission reduction goals,
4 both at the ~~site~~large industrial campus and at the corporate level; and
- 5 (B) A summary of energy efficiency or on-site renewable energy projects implemented
6 in the reporting year.
- 7 (2) An oral report or presentation (the "Annual Report") of the following information
8 provided during an annual meeting between the ~~L~~large ~~I~~industrial ~~C~~campus and city
9 staff members who are identified in an agreement executed pursuant to 10-7.7(d),
10 B.R.C:
- 11 (A) A qualitative comparison of energy usage in the reporting year with the preceding
12 year and an explanation of the reason for any substantial (more than 2.5 percent)
13 change; and
- 14 (B) Using a formula supplied by the city manager, the percentage of total energy
15 savings during the reporting year. Supporting documentation for this calculation
16 must be disclosed to the city during this annual meeting.
- 17 (C) The Annual Report Shall be treated as confidential in accordance with the terms of
18 the agreement executed pursuant to Section 10-7.7-7(d).
- 19 (b) The owner of a large industrial campus shall:
- 20 (1) On or before June 1, 2019 and at least once every ten years thereafter, conduct an
21 energy assessment that covers at least seventy-five percent of the total energy usage on
22 the large industrial campus; and
- 23 (2) Within two years after each assessment, the owner must implement any measures
24 recommended that are projected to produce monetary savings over a one=year period
25 equal to or in excess of the cost of implementation, less the value of rebates.
- (c) By June 1, 2025, each owner of a large industrial campus shall:
- (1) Replace or upgrade any interior ~~or exterior~~ lighting fixtures ~~identified as not meeting~~
necessary to meet the lighting power allowances for interior and exterior lighting
established in the 2017 City of Boulder Energy Conservation Code set forth in the
current version of the International Energy Conservation Code.
- (2) Replace or upgrade any exterior lighting fixtures as necessary to meet the lighting
power allowances for exterior lighting established in the 2012 International Energy
Conservation Code.
- (23) Comply with the requirements for automatic time switch control devices, occupancy
sensors, and exterior lighting controls as necessary to meet the 2017 City of Boulder
Energy Conservation Code, set forth in the current version of the International Energy
Conservation Code.
- (3) ~~Comply with the maximum allowed wattage for internally illuminated exit signs, set~~
~~forth in the current version of the International Energy Conservation Code.~~
- (4) Provide to the city manager a summary of any actions taken pursuant to this subsection.
The city manager may grant an owner of a large industrial campus a reasonable
extension of time in which to comply with this upon proof of technical difficulties or
financial hardship.

- (d) An owner of a large industrial complex shall be exempt from the requirements of subsections (b) and (c) above, if:
- (1) The owner demonstrates to the city manager that energy efficiency measures or on-site renewable energy sources produced a reduction of total energy usage of at least two and a half percent, annualized over four years; or
 - (2) The owner demonstrates that it has established an energy or greenhouse gas emission reduction goal for the large industrial campus that is equivalent to that set forth in Section 10-7.7-8(d)(1); and the large industrial campus is making adequate progress toward that goal, as determined by the city manager.

10-7.7-9. – Exemptions.

- (a) This section applies to any owner and tenant, including those within a “Large Industrial Campus.”
- (b) An owner may receive an exemption from all efficiency requirements set forth in Sections 10-7.7-3, “Energy Assessment,” 10-7.7-4, “Required Lighting Upgrades,” or 10-7.7-5, “Retrocommissioning,” if the owner can demonstrate to the city manager a pattern of significant and consistent improvements in the building’s energy efficiency or greenhouse gas emissions.
- (b~~c~~) Any exemption must be approved by the city manager.
- (e~~d~~) Applications to exempt any building from the requirements of this chapter must be made by the building’s owner. Exemptions shall be subject to the following limitations:
- (1) Any exemption from annual requirements shall be for a period of one year. Owners may re-apply for an additional exemption at the expiration of the initial exemption period;
 - (2) Any exemption from the requirements of Sections 10-7.7-3, 10-7.7-4 and ~~Section 10-7.7-5~~ shall be valid for so long as for a period of ten years or until the next ten-year compliance deadline, whichever is later, if the requirements for maintaining an exemption ~~in future years~~, as defined in the city manager rules, are met;
 - (3) Any exemption from the requirements of Section 10-7.7-8(b) shall be valid for a period of ten years or until the next ten-year compliance deadline, whichever is later;
 - (4) Any exemption from the requirements of ~~Section 10-7.7-4~~ and Section 10-7.7-8(c) shall permanently exempt the building from those requirements;
 - (5) Applications must be received sixty days before the compliance deadline established in this chapter;
 - (6) An application must demonstrate the owner has considered all reasonable options that would bring the building into compliance and must explain to the satisfaction of the city manager why none of these options are viable.
- (e~~c~~) The city manager may issue additional rules that govern the conditions under which an application for an exemption may be submitted and granted.
- (e~~f~~) Applications for an exemption may require submission of an application processing fee.

1 **10-7.7-10. – Administrative Remedy.**

- 2 (a) This section applies to any owner and tenant, including those within a “~~L~~arge ~~I~~ndustrial
3 ~~c~~ampus.”
- 4 (b) If the city manager believes that a violation of any provision of this chapter exists, the city
5 manager shall issue a warning to the person alleged to be in violation. The person shall be
6 given 14 days to correct the violation.
- 7 (c) If 14 days after a warning is issued the city manager finds that a violation of any provision
8 of this chapter still exists, the city manager, after notice to the person and an opportunity for
9 hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C.
10 1981, may take any one or more of the following actions to remedy the violation:
- 11 (1) Impose a civil penalty of:
- 12 (a) ~~\$~~0.0025 per square foot per day, not to exceed \$1,000 per day;
- 13 (b) Issue any order reasonably calculated to ensure compliance with this chapter and
14 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
- 15 (d) If notice is given to the city manager by the owner at least forty-eight hours before the time
16 and date set forth in the notice of hearing on any violation that the violation has been
17 corrected and the city manager finds that the violation has been corrected, the city manager
18 may cancel the hearing.
- 19 (e) The city manager's authority under this section is in addition to any other authority that he or
20 she has to enforce this chapter; and election of one remedy by the city manager shall not
21 preclude resorting to any other remedy as well.
- 22 (f) The city manager may, in addition to taking other collection remedies, certify due and
23 unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-
24 12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for
25 Collection," B.R.C. 1981.
- 26 (g) To cover the costs of investigative inspections, the city manager will assess owners a
\$250.00 fee per inspection, where the city manager performs an investigative inspection to
ascertain compliance with or violations of this chapter.

19 **10-7.7-11. – City Manager May Issue Rules.**

- 20 (a) Rulemaking Authority: The city manager may promulgate such rule as the manager
21 considers necessary to implement and enforce this chapter. All such rules shall be adopted
22 in accordance with the procedures set forth in chapter 1-4, "Rulemaking," B.R.C. 1981.
- 23 (b) Violation of Rules Prohibited: No person shall violate any rule issued by the city
24 manager under this section.

25 Section 2. This ordinance is necessary to protect the public health, safety and welfare of
the residents of the city, and addresses matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 21st day of August 2018.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED, this 4th day of September
2018.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk