

Building Performance Ordinance – Exemptions Reference Guide



A Reference Guide for Exemptions from the Building Performance Ordinance Requirements

Contents

- About this Guide**..... 1
 - Why Are Exemptions Available? 1
- Exemptions from All Requirements**..... 2
- Exemptions from Rating and Reporting Only**..... 2
- Exemptions from All Efficiency Requirements (Energy Assessment, RCx, Lighting)**..... 3
 - Maintaining an Efficiency Exemption 4
- Exemptions from Energy Assessment Requirement Only** 5
- Exemptions from Retrocommissioning Requirement Only** 6
- Exemptions from Public Disclosure** 7
- Other Exemptions** 7

About this Guide

This reference guide describes the available exemptions from the Building Performance Ordinance requirements and provides examples and recommendations for applying for an exemption. Building owners are required to meet all requirements of the ordinance unless they have applied for, and received, an exemption from the City Manager. Applications must be received by the city at least 60 days prior to the requirement deadline.

To apply for an exemption, owners must fill out and **submit the Boulder Building Performance Exemption Request**¹ **with all required supporting documentation for that exemption.** The city may request additional documentation during the review beyond what is included in this section.

Why Are Exemptions Available?

The City of Boulder structured this ordinance to reward building owners who have already been prioritizing efficiency. If an owner has constructed, purchased or upgraded a building with high levels of energy efficiency, they are encouraged to review the exemptions to see if they qualify. The exemptions

¹ The most updated version is always available on the website under the “Exemptions” drop down at www.BoulderBuildingPerformance.com

also address unique situations, such as dealing with financial hardship, which may inhibit a building owner's ability to meet the ordinance requirements.

Exemptions from All Requirements

Commercial and industrial building owners may be exempt from *all* requirements if:

1) The building is unconditioned and unlit.

- a) **Exemption period:** One year, re-apply annually 60 days or more prior to requirement deadline.
- b) **Required for submittal:**
 - i) A narrative describing the space and a description of what, if anything, consumes energy.
 - ii) The city may request additional documentation during the review.

Example: You have an out building that used to be a repair shop. You now use it for storage and do not light or heat the building. There are gas powered lawn mowers and snow blowers stored there. Do you qualify for an all requirements exemption for that space? **Answer:** YES, especially if you can show the electrical and gas connections are shut off.

Example: You have an airplane hangar that has lighting and a gas space heater but is only used a few hours per month. Do you qualify for an all requirements exemption for this space? **Answer:** NO, as long as the space is still occupied, and being lighted or heated, the building is subject to the ordinance requirements.

2) The building is under financial hardship.

- a) **Exemption period:** One year, re-apply annually 60 days or more prior to requirement deadline.
- b) **Required for submittal:**
 - i) Proof the building is the subject of a qualified tax lien sale or public auction due to property tax arrangements; or,
 - ii) Proof the building is controlled by a court appointed receiver; or,
 - iii) Proof the building has been acquired by deed in lieu of foreclosure.

Example: Your building is currently under a tax lien by the County for unpaid tax. Do you qualify for a financial hardship exemption? **Answer:** YES as long as you can provide proof of your financial hardship as outlined above.

Example: You have not been able to lease your building due to a poor commercial market for an extended period and have fallen behind on your building's mortgage payments but still have six months before the building goes into foreclosure. You have an energy ordinance deadline for this space due in one year. Do you qualify for a financial hardship exemption for this space? **Answer:** NO, as long as the space is still not in foreclosure and you have time to resolve. However, you can plan to apply for an exemption within 60 days of your foreclosure date if not resolved or extended.

Exemptions from Rating and Reporting Only

Affected building owners may be exempt from rating and reporting for one reporting year if:

1) The building has less than 12 months of energy data in the reporting calendar year (Jan-Dec).

- a) **Exemption period:** One year, re-apply annually 60 days or more prior to requirement deadline.
- b) **Required for submittal:**
 - i) Certificate of occupancy.

Example: Your building was built during the reporting year (in this case, 2015) and your certificate of occupancy shows an occupancy data of June 2015. This means you only have energy consumption for the building June-Dec 2016. Do you qualify for an exemption? **Answer:** YES as long as you provide a copy of the certificate of occupancy.

Example: You purchased the building in March 2016 and you did not pay the energy consumption bills for the building in 2015 so you do not know the energy consumption for the reporting year. Do you qualify for an exemption? **Answer:** NO. As long as the building was occupied, heated, and lit during the entire calendar year, the building is still subject to the ordinance requirements. As the owner you must collect the whole-building energy consumption for the reporting year by either using [Xcel Energy's automatic upload service](#), or by working with the previous owner or tenants to collect the usage.

Exemptions from All Efficiency Requirements (Energy Assessment, RCx, Lighting)

High performing, energy-efficient buildings will still be required to annually rate and report, but may be exempt from the other efficiency requirements, including energy assessments, retrocommissioning, and lighting upgrades. Buildings will be considered for the efficiency exemption if they meet any of the following criteria:

1) Current [ENERGY STAR certification](#).²

- a) Must achieve and maintain an ENERGY STAR score of 75 or better
- b) **Exemption period:** Ten years or until the next ten-year compliance deadline, whichever is later, if the requirements for maintaining an exemption in future years are met (see [Maintaining an Efficiency Exemption](#) below).
- c) **Required for submittal:** Copy of current ENERGY STAR Certification

2) Current [LEED EBOM certification](#) (Leadership in Energy and Environmental Design: Existing Building Operations and Maintenance).

- a) **Exemption period:** Ten years or until the next ten-year compliance deadline, whichever is later, if the requirements for maintaining an exemption in future years are met (see [Maintaining an Efficiency Exemption](#) below).
- b) **Required for submittal:** Copy of LEED EBOM Certification with clear issue and renewal date.

3) Can demonstrate a pattern of significant and consistent improvements in energy efficiency or greenhouse gas emissions subject to approval by the City Manager and demonstrated by provided information, as outlined below.

- a) **Exemption period:** Permanent exemption from lighting requirements, exempt from first round of energy assessment and retrocommissioning requirements; re-apply at least 60 days prior to requirement deadline of the next round of efficiency requirements- if the requirements for maintaining an exemption in future years are met (see [Maintaining an Efficiency Exemption](#) below).

² There's no fee to apply for ENERGY STAR certification, but applications do require review and verification by a professional engineer or a registered architect, which may have a cost. Find tips for low-cost verifications here: <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/earn-recognition/energy-star-certification/tips-low> and more information on pro-bono verifications here: https://www.energystar.gov/buildings/service_providers/verify/pro_bono_verification_energy_star_applications

b) **Required for submittal:**

- i) ENERGY STAR Portfolio Manager report or other records showing energy consumption and/or greenhouse gas emissions for the past three years; and,
- ii) A narrative and documentation of initiatives, activities, etc. used to achieve the reductions.³ The narrative should include the following:
- iii) An explanation of why this building is ineligible for ENERGY STAR or LEED EBOM certification and if applicable; and (choose one of the following):
 - (1) **Path 1:** (only available to buildings ineligible to receive an ENERGY STAR certification): Provide justification that the building's energy performance is better than at least 75 percent of similar buildings and provide the dataset used for administrative review. The dataset used to justify performance should include building site or source energy use intensity data of at least five similar buildings, normalized for climate, building use, and occupancy or a similar dataset that can be justified. This can include the Portfolio Manager comparison dataset; or
 - (2) **Path 2:** Using at latest the first year of rating and reporting, as set forth in BRC 10-7.7-2, as the baseline year site or source energy use intensity (EUI), implement measures with a combined deemed savings that will achieve at least a 15% reduction in EUI from the base year EUI within five years of application. Applicants must provide those deemed savings calculations to the city with proof of installation of each measure; or
 - (3) **Path 3:** An alternative approach with supporting documentation showing a pattern of significant and consistent improvements.

Example: *Your building recently underwent a renovation and you upgraded much of your major HVAC equipment. Do you qualify for an exemption from all energy efficiency requirements? **Answer:** IT DEPENDS. You will still be required to rate and report, so first look at your ENERGY STAR score – are you eligible for certification or close to it? If you're not eligible for a score, how does your EUI compare to the median? Is it in the top 25% of like buildings or close? If you are close to either, it is probably more cost-effective to invest in a few more efficiency measures to achieve the exemption than it would be to spend the capital on the assessment, RCx, and lighting upgrades.*

Example: *Your building is not eligible for an ENERGY STAR score, but you have been prioritizing efficiency. Do you qualify for an exemption from all energy efficiency requirements? **Answer:** IT DEPENDS. Can you prove your building is in the top 25% of like buildings when looking at EUIs? If not, consider getting an energy assessment or working with a contractor to identify additional efficiency measures that will result in a 15% savings reduction (based on deemed savings) from your EUI reported in your first R&R compliance report. If you can submit proof of installation of those measures that would achieve a 15% reduction within 5 years you may be eligible for the efficiency exemption.*

Maintaining an Efficiency Exemption

If an exemption is granted for having a current U.S. Environmental Protection Agency ENERGY STAR certification, or a current LEED EBOM certification from the U.S. Green Building Council, the building owner must maintain that exemption.

³ If a building owner is considering applying for this exemption, note that the owner will likely be asked to submit proof of payment for the upgrades implemented.

If an exemption is granted for having a current U.S. Environmental Protection Agency ENERGY STAR certification, or a current Leadership in Energy and Environmental Design (LEED) Building Operations and Maintenance certification from the U.S. Green Building Council, or for showing a significant pattern of continuous reductions in energy or greenhouse gas emissions, the Owner must maintain that exemption in the following ways.

1. If the exemption is granted for an ENERGY STAR certification:
 - a. The exemption will be valid as long as the ENERGY STAR score of the building is in the certified range (minimum of 75), as submitted through the rating and reporting requirement, with an actual re-certification required every 10 years.
 - b. If the building's score falls below the certified range (below 75) at the time of annual rating and reporting, the owner will have one more rating and reporting cycle to improve their ENERGY STAR score above 75 – if they fail to do so, the exemption will no longer be valid, and the owner will have to comply with all future efficiency requirements.
2. If the exemption is granted for a LEED for Existing Buildings Operations and Maintenance certification:
 - a. The exemption will be valid as long as the LEED Certification is valid (re-certification is required every 5 years through LEED to stay current).
 - b. If the building loses its LEED certification, the exemption will no longer be valid, and the owner will have to comply with all future efficiency requirements.
3. If the exemption is granted for showing a significant pattern of continuous reductions in energy or greenhouse gas emissions, the exemption will be valid provided the basis for the exemption is maintained as demonstrated through annual rating and reporting.

***Example:** In 2015 you received an ENERGY STAR score of 78 and decided to certify the building. You then applied for and received an exemption from the efficiency requirements that begin in 2019. However, your 2017 rating and reporting efforts show that your building has been using steadily more energy especially over the last two years and Portfolio Manager shows an ENERGY STAR score of 73. Are you still exempt from all energy efficiency requirements that begin in 2019? **Answer:** NOT NECESSARILY. You will have a one-year grace period to get your score back up to at least 75 by your 2018 rating and reporting or you will lose the exemption and be subject to all following efficiency requirements.*

Exemptions from Energy Assessment Requirement Only

Buildings that have recently performed an energy assessment may be exempt from the energy assessment requirement if:

- 1) **The building received an equivalent energy assessment to what would be required by the energy ordinance.**
 - a) The building must have received an energy assessment that met the ASHRAE Level I or Level II requirements based on square footage (Level I for < 50,000 sf, and Level II for > 50,000 sf); and
 - b) The assessment must have been completed within ten years of the first deadline for energy assessments; and
 - c) The building owner must have implemented the cost-effective measures that were recommended (measures with a payback less than or equal to five years) or can justify why implementation was infeasible for the building.

- d) **Exemption period:** Ten years or until the next ten-year compliance deadline, whichever is later; one-time exemption.
- e) **Required for submittal:**
 - i) Assessment report or signed documentation from assessor with date of assessment and list of recommended measures including capital costs, rebates and incentives, and payback times.
 - ii) An itemized invoice or receipt or signed document from contractor identifying installed measures
 - (1) If not all cost effective measures were implemented, present documentation and reasoning to the reasons they were not implemented.

Example: *If your 60,000 sq mixed use building received an audit from Xcel Energy in 2015, are you exempt from the energy assessment requirement? **Answer:** NO, because the ordinance requires that buildings 50,000 sq or larger perform a Level II energy assessment and Xcel Energy’s audits do not meet ASHRAE Level II requirements. However, you could contact the service provider that conducted the Xcel Level I assessment and contract with them to provide additional services to satisfy the requirements of the Level II assessment.*

Example: *You performed a previous equivalent energy assessment two years ago and have a copy of the study, but can’t find documentation from the firm that installed the measures, and they have since gone out of business. Do you qualify for an energy assessment exemption? **Answer:** YES, as long as you contact PACE partners and they provide the free walkthrough confirming the installation of all the measures with payback periods of less than or equal to five years. You will need to submit the PACE documentation to qualify.*

Exemptions from Retrocommissioning Requirement Only

Buildings where there are no opportunities for retrocommissioning may be exempt from the retrocommissioning requirement if:

- 1) **During the preliminary energy assessment, or when the owner applied for the local utility’s RCx programs, the service provider or utility issued a recommendation that retrocommissioning is unnecessary for the building.**
 - a) Examples of why a service provider would make a recommendation that RCx is not necessary for a building: No control system, no cost-effective measures to add controls, or all schedules, maintenance, and efficient control strategies are already in place.
 - b) **Exemption Period:** Ten years or until the next RCx compliance deadline, whichever is later; re-apply every ten years at least 60 days prior to requirement deadline.
 - c) **Required for submittal:**
 - i) Statement in writing from a qualified service provider or utility that a preliminary RCx potential analysis has been performed and that there are no current cost-effective measures so the building would not benefit from an RCx effort.
 - ii) The statement must be accompanied by a list of possible measures that were checked, and the results of those checks leading to the conclusion, including any proof of the conclusions including notes, photos, drawings, or calculations.

Exemptions from Public Disclosure

As a city government, all information in its possession is public and subject to the Colorado Open Records Act (CORA). Any building owner that wishes data to be withheld from public disclosure for CORA purposes, both during the initial grace period and after, must submit a document detailing why this disclosure would cause substantial harm to their competitive position. Exemptions will only be granted if they meet the requirements of a CORA exemption, which are trade secrets, privileged information, and confidential data. Concern that potential tenants might shy away from renting or buying buildings with poor energy performance will NOT qualify for this exemption.

If the submission is sufficient and exemption is approved, the city will withhold the information from public disclosure and from any CORA request.⁴

- 1) Building information includes trade secrets, privileged or confidential information.⁵
 - a) **Exemption period:** One year, re-apply annually 60 days or more prior to requirement deadline.
 - b) **Required for submittal:**
 - i) A statement that includes the manner in which public disclosure would cause substantial harm to the owner's trade secrets, privileged or confidential commercial information.

Example: You plan to complete the rating and reporting requirement, but don't want your data made public because your building is currently inefficient and you don't want this to deter potential tenants or buyers. Do you qualify for a public disclosure exemption? **Answer:** NO, inefficient energy usage alone will not be considered confidential commercial information.

Example: You own a manufacturing facility and are rating and reporting using the Energy Tracking Tool and a metric of energy use per unit of production. However, you do not want your total annual production numbers publicly disclosed as it is considered proprietary information. Do you qualify for a public disclosure exemption? **Answer:** YES, if you can prove that disclosing production data would threaten your competitive advantage or trade secrets of your business. If approved, the city would publicly disclose EITHER the energy use per unit of production OR the total energy use, but not both (which would allow someone to calculate the total units produced in the reporting year). However, the production information would still be submitted to the city for compliance purposes as part of the energy report. The exemption would only ensure that the confidential information would not be publicly reported.

Other Exemptions

There are several possibilities for an exemption which are not listed as a separate item on the Exemption Request Form. This section on the form is for any item not covered elsewhere in the form. Also, if an owner thinks they deserve an exemption for one of the other categories, but can't meet that specific requirement, they can try for an exemption here. For example, if a building owner implemented lighting upgrades to meet the Outdoor Lighting Ordinance and the remaining exterior lighting opportunities are not cost-effective, if the owner can demonstrate with a lighting professional that

⁴ If you have questions on CORA, please view this [additional information](#).

⁵ If this exemption request is approved, the information provided will not be publicly disclosed. In the event a Colorado Open Record Act (CORA) request is made, the city will deny the CORA request based on this exemption. However, if this denial is challenged, the building owner must defend the exemption, not the city.

these certain requirements cannot be completed in a cost-effective manner, the building may be exempt from the exterior lighting requirements of the ordinance.

Resources

For more information on Exemptions, please see the Boulder Revised Code, Ch. 10-7.7:

https://library.municode.com/co/boulder/codes/municipal_code?nodeId=TIT10ST_CH7.7COINENE

Please see the City Manager Rule for additional information, available at:

www.BoulderBuildingPerformance.com

The Exemption Request Form is Available on the website under Resources for Rating and Reporting (<https://bouldercolorado.gov/sustainability/boulder-building-performance-rating-reporting>) and for the Efficiency Requirements (<https://bouldercolorado.gov/sustainability/boulder-building-performance-efficiency-requirements>).