

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 17.85.200 AND 17.85.420 OF THE SAN JOSE MUNICIPAL CODE RELATED TO THE SAN JOSE ENERGY AND WATER BUILDING PERFORMANCE ORDINANCE TO REMOVE “FUNCTIONAL PERFORMANCE TESTING REPORTS” AND “OPERATIONAL TRAINING CONDUCTED” FROM THE AUDIT REPORT MINIMUM REQUIREMENTS, TO IMPROVE CLARITY AND TO BETTER ALIGN WITH INDUSTRY AUDIT STANDARDS

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 17.85.200 of Chapter 17.95 of Title 17 of the San José Municipal Code is amended to read as follows:

17.85.200 Definitions.

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

A. Audit

"Audit" means a systematic evaluation process to identify modifications and improvements of the Base Building Systems, including, but not limited to, alterations of such systems and the installation of new equipment, insulation or other generally recognized Energy and water efficiency technologies to optimize Energy and water use performance of the building and achieve Energy and water savings.

B. Audit Report

"Audit Report" means the final document produced by a Qualified Auditor including but not limited to:

1. The summary audit report;
- ~~2. Functional performance testing reports;~~
32. An assessment of how the major Energy and water consuming equipment and systems used within tenant spaces impact the Energy and water consumption of the Base Building Systems based on a representative sample of spaces as determined by the Director of the Department; and
43. Narratives, photographs and any additional explanatory information as required to describe the results of the Audit.

C. Base Building Systems

"Base Building Systems" means the systems and subsystems of a building that use or distribute Energy or water or impact the Energy or water consumption, including the building envelope; the heating, ventilating and air conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-

using equipment; and landscape irrigation systems and water features. Base Building Systems shall not include:

1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the Energy and water bills according to usage and demand as measured by a meter or sub-meter;
2. Systems or subsystems owned by a residential unit Owner that exclusively serve the residential unit of that Owner; or
3. Systems or subsystems that operate industrial applications such as manufacturing.

D. Baseline Year

"Baseline Year" means a Covered Property's first year submitting a Benchmarking Report, the most recent Performance Verification Report or verification of improvement pathway (as applicable), whichever is later.

E. Benchmark

"Benchmark" means to input and submit the total Energy and water consumed for a Property for the previous calendar year and other descriptive information for such Property as required by the Benchmarking Tool. Total Energy and water consumption shall not include separately metered uses, such as separately metered solar panels or electric vehicle charging stations, that are not integral to building operations, as determined by the Director of the Department.

F. Benchmarking Tool

"Benchmarking Tool" means the U.S. Environmental Protection Agency's ("US EPA") ENERGY STAR® Portfolio Manager, or any additional or alternative tool adopted by the Director of the Department, used to track and assess the Energy and water use of certain properties relative to similar properties.

G. Benchmarking Report

"Benchmarking Report" means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual Energy and water performance of a building.

H. Covered Property

"Covered Property" means any Property that has (1) no residential utility accounts; or (2) five (5) or more active utility accounts of one (1) utility type, at least one (1) of which is residential.

I. Department

"Department" means the City of San José Environmental Services Department.

J. Energy

"Energy" means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

K. Energy Audit

"Energy Audit" means that part of an Audit that addresses the Energy systems.

L. Energy Use Intensity

"Energy Use Intensity" means the Energy consumed per square foot of a building per year, as calculated by ENERGY STAR® Portfolio Manager by dividing the total Energy consumed by the building in one (1) year (measured in kBtu or GJ) by the total gross floor area of the building.

M. ENERGY STAR® Certified

"ENERGY STAR® Certified" means a building which has earned an ENERGY STAR® Score of 75 or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings nationwide.

N. ENERGY STAR® Portfolio Manager

"ENERGY STAR® Portfolio Manager" means the US EPA's online tool for measuring, tracking, and managing a building's Energy, water and greenhouse gas emission data and to Benchmark the performance of a building.

O. ENERGY STAR® Score

"ENERGY STAR® Score" means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager as a measurement of a building's Energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by US EPA's ENERGY STAR® Portfolio Manager.

P. Financial Distress

"Financial Distress" means that a Property:

1. Had arrears of property taxes or water or wastewater charges that resulted in the Property's inclusion, within the prior two (2) years, on the City's annual tax lien sale list; or
2. Has a court appointed receiver in control of the asset due to Financial Distress; or
3. Is owned by a financial institution through default by the borrower; or
4. Has been acquired by a deed in lieu of foreclosure; or
5. Has a senior mortgage subject to a notice of default.

Q. Nonresidential Building

"Nonresidential Building" means a building with a land use zoning designation other than Residential, or any legal non-conforming non-Residential use, with at least twenty thousand (20,000) square feet of gross area, or a group of buildings as designated by Department as an appropriate reporting unit. A Property with a land use zoning designation that is exclusively industrial is excluded from this Chapter.

R. Owner

"Owner" means any of the following:

1. An individual or entity possessing title to a Property;
2. The board of directors, in the case of a cooperative apartment corporation;
or
3. An agent authorized to act on behalf of any of the above.

S. Property

"Property" means any of the following:

1. A single building, or a portion of a building which is separately owned and metered;
2. A campus of two (2) or more buildings which are owned and operated by the same party, have a single shared primary function, and are:
 - a. Behind a common utility meter or served by a common mechanical/electrical system (such as a chilled water loop) which would prevent the Owner from being able to easily determine the Energy use attributable to each of the individual buildings; or
 - b. Used primarily for one (1) of the following functions:
 - i. Privately-owned hospital;
 - ii. Hotel;
 - iii. Multifamily housing; or
 - iv. Senior care community.

T. Qualified Auditor

"Qualified Auditor" means an individual whose job duties do not regularly occur at the Property and who possesses such qualifications as determined by the Director of the Department to perform or directly supervise individuals performing Audits, and to certify Audit Reports required by this Ordinance. The Qualified Auditor can be an employee or contractor hired by the reporting entity, an employee of a utility, or a third-party service provider and must have two (2) or more years of auditing experience and possesses one (1) or more of the following certifications:

1. An accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;
2. A Professional Engineer (PE) registered in the State of California;
3. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);

4. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);
5. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International;
6. High Performance Building Design Professional (HBPD) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
7. For Audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI); or
8. Additional qualified certifications as the Director of the Department deems appropriate.

After the establishment of a DOE-recognized standard for a water auditor, the Director of the Department may adopt the qualifications of the DOE-recognized standard with modifications as the Director of the Department deems to be appropriate.

U. Qualified Retro-Commissioning Professional

"Qualified Retro-Commissioning Professional" means an individual whose job duties do not regularly occur at the Property and who possesses such qualifications as determined by the Director of the Department to perform or directly supervise individuals performing the retuning work required by this Ordinance. The Qualified Retro-Commissioning Professional can be an employee or contractor hired by the reporting entity, an employee of a utility, or a third-party service provider who has two (2) or more years of commissioning or retuning experience and possesses one (1) or more of the following certifications:

1. An accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;

2. A Professional Engineer (PE) registered in the State of California;
3. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
4. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
5. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
6. Certified Professional certified by the National Environmental Balancing Bureau (NEBB);
7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
8. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin; or
9. Additional qualified certifications as the Director of the Department deems appropriate.

V. Residential Building

"Residential Building" means a building with a land use zoning designation of Residential under San José Municipal Code Chapter 20.30, legal non-conforming Residential, where Residential use is permitted under San José Municipal Code Section 20.40.115, where Residential use is permitted under a Planned Development Permit, or any other zoning designation where the actual use is fully or partially residential in nature.

W. Retro-Commissioning

"Retro-Commissioning" means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

X. Retro-Commissioning Measures

"Retro-Commissioning Measures" means work relating to Retro-Commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's Energy or water performance.

Y. Retro-Commissioning Report

"Retro-Commissioning Report" means the report for any unmet standard that is prepared by a Qualified Retro-Commissioning Professional and provided to the Owner which includes, at a minimum, the following:

1. Summary of the work performed and overall results;
2. Energy or water end use breakdown;
3. Functional performance testing reports; and
4. Description of operational training.

Z. Retrofit Measures

"Retrofit Measures" means upgrades or alterations of building systems involving the installation of Energy or water efficiency technologies that reduce Energy or water consumption and improve the efficiency of such systems.

AA. US EPA

"US EPA" means the United States Environmental Protection Agency.

BB. US EPA Water Score

"US EPA Water Score" means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole Property's water use, normalized for that Property's characteristics, operations, and weather, according to methods established by US EPA's ENERGY STAR® Portfolio Manager.

CC. Water Audit

"Water Audit" means that part of an Audit that addresses the water systems.

DD. Water Use Intensity

"Water Use Intensity" means the water consumed per square foot of a building per year, as calculated by EPA's ENERGY STAR® Portfolio Manager by dividing all water sources by the building's net square feet excluding parking and irrigated area.

SECTION 2. Section 17.85.420 of Chapter 17.85 of Title 17 of the San José Municipal Code is amended to read as follows:

17.85.420 Improvement pathways: Properties requiring additional energy or water efficiency.

If a Property does not meet performance standards set forth in Section 17.85.400 above, an Owner shall meet the requirements of this Chapter through one (1) of three (3) alternative means:

- (1) Conducting an Audit;
- (2) Performing Retro-Commissioning; or
- (3) Adopting Efficiency Improvement Measures.

A. Improvement Pathway 1: Audit

An Owner may comply with the requirements of this Chapter by conducting an Audit by a Qualified Auditor for any unmet Energy or water standard and submitting an Audit Report within the time set forth in Part 5.

1. Audit Requirements: An Owner may comply with the requirements of this Chapter by performing an Audit by a Qualified Auditor as verified in an Audit Report. Such Audit shall comply with the following:
 - a. Energy Audit: The Energy Audit required by this Chapter shall meet or exceed the following:
 - i. Level 2 Audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers ("ASHRAE") *Standard 211-2018: Standard for*

Commercial Building Energy Audits (latest edition at the time the Audit is initiated); or

- ii. An Energy assessment or Audit offered by the utilities serving the Property, provided that the potential savings opportunities related to all Energy sources are evaluated.
- b. Water Audit: The Water Audit required by this Chapter shall be performed in accordance with industry standard practices. Until such time as a third party verifiable water auditing process is developed and endorsed by a professional building association, governmental entity, or academic institution, and as approved by the Director of the Department, Water Audit of the Base Building Systems shall include, at a minimum, the following:
 - i. Potable water distribution systems;
 - ii. Landscape irrigation systems;
 - iii. Water reuse systems; and
 - iv. Water features.
- 2. Audit Report: A report of the Audit, completed and signed by Qualified Auditor, shall be submitted to the City and maintained by the Owner as required in Section 17.85.500. The report shall meet the requirements of Section 17.85.410 and shall include, at a minimum, the following:
 - a. The date(s) that the Audit was performed;
 - b. Identifying information on the auditor;
 - c. Information on the Base Building Systems and equipment;
 - d. A list of all Retrofit Measures that can reduce Energy or Water use, or cost of operating the Property, costs of each measure, and an estimate of the Energy and/or Water savings associated with each measure;
 - ~~e. Functional performance testing reports;~~
 - ~~f. Operational training conducted;~~

- ge.** Acknowledgment that an ASHRAE Level 2, or alternate approved assessment or audit was conducted; and
- hf.** Identification of existing electric vehicle charging stations, equipment, and infrastructure, as defined in Article 625 of the California Electric Code, including:

 - i. Number of existing electrical charging stations; and
 - ii. Number of "EV Capable" parking spaces as defined in California Green Building Standards (CalGreen) Sections 5.106.5.3.3 (Non-residential) and 4.106.4.2 (Residential) or as thereafter amended; or if no "EV Capable" parking spaces are present, number of 40-ampere minimum branch circuit capacity within the nearest circuit panel to existing parking spaces.

B. Improvement Pathway 2: Retro-Commissioning

An Owner may comply with the requirements of this Chapter by performing Retro-Commissioning under the direct supervision of a Qualified Retro-Commissioning Professional for any unmet Energy or water standard and submitting a Retro-Commissioning Report within the time set forth in Part 5. Such Retro-Commissioning shall comply with the following:

1. Energy Retro-Commissioning. Energy Retro-Commissioning shall be performed in accordance with industry standard practices, including ASHRAE Guideline 0.2, Commissioning Process for Existing Systems and Assemblies, and other standards as may be defined by the Director of the Department.

 - a. The Retro-Commissioning of the Base Building Systems shall ensure that all systems are maintained, cleaned and repaired, HVAC temperature and humidity set points and setbacks are appropriate, operating schedules reflect major space occupancy patterns and the

- current facility requirements, and that all operating parameters are adjusted to achieve efficient operations; and
- b. The Retro-Commissioning shall include, at minimum, the following:
 - i. Heating, ventilation, air conditioning (HVAC) systems and controls;
 - ii. Indoor lighting systems and controls;
 - iii. Water heating systems; and
 - iv. Renewable Energy systems.
2. Water Retro-Commissioning: Water Retro-Commissioning shall be performed in accordance with industry standard practices, such as ASHRAE Guideline 0.2, Commissioning Process for Existing Systems and Assemblies, or other standards as may be defined by the Director of the Department. The Retro-Commissioning of the Base Building Systems shall include, at minimum, the following:
- a. Potable water distribution systems;
 - b. Landscape Irrigation Systems;
 - c. Water Reuse Systems; and
 - d. Water Features.
3. Retro-Commissioning Report: A Retro-Commissioning Report, completed and signed by a Qualified Retro-Commissioning Professional, shall be submitted to the Department and maintained by the Owner as required in Section 17.85.500. The report shall meet the requirements of this Chapter, and shall include, at a minimum, the following:
- a. The date(s) that the Retro-Commissioning was performed;
 - b. Identifying information for the Retro-Commissioning provider;
 - c. Information on the Base Building Systems and equipment both before and after the Retro-Commissioning; and
 - d. All the Retro-Commissioning process activities undertaken, and Retro-Commissioning Measures completed.

C. Improvement Pathway 3: Efficiency Improvement Measures

An Owner of a Property which does not have a central cooling system may comply with the requirements of this Chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures listed below were completed and submitting an Efficiency Improvement Measures Report within the time set forth in Part 5.

1. Energy Efficiency Improvement Measures:
 - a. Installation of common area and exterior lighting fixtures in accordance with California Building Standards Code (California Code of Regulations, Title 24) requirements in effect at the time of the compliance cycle;
 - b. Installation of domestic hot water heater in accordance with California Building Standards Code (California Code of Regulations, Title 24) requirements in effect at the time of the compliance cycle;
 - c. Replacement of all refrigerators on the Property to ENERGY STAR® Certified models;
 - d. Replacement of all gas stoves on the Property to electric induction stoves;
 - e. Replacement of all gas water heaters on the Property to electric heat pump or tankless water heaters;
 - f. Installation of a smart thermostat;
 - g. Installation of a solar thermal heating/cooling system;
 - h. Enrollment in a Department-approved utility demand response program;
 - i. Installation of insulation on all hot water pipes in accessible Property locations; or
 - j. Participation in a Department-approved Energy utility retrofit program (e.g., taken advantage of rebate or incentive programs for upgrades).

2. Water Efficiency Improvement Measures

- a. Installation of plumbing such that all systems on the Property are in compliance with California Building Standards Code (California Code of Regulations, Title 24) requirements in effect at the time of the compliance cycle;
- b. Installation of outdoor landscaping and irrigation such that all systems on the Property are in compliance with San José Municipal Code Chapter 15.11, Water Efficient Landscape Standards for New and Rehabilitated Landscaping in effect at the time of the compliance cycle;
- c. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended;
- d. Installation of insulation on all hot water pipes in accessible Property locations; or
- e. Participation in approved water utility retrofit program (e.g., taken advantage of rebate or incentive programs for upgrades).

3. Efficiency Improvement Measures Report: A report of the Efficiency Improvement Measures implemented shall be submitted to the City and maintained by the Owner as required in Section 17.85.500. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

- a. Descriptions of the measures including the date(s) that the Efficiency Improvement Measures were implemented;
- b. Identifying information on the person implementing the Efficiency Improvement Measures;
- c. Information on the Base Building Systems and equipment; and
- d. A list of all Efficiency Improvement Measures that can reduce Energy or Water use and the cost of operating the Property, and the costs of each measure.

PASSED FOR PUBLICATION of title this _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk