COUNCIL AGENDA: 12/11/18
FILE: 18-1648
ITEM: 7.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: November 26, 2018

Approved D-DSyL

Date 11/29/18

SUBJECT: ENERGY AND WATER BUILDING PERFORMANCE ORDINANCE

RECOMMENDATION

(a) Approve an ordinance amending the San José Municipal Code to add Chapter 17.85, the Energy and Water Building Performance Ordinance for existing commercial and multifamily buildings and amending section 1.08.020 to add violations of Chapter 17.85 to the list of infractions.

(b) Adopt a resolution amending the schedule of fines to make clerical corrections and to add violations of Chapter 17.85.

OUTCOME

City Council adoption of the *Energy and Water Building Performance Ordinance* for existing large commercial and multifamily buildings is a first policy step which will further community-wide progress on meeting the goals of the following Climate Smart San José ("Climate Smart") strategies:

- Strategy 1.2: Embrace Our California Climate
- Strategy 2.2: Make Homes Efficient & Affordable for Our Residents
- Strategy 3.2: Improve Our Commercial Building Stock

EXECUTIVE SUMMARY

Through a City Energy Project (CEP) grant received in 2016, San José has been working on a suite of energy efficiency policies and programs primarily geared toward the large commercial building sector. A focal initiative supported by the CEP grant was the evaluation of a local energy and water benchmarking and transparency ordinance as well as a building performance standard ordinance. Based on this work, staff is proposing a combined *Energy and Water Building Performance Ordinance* which includes both elements and will be one of the first policy steps related to the City's Climate Smart goals.

Existing buildings, in contrast to new construction, represent the vast majority of city-wide building stock, and can often go extended periods without efficiency improvements. These existing buildings represent the second largest source of greenhouse gas (GHG) emissions in San Jose after transportation, and present a long-term opportunity for substantial energy savings and water conservation, both of which are key Climate Smart focus areas.

The *Energy and Water Building Performance Ordinance* will encourage existing building owners and tenants to become more energy and water efficient, provide pathways for owners of low-performing buildings to improve the building's efficiency, and recognize high-performing, efficient buildings. The proposed ordinance will require covered large commercial and multifamily building owners of buildings over 20,000 square feet to track, or "benchmark," their buildings' energy and water use and report this data to the City on an annual basis. The City will then publish a subset of whole building performance data online. Approximately 2,500 buildings would be covered by this ordinance.

The ordinance will inform the market by educating prospective and current tenants, as well as building owners and operators, of their buildings' performance relative to other buildings covered by the ordinance. By collecting this data, the City will be able to better understand city-wide building stock, design more informed energy and water efficiency programs, and more accurately track several key Climate Smart metrics.

In addition to benchmarking and transparency requirements, the proposed ordinance creates two "beyond benchmarking pathways:" a "performance" pathway and an "improvement" pathway, one of which a building owner opts into every five years. Through the performance pathway, buildings owners will demonstrate, through collected benchmarking metrics, that their buildings meet key performance standards of a high performing building. If a building is not high performing, its owner can select one of several options via the improvement pathway to increase efficiency over time. These options include pursuing an energy or water audit, building retro-commissioning (retuning), or undergoing targeted efficiency upgrades.

Staff undertook an extensive stakeholder engagement process to vet the proposed ordinance, which was developed with highly collaborative feedback from over 100 individuals and over 50 organizations. Upon adoption, in addition to program administration, staff will provide outreach

and education to covered buildings, as program funding allows, to assist as building owners pursue increased building performance.

Program costs for the remainder of 2018-2019 will be paid for with existing resources. The funding of program costs for 2019-2020 will be considered as part of the 2019-2020 Proposed Budget process. While the program is anticipated to be funded by a cost recovery fee on an ongoing basis, staff will evaluate the possibility of identifying additional one-time funding to cover costs in 2019-2020 during the program's first full year if establishing a cost recovery fee for 2019-2020 is deemed not feasible or desirable.

The *Energy and Water Building Performance Ordinance* is anticipated to reduce energy and water consumption and generate significant community-wide GHG reductions in alignment with Climate Smart goals.

BACKGROUND

On Feb. 27, 2018, City Council unanimously approved Climate Smart. This climate action plan outlines three pillars and nine individual strategies that address community-wide GHG reductions and water conservation. Council also directed staff to prioritize the creation of "innovative policies and programs to spur commercial building energy efficiency initiatives through the grant-funded City Energy Project" in the proceeding nine months.

A benchmarking and transparency ordinance typically requires the owners of existing commercial and multifamily buildings over a certain size threshold to track their energy and water use at no-cost through the online U.S. Environmental Protection Agency platform, ENERGY STAR Portfolio Manager® (ESPM). Covered buildings owners enter building characteristics and whole building aggregated energy and water usage data into ESPM and then submit ESPM-generated performance metrics to the implementing jurisdiction on an annual basis. A subset of ESPM data is then published online to encourage efficiency by increasing awareness of and demand for improved building performance.

In order to evaluate the proposed *Energy and Water Building Performance Ordinance*, City staff collected input from a wide variety of stakeholders in an extensive outreach effort (see Attachment A, *Outreach Summary*). From February through August 2018, staff held six three-hour public meetings with the assistance of Global Green, a third-party facilitator which also led the stakeholder outreach related to Los Angeles' comparable ordinance. In total, staff engaged over 50 organizations and 100 individuals, including commercial and multifamily building owners and property managers, research institutions, water and energy utilities, building trade groups, architects, engineers, affordable housing groups, energy services companies, and advocacy groups. In addition, staff provided direct outreach to membership organizations and met with individual stakeholders.

California Assembly Bill (AB) 802, adopted in 2015, created a statewide building energy use benchmarking and public disclosure policy for buildings larger than 50,000 square feet (sq. ft.). In June 2018, the California Energy Commission (CEC) adopted the regulations to implement AB 802. These regulations require building owners to report specified performance metrics to the CEC by June 1 annually, with the ultimate publication of a portion of that data. Reporting began under AB 802 on June 1, 2018 for commercial buildings and will begin on June 1, 2019 for multifamily buildings. Due to minimal outreach and a lack of enforcement, only approximately 18 percent of covered buildings met the June 1, 2018 reporting deadline to the CEC.

AB 802 permits a local jurisdiction to adopt its own benchmarking ordinance. The ordinance would then be provided to the CEC for approval. If the CEC determines the local ordinance meets the goals of AB 802, compliance with the local ordinance relieves the building owners from further reporting to the state.

ANALYSIS

Through the CEP stakeholder engagement process, participants provided feedback on the various components of a draft ordinance, which was synthesized and integrated as appropriate to craft a final proposed *Energy and Water Building Performance Ordinance* (Attachment B).

Ordinance Components

The *Energy and Water Building Performance Ordinance* builds upon the standard benchmarking and transparency ordinance model to create a more comprehensive and locally-tailored version which more effectively implements Climate Smart and captures significantly higher energy and water savings from covered buildings. For a comparison of benchmarking policies nationally, see Attachment C. The ordinance will require owners of existing commercial and multifamily buildings of 20,000 sq. ft. and above to benchmark and report aggregated ESPM performance metrics to the City annually. Approximately 2,500 buildings would be impacted by the Ordinance. It excludes townhomes and condominiums due to the inherently more complicated ownership and management structure of these complexes. However, the proposed Ordinance requires the building owners to comply with the CEC's regulations on the collection of the data, including the requirements for obtaining tenant's consent, if necessary. A subset of reported ESPM data will then be made publicly available (e.g. via a spreadsheet or interactive map).

In addition to annual benchmarking reporting and transparency requirements, on a rolling five-year cycle, the *Energy and Water Building Performance Ordinance* will require the owners of covered buildings to go through one of the two following beyond benchmarking pathways in order to encourage a more rapid uptake of water and energy efficiency improvements than benchmarking alone.

Performance Pathway: The performance pathway is for owners whose buildings meet key building energy and water performance standards, or that demonstrate significant improvements in building energy and water efficiency, as measured and reported through ESPM over the past five-year compliance cycle. For example, the owner of a newer building or one that has received a 75 percent Energy Star rating will be required only to submit verification of this high performance. For more details on Performance Pathway criteria, please see Attachment D.

Improvement Pathway: The improvement pathway is for owners whose buildings do not currently meet the performance standards. A building owner may complete an audit, building retuning, or two of the energy and/or water efficiency improvement measures to increase energy and/or water performance of the building (depending on the building's performance metrics in each category). See Attachment D for details including the energy and water efficiency improvement measures. The list of improvement measures is based primarily on tracked metrics in Climate Smart and will be updated over time to reflect changes in technology. It is intended to be flexible, so that a building owner can select an improvement pathway that is most effective from both a cost and savings perspective.

For those buildings in need of improvement, an energy and/or water audit is a common first step to identify retrofits yielding the best return on investment. The cost of an American Society of Heating, Refrigerating and Air-Conditioning Engineers or "ASHRAE" level II audit (level required by the ordinance) costs roughly $0.15/sq. ft. which equates to approximately $3,000 for a 20,000 sq. ft. building. Building owners are not required to implement the recommended retrofits, but doing so would yield energy and water cost savings. Building retro-commissioning costs roughly $.30/sq. ft. which translates to approximately $6,000 for a 20,000 sq.ft. building. Unlike audits, retro-commissioning focuses on identifying building tune-up actions, which typically are low-cost to implement, but still yield energy and water cost savings. Smaller buildings may opt to not conduct an energy and/or water audit, but instead perform basic retrofits, such as converting to LED lighting, which typically have short payback periods. There are several audit, retrofit, and financing resources available to assist with these efforts.

The Ordinance outlines criteria for exemptions and appeals. It also allows for the City to assess administrative citation fines for non-compliance. Daily non-compliance fine amounts ($25-50 depending on building size) have been set to ensure covered building owners are properly incentivized to comply; the cost of non-compliance is only slightly lower than compliance estimates, but still substantial enough to encourage compliance. The cumulative fine per violation will be capped at $2,500-$5,000 (depending on building size). The proposed Ordinance also adds violations to the list of infractions. At the same time, the Ordinance makes three clerical corrections to the list of infractions by adding two sections that were inadvertently dropped and removing a repealed section. Staff will ensure proper outreach and education on compliance requirements and assess compliance rates over the first three program cycles prior to enforcing on the new requirements.

Ordinance Benefits

While AB 802 is a valuable first step in encouraging building efficiency, the state law authorizes local jurisdictions to adopt ordinances to go beyond the state minimums. The proposed Ordinance would increase the number of covered buildings (from 1,400 to 2,500), add a water component, and further mandate building owners to meet performance standards, or complete actions which will improve building efficiency.

Adoption of the *Energy and Water Building Performance Ordinance* in San José will benefit the City and community in many ways, including:

- **Reduced GHG Emissions:** Building energy usage represents approximately 33 percent of San José's GHG emissions, second only to emissions associated with transportation. Over half of the buildings that will be standing in our community in 50 years have already been built[1], and the poorest performing buildings can use three to seven times more energy than the highest performing buildings[2]. This ordinance will help to increase the energy- and water-efficiency in existing buildings. In Washington D.C., for example, buildings that benchmarked from 2010 to 2012 under the District's ordinance reduced energy use by nine percent on average over that three-year period.[2]

- **Long-term Building Cost Savings:** Benchmarking enables building owners and tenants to set performance baselines, better understand their usage trends, catch usage irregularities sooner, and compare their buildings' performance to that of other similar buildings, highlighting the opportunity for and encouraging the investment in energy and water savings. This can lower utility costs for building owners and/or occupants. Owners across the U.S. that benchmarked their buildings over a three-year period reduced energy consumption by an average of 2.4 percent annually, which for a 500,000 sq. ft. office building could result in cumulative energy cost savings of $120,000 over a three-year period.[2]

  The ordinance can also have a positive impact on low-income, multifamily tenants. Efficiency in this sub-sector is especially important, as low-income households have been shown to spend up to three times as much (as a percentage of annual household income) as higher-income households on energy utilities.[3] Owner funded improvements to the energy and water efficiency of low-income multifamily housing, can reduce the utility costs passed on to tenants.

- **Improved Data**: By collecting benchmarking data, the City will gain an enormous amount of insight into the state of the local building stock, both building systems characteristics and performance trends. This data will enable staff to design locally tailored energy and water efficiency programs.

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[1] https://buildingefficiencyinitiative.org/articles/why-focus-existing-buildings
[2] https://www.imt.org/resources/fact-sheet-energy-benchmarking-and-transparency-benefits/
[3] http://aceee.org/research-report/u1602

- **Economic Growth**: Over time, the demand for services from engineers, auditors, architects, facility managers and construction workers will increase across the market. Through the development of the City of Philadelphia's benchmarking ordinance, 77 percent of buildings were identified as needing upgrades, which were estimated would generate more than $600 million in local spending and support 23,000 jobs.[2]

- **Improved Public Health**: Implementation of the ordinance will have a positive impact on community-wide health by reducing the amount of energy generation required, mitigating climate change risks long-term. On an individual level, building occupant health will be improved, as energy efficient buildings are shown to have improved indoor air quality. These community and individual benefits have been shown to result in lower public health spending and higher economic productivity.[4]

Implementation and Enforcement
While the CEC has been granted authority to administer fines and enforce the requirements of AB 802, it has indicated that there are limited resources allocated for this to occur in the future to improve the rate of reporting. Therefore, and based on City Energy Project feedback on best practices, an overriding local Ordinance would more effectively reduce GHG emissions. In addition to enforcement, City staff will provide support through outreach and education to covered buildings, as funding permits. In order to allow San José building owners to plan for the requirements of the Ordinance, implementation will be phased in over the course of approximately four years as follows:

- Year 1—On May 1, 2019, covered buildings over 50,000 sq. ft. will be required to report benchmarking data to the City. Data will be made transparent for this subset of covered buildings. Year 1 implementation is intended to transition buildings covered by AB 802 from reporting to the state to reporting to the City, covering approximately 13 percent of the buildings in the City.

- Year 2—On May 1, 2020, all covered buildings over 20,000 sq. ft. will be required to report benchmarking data to the City, raising the percentage of buildings covered in the City to 24 percent. Data will be made transparent for all covered buildings at this time.

- Year 3—On May 1, 2021, Beyond benchmarking pathway requirements will be implemented for buildings over 50,000 sq. ft., where needed.

- Year 4—On May 1, 2022, Beyond benchmarking pathway requirements will be implemented for buildings over 20,000 sq. ft., where needed.

The phased implementation approach is meant to provide ample time for outreach and education around the new requirements. This will also allow the development of internal resources to support additional buildings and data management over time.

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[4] https://webstore.iea.org/capturing-the-multiple-benefits-of-energy-efficiency

The *Energy and Water Benchmarking and Transparency Ordinance* is a key first policy to spur energy and water efficiency improvements and associated GHG reductions in San Jose's large buildings in alignment with Climate Smart goals.

EVALUATION AND FOLLOW-UP

ESD will provide a status update on the *Energy and Water Building Performance Ordinance* annually to City Council as part of its regular Climate Smart Council updates.

POLICY ALTERNATIVES

Alternative 1: Set benchmarking and transparency size threshold higher at 50,000 sq. ft.
Pros: If set to 50,000 sq. ft. the ordinance aligns with AB 802, covering approximately 1,400 buildings, representing approximately 70 percent of commercial and multi-family building stock.
Cons: Compared to comparable local ordinances nationwide, 50,000 sq. ft. is a relatively high threshold, still leaving much opportunity to capture savings. Typically, larger building owners already have more internal bandwidth, capital, and motivation to pursue efficiency, so a higher threshold does not target buildings in need of the most assistance.
Reason for not recommending: Staff have suggested lowering the threshold to 20,000 sq. ft. to ensure a higher impact, align with Climate Smart San José goals, and more equitably encourage efficiency in city-wide building stock.

Alternative 2: Set benchmarking and transparency size threshold lower at 10,000 sq. ft.
Pros: If set to 10,000 sq. ft. the ordinance will cover approximately 4,700 buildings, representing approximately 90 percent of commercial and multi-family building stock. This would be one of the most aggressive ordinance thresholds nationwide.
Cons: Smaller buildings represent smaller opportunity for savings; dropping the threshold would represent a significant increase in work for staff, yielding less additional energy or water savings. Smaller building owners typically have less internal bandwidth, capital and expertise to pursue efficiency, making the internal demand for support that much higher, and likely unfeasible at this point.
Reason for not recommending: Staff have suggested setting the threshold at 20,000 sq. ft. maximizing the covered square footage and minimizing the number of buildings covered.

Alternative 3: Do not include Beyond Benchmarking pathways in ordinance
Pros: Covered buildings will have fewer requirements and often a lower cost of compliance.
Cons: Removing Beyond Benchmarking pathways will result in decreased energy and water conservation city-wide and decrease the ordinance's contributions to the goals of Climate Smart.
Reason for not recommending: Beyond Benchmarking Pathways support actionable solutions to reducing local GHG emissions.

Alternative 4: Do not pursue Energy and Water Benchmarking and Transparency Ordinance
Pros: There will be no impact to the large commercial or multifamily building stock of San José.
Cons: This ordinance provides a means to engage building owners on opportunities for efficiency and improved performance; without this ordinance, the City will not ensure energy and water savings, which will contribute to Climate Smart goals and provide valuable data to the City and public.
Reason for not recommending: The GHG reductions called for in Climate Smart are extremely aggressive and will not be achieved without definitive actions. Voluntary programs to encourage high-performing buildings are beneficial, but do not yield the magnitude of impact needed to meet our Climate Smart goals. AB 802 acts as a backstop for jurisdictions that cannot pass ordinances, but has a high sq. ft. coverage threshold, excludes water, and lacks additional components that prompt further actions, all of which contribute to a higher level of energy and water savings, and overall GHG reductions. In addition, the State does not possess an inventory of existing buildings in San José or elsewhere, so reliance on AB 802 does little to improve the City's understanding of its commercial building stock.

PUBLIC OUTREACH

Public outreach occurred from February through October 2018. See Attachment A (*Outreach Summary*) for an overview of community outreach conducted during the policy development process. All meetings were open to the public and agendas and meeting minutes were noticed in compliance with public meeting requirements.

Stakeholders were actively engaged at each of the meetings held. Each meeting approached a different component of the proposed ordinance, and no negative feedback surfaced throughout the process. Stakeholders did request that the City provide the following, should the ordinance be adopted:

- Adequate staffing resources to assist smaller building owners with compliance
- Context for any building data published, so that viewers would be able to understand that a building's low score might be attributable to a specialized use, e.g., server farm/data center, as opposed to being indifferent to making efficiency upgrades
- Education and training for building owners, where needed

Participants in the stakeholder engagement process will be informed of the ordinance moving to the T&E Committee and City Council, and potential funding mechanisms at a meeting scheduled for November 30, 2018.

This ordinance was presented to the Transportation and Environment Committee on December 3, 2018. This memorandum shall be posted on the City's website for the December 11, 2018 City Council meeting.

COORDINATION

Preparation of the *Energy and Water Building Performance Ordinance* and this memorandum were coordinated with the City Attorney's Office, Planning, Building and Code Enforcement Department, Housing Department, Public Works Department, Finance Department, the Office of Economic Development, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

This ordinance was presented to the Transportation and Environment Committee on December 3, 2018.

POLICY ALIGNMENT

The *Energy and Water Building Performance Ordinance* directly aligns with the following Climate Smart strategies:

- Strategy 1.2: Embrace Our California Climate
- Strategy 2.2: Make Homes Efficient & Affordable for Our Residents
- Strategy 3.2: Improve Our Commercial Building Stock

The ordinance also directly supports AB 802 and several other state-level policies, including Senate and Assembly Bill 32 (*Global Warming Solutions Act of 2006*) and Senate Bill 350 (*Clean Energy and Pollution Reduction Act of 2015*).

COST SUMMARY/IMPLICATIONS

The *Energy and Water Building Performance Ordinance* will require staffing resources for outreach, technical assistance, fee collection and enforcement, analysis, and reporting. From adoption of the Ordinance through June 30, 2019, staff's intention is that the program will be funded with existing resources, such as the Silicon Valley Energy Watch (SVEW) 2019 grant and funding previously allocated for the Property Assessed Clean Energy (PACE) Program at a total estimated cost of approximately $75,000. PACE Program funding was allocated in 2014-2015 for a multi-year marketing campaign, which concluded in early 2018-2019. While minor PACE activities are planned to continue in 2018-2019, much of the remaining funding will be recommended to be reallocated toward the *Energy and Water Building Performance Ordinance* activities as part of the 2018-2019 Mid-Year Budget Review.

Staff will consider the feasibility of implementing a fee program crafted to ensure that costs to administer the program are fairly recuperated on an ongoing basis. The costs will reside within the Environmental Services Department for direct management of the program, and within the

Finance Department to provide billing and collections services. Based on the experience of other large cities, approximately 0.5 FTE in the Environmental Services Department will be required for direct program support and monitoring. At present, the costs related to billing and administrative support are still under evaluation. These combined costs would form the basis of a potential fee program paid by the covered building owners.

As part of the 2019-2020 Proposed Budget development process, staff will consider the feasibility of implementing a fee for this program in 2019-2020, or if other one-time resources could be identified to support the program during its first full year to allow further consideration of a fee program starting in 2020-2021.

CEQA

Exempt, File No. PP18-088, CEQA Guidelines Section 15061(b)(3) – General Rule

/s/
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Ken Davies, Sustainability and Compliance Division Manager, at (408) 975-2587.

Attachment A: Outreach Summary
Attachment B: Energy and Water Building Performance Ordinance
Attachment C: Current U.S. Benchmarking and Transparency Ordinances
Attachment D: Beyond Benchmarking Pathways

Attachment A: Outreach Summary

Task Force Meetings:

Date	Topics Covered
2/15/18	Kick-off of City Energy Project; introduction to benchmarking and transparency
3/15/18	Overview EnergyStar Portfolio Manager, examining San José's building stock
4/19/18	Reporting and Transparency
5/16/18	Examining policy structure and strategies, reporting process, and compliance
6/14/18	Implementation and enforcement, education and workforce trainings
8/1/18	Presenting draft ordinance structure

Stakeholders:

1st Community Housing
Adobe
AEA
American Institute of Architects, Silicon Valley
American Society of Heating, Refrigeration and Air Conditioning Engineers
Building Owners and Managers Association
California Air Resources Board (CARB)
California Apartment Association- Tri County Division
California Energy Commission
CBRE
Charities Housing
Cisco Systems, Inc.
Code Green Solutions
CommEnergy
CoreNet
County of Santa Clara
Cypress Envirosystems
Department of Transportation
Ecology Action
ENGIE Services U.S.
Essex
Global Green
Great Oaks Water Company
Greystar
Harvest Properties
Hillhouse Construction
Hispanic Chamber of Commerce
Institute for Real Estate Management
Integral Group
International Facilities Management Association
Irvine Company
JLL
Joint Venture Silicon Valley
Laborers Local 270
Lawrence Berkeley National Lab
Local 3 Operating Engineers
Local 332 International Brotherhood of Electrical Workers
Local 393 United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry
Mach Energy
MCM Diversified
Microsoft
Natural Resources Defense Council
Nimble Storage
Pacific Gas and Electric
Point Blue Conservation Science
Professional Retail Store Maintenance Association
Prologis
Prospect Silicon Valley
Raimi Associates
San Jose Community Energy
San Jose Downtown Association
San Jose Municipal Water Company
San Jose State University
San Jose Water Company
Santa Clara Valley Water District
Sharp Development

Sheet Metal Workers Local Union No. 104
Siemens
Sierra Club
Silicon Valley Leadership Group
Silicon Valley Organization (San Jose Chamber of Commerce)
Sperry CGA
Sprinkler Fitters Local 483
SPUR
Stanford
Stok
Stop Waste
Team San Jose
The Irvine Company
The Sobrato Organization
Therma
U.S. Green Building Council
Vietnamese Chamber of Commerce

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A NEW CHAPTER 17.85 TO TITLE 17 OF THE SAN JOSE MUNICIPAL CODE FOR THE SAN JOSE ENERGY AND WATER BUILDING PERFORMANCE ORDINANCE, AND AMENDING SECTION 1.08.020 OF CHAPTER 1.08 OF TITLE 1 TO MAKE TECHNICAL AND CLERICAL CORRECTIONS AND TO ADD VIOLATIONS OF CHAPTER 17.85 TO THE LIST OF INFRACTIONS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new Chapter is added to Title 17 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

Chapter 17.85

CITY OF SAN JOSE ENERGY AND WATER BUILDING PERFORMANCE ORDINANCE

Part 1

GENERAL PROVISIONS

17.85.100 Title

This Chapter shall be known as the City of San José Energy and Water Building Performance Ordinance.

17.85.120 Scope

A. This Chapter shall apply to all buildings, including existing buildings, that are either:

1. Owned by the City of San José and are fifteen thousand (15,000) square feet or more, provided, however, such buildings may comply with the requirements of Part 4; or

2. Privately-owned Residential or Nonresidential Buildings and which are twenty thousand (20,000) square feet or more.

B. This Chapter shall not apply to single-family, two-family, and four-plex Residential Buildings and related accessory structures; residential hotels as defined by the California Health and Safety Code Section 50519 and San José Municipal Code Section 20.200.1160; utility pumping stations; treatment facilities; and other buildings not meeting the purpose of this Chapter, as determined by the Environmental Services Department.

Part 2
DEFINITIONS

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;

3. 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

4. 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. 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.

E. 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.

F. Benchmarking Report

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

G. 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.

H. Department

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

I. 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.

J. Energy Audit

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

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. Property

"Property" means any of the following:

1. A single building;

2. A campus of two (2) or more contiguous 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.

S. 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 who has 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.

T. 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.

U. 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.

V. 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.

W. 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.

X. 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.

Y. 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.

Z. US EPA

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

AA. 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.

BB. Water Audit

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

CC. 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.

Part 3
BENCHMARKING AND SELF-REPORTING

17.85.300 Annual Energy and Water Benchmarking and Reporting

A. For every Property subject to this Chapter, the Owner shall annually collect data related to the building's Energy and water usage according to the latest guidance under Building Energy Use Data Access, Benchmarking, and Public Disclosure Regulations, California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680, and following, including, but not limited to, those related to obtaining customer consent.

B. The Owner shall annually submit to the Department an Energy and Water Benchmarking Report according to the schedule set forth in Part 5. The Energy and Water Benchmarking Report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total Energy and water consumed by the whole building for the entire calendar year being reported. The Energy and Water Benchmarking Report shall, at minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this Chapter, including, but not limited to, the building address, facility gross square footage, property type, and the individual or entity responsible for the Benchmarking Report.

2. Energy and Water Benchmarking Information. Information necessary to Benchmark Energy and water usage shall be determined by the Department and shall include, at a minimum, the following data:

   a. The ENERGY STAR® Portfolio Manager ENERGY STAR® Score for the building, where available;

   b. The weather-normalized site and source Energy Use Intensity (EUI) per unit area per year (kBTU per square foot per year) for the building;

   c. The site and source Energy Use Intensity (EUI) per unit area per year (kBTU per square foot per year) for the building;

   d. The annual carbon dioxide equivalent emissions due to Energy use for the building as estimated by ENERGY STAR® Portfolio Manager;

e. The US EPA Water Score for the building, where available;

f. Indoor water use, indoor water intensity, outdoor water use (when available), and total water use; and

g. Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable.

C. Nothing in this Chapter permits an Owner to use tenant utility usage data for purposes other than compliance with Benchmarking Report requirements. The reporting requirements of this Chapter are in addition to any federal or state laws governing direct access to, and publication of, tenant utility data.

17.85.310 Quality Check of Benchmarking Report Submission

The Owner shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the Benchmarking Report to the Department.

17.85.320 Exemptions from Benchmarking Report Submission

A. The Owner may receive an exemption from filing a Benchmarking Report for a reporting year if any of the following conditions apply:

1. The Property did not have a Certificate of Occupancy or Temporary Certificate of Occupancy for the entire calendar year required to be Benchmarked;

2. The entire Property was not occupied, due to renovation, for the entire calendar year required to be Benchmarked;

3. The demolition permit for the entire Property has been issued and demolition work has commenced on or before the date the Benchmarking Report is due for that calendar year;

4. The Property did not receive Energy or water services for the entire calendar year required to be Benchmarked;

5. The Property is in Financial Distress; or

6. The disclosure of the Property Energy or water use data would result in the release of proprietary information that can be characterized as a trade secret or would otherwise violate a customer's right to privacy under the California Constitution or other applicable law.

B. Any Owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Director of the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Director of the Department in the exemption determination. Any exemption granted will be limited to the Benchmarking submission for which the request was made and does not extend to past or future submittals.

C. For each reporting cycle, the Department shall determine whether an exemption under this Section applies to a building. Appeal of a determination that a building is not exempt shall be made according to the procedures set forth in Part 6.

17.85.330 Publication of Limited Summary Data

The Department shall make at least the following information available to the public on the internet, as reported by Owners, and update the information at least annually:

A. Summary statistics on overall compliance with this Chapter;

B. Summary statistics on overall Energy and water consumption of Properties subject to this Chapter derived from aggregation of annual Benchmarking Reports; and

C. For each Property subject to this Chapter:

1. Property address and property use type;

2. Annual summary statistics for the whole Property derived from the submitted Benchmarking Report, including all information required under Section 17.85.300, except for Subsection B.2.g.; and

3. The status of compliance with the requirements of this Chapter.

Part 4

BEYOND BENCHMARKING:

PATHWAYS FOR DEMONSTRATING AND INCREASING ENERGY AND WATER PERFORMANCE

17.85.400 Performance Standards for Energy and Water Efficiency

A. An Owner shall establish a Property's satisfactory Energy and water efficiency by either providing verification of satisfactory Property performance under Section

17.85.410, or, if a Property does not meet such performance standards, through either performing an Energy or Water Audit, Retro-Commissioning, or completing Energy and water efficiency improvement measures and providing verification of such under Section 17.85.420, *et seq.*

B. An Owner of a Covered Property shall provide verification of compliance with this Chapter within the time schedule as listed in Part 5.

17.85.410 Performance Path: Properties which are Highly Efficient or Have Demonstrated Increased Efficiency

An Owner may establish satisfactory Energy and water efficiency by providing a Performance Verification Report to the Department in such a form as required by the Director of the Department that demonstrates the following:

A. The Property is new and has been occupied for less than five (5) years from its first due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy; or

B. The Property has achieved one (1) or more of the following Energy standards and one (1) or more of the following water standards for at least two (2) of the four (4) years preceding the Property's compliance due date in Part 5:

1. Energy Standards [at least one (1) of the following]:

a. The Property has received an ENERGY STAR® Score of 75 or greater from the US EPA;

b. The Property has improved its ENERGY STAR® Score by fifteen (15) points or more relative to its performance during the baseline year;

c. A California licensed engineer or architect certifies that the Property has a weather normalized source Energy Use Intensity as calculated by the Benchmarking Tool that is twenty-five percent (25%) below the calculated mean for that property type; or

d. A California licensed engineer or architect certifies that the Property has reduced its weather normalized source Energy Use Intensity by at least fifteen percent (15%) relative to its performance during the baseline year.

2. Water Standards [at least one (1) of the following]:

a. The building has received a US EPA Water Score of 75 from the US EPA;

b. The Property has improved its US EPA Water Score by fifteen (15) points or more relative to its performance during the baseline year;

c. A California licensed engineer or architect certifies that the Property has a Water Use Intensity as calculated by the Benchmarking Tool that is twenty-five percent (25%) below the locally calculated mean for that property type; or

d. A California licensed engineer or architect certifies that the Property has reduced its Water Use Intensity by at least fifteen percent (15%) relative to its performance during the baseline year.

C. If a Property has achieved both Energy and water standards, the Owner is only required to submit a Performance Verification Report for that reporting year. If the Property only meets one (1) of the standards, the Owner shall submit a Performance Verification Report for the satisfactory standard and shall comply with this Chapter by completing one (1) of three (3) improvement pathway options for the unmet standard.

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 Audi;

(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 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 Water 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 II Audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers ("ASHRAE") *Procedures 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;

   g. Acknowledgment that an ASHRAE Level II, or alternate approved assessment or audit was conducted; and

   h. 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 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; or

i. 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.

Part 5
GENERAL PROVISIONS

17.85.500 Record Maintenance

The Owner shall maintain records related to Benchmarking, Audits and Retro-Commissioning, and Efficiency Improvement Measures including, but not limited to, the Energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of five (5) years. When the Property is sold, copies of the records shall be given to the new Owner.

17.85.510 Schedule for Benchmarking Report Compliance

An annual Benchmarking Report in compliance with Part 3 shall be submitted to the Department according to the following schedule:

A. For Properties owned by the City with gross floor area of fifteen thousand (15,000) square feet or more, the Owner must complete and submit the initial Benchmarking Report on or before May 1, 2019, and annually no later than May 1 thereafter.

B. For a privately-owned Property with gross floor area of fifty thousand (50,000) square feet or more, the Owner must complete and submit the initial Benchmarking Report on or before May 1, 2019, and annually no later than May 1 thereafter.

C. For a privately-owned Property with gross floor area equal to or greater than twenty thousand (20,000) square feet but less than fifty thousand (50,000) square feet, the Owner must complete and submit the initial Benchmarking Report on or before May 1, 2020, and annually no later than May 1 thereafter.

17.85.520 Schedule for Performance, Audit, Retro-Commissioning, or Efficiency Improvement Measures Report Compliance

Compliance with Part 4 shall be due once every five (5) years, as set forth below based on the last number of the Santa Clara County Tax Assessor's Parcel Number for each Property subject to this Chapter under Section 17.85.120.

Properties ≥ 50,000 square feet

Last digit of APN	First compliance due date	Subsequent compliance due dates
0	May 1, 2021	Every five years thereafter
1	May 1, 2021	Every five years thereafter
2	May 1, 2022	Every five years thereafter
3	May 1, 2022	Every five years thereafter
4	May 1, 2023	Every five years thereafter
5	May 1, 2023	Every five years thereafter
6	May 1, 2024	Every five years thereafter
7	May 1, 2024	Every five years thereafter
8	May 1, 2025	Every five years thereafter
9	May 1, 2025	Every five years thereafter

Properties 20,000 square feet - 49,999 square feet

Last digit of APN	First compliance due date	Subsequent compliance due dates
0	May 1, 2022	Every five years thereafter
1	May 1, 2022	Every five years thereafter
2	May 1, 2023	Every five years thereafter
3	May 1, 2023	Every five years thereafter
4	May 1, 2024	Every five years thereafter
5	May 1, 2024	Every five years thereafter
6	May 1, 2025	Every five years thereafter
7	May 1, 2025	Every five years thereafter
8	May 1, 2026	Every five years thereafter
9	May 1, 2026	Every five years thereafter

17.85.530 Timing of Audit, Retro-Commissioning, and Efficiency Improvement Measures

Except as otherwise provided in Section 17.85.540, the Audits and Retro-Commissioning and Efficiency Improvement Measures shall be completed no earlier than five (5) years prior to a Property's compliance due date.

17.85.540 Time Extensions

The Director of the Department may grant an extension of time of up to sixty (60) days to file any submittal required by this Chapter. The Director of the Department may grant an additional extension up to one hundred eighty (180) days upon an application based upon a showing of substantial hardship.

17.85.550 Non-compliance Unlawful; Penalty for Violations

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter, and each and every violation shall constitute a separate violation each day for ongoing violations and shall be subject to the remedies and enforcement measures authorized by this Code.

Part 6
APPEAL

17.85.600 Appeal of Decisions under this Chapter

Decisions under this Chapter, including, but not limited to, rulings on exemptions or time extensions, shall be made by the Director of the Department or his or her designee.

17.85.610 Notice of Decision

Decisions shall be given to the applicant in writing and describe the reasons upon which the decision is based.

17.85.620 Appeal to City Manager

Within twenty (20) days from the date of deposit of the decision in the mail, the applicant may appeal, in writing, to the City Manager, setting forth with particularity the ground or grounds for the appeal.

17.85.630 Hearing on Appeal

The City Manager shall set a time and place for the hearing on the appeal and shall notify the applicant, in writing, of such date and time. The hearing shall be conducted informally and within a reasonable time from the date the appeal was received by the City Manager.

17.85.640 Disposition of Appeal

After the hearing on the appeal, the City Manager may refer the matter back to the Director of the Department for a new investigation and decision, may affirm the decision of the Director of the Department, or may approve the application with or without conditions. The decision of the City Manager shall be the final administrative determination and is subject to judicial review under the Code of Civil Procedure Section 1094.6.

SECTION 2. Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code is amended to read as follows:

1.08.020 Certain Violations Deemed Infractions

Violations of the following provisions shall be infractions:

Title 4:

Section 4.76.320.

Title 6:

Sections 6.02.100 and 6.08.080.

Chapter 6.16.

Sections 6.18.020, 6.20.010, 6.36.020, 6.36.030, 6.60.070B, 6.60.350, 6.64.280, 6.64.390, 6.64.450 and 6.66.080.

Title 7:

Sections 7.20.570B, 7.20.580, 7.20.700, 7.20.710, 7.40.010, 7.40.020, 7.40.030, 7.40.040, 7.40.050, 7.40.100, 7.40.120, 7.40.140, 7.50.010, 7.50.090, 7.60.050, 7.60.310, 7.60.500, 7.60.510, 7.60.700, 7.60.750, 7.60.755, 7.60.760, 7.60.790, 7.60.795, 7.60.800, 7.60.810, 7.60.815 and 7.60.820.

Title 9:

Sections 9.36.150 and 9.44.010(a).

Title 10:

Sections 10.12.010, 10.12.110, 10.20.010 and 10.46.030.

Title 11:

Sections 11.12.010, 11.12.050 and 11.16.100, 11.20.020, 11.20.040, 11.20.050, 11.24.010, 11.32.010, 11.32.020, 11.32.030, 11.32.040, 11.32.050, ~~11.32.060,~~ 11.32.070, 11.34.010, 11.34.070, 11.36.040, 11.44.340, 11.48.660, 11.64.020, 11.64.030, 11.64.040, 11.64.050, 11.72.080, 11.72.100, 11.72.120, 11.72.130, 11.72.170, 11.72.190, 11.76.020, 11.76.110, 11.76.120, 11.84.010, 11.96.070 and 11.96.080.

Title 13:

Sections 13.08.020, 13.20.010, 13.20.020, 13.20.050, 13.20.080, 13.21.200, 13.21.300, 13.28.440A, 13.28.440B, 13.44.020, 13.44.090, 13.44.100,

13.44.110A-E, 13.44.150, 13.44.160, 13.44.170, 13.44.180, 13.44.230, 13.44.250 and 13.44.260.

Title 17:

Sections 17.20.480, 17.20.600, ~~and~~ 17.20.630, 17.85.300, 17.85.400, 17.85.500, 17.85.510, and 17.85.550.

Title 20:

Sections 20.30.430, 20.80.860 and 20.80.1840.

Title 25:

Sections 25.03.300, 25.03.310 and 25.12.1200.

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

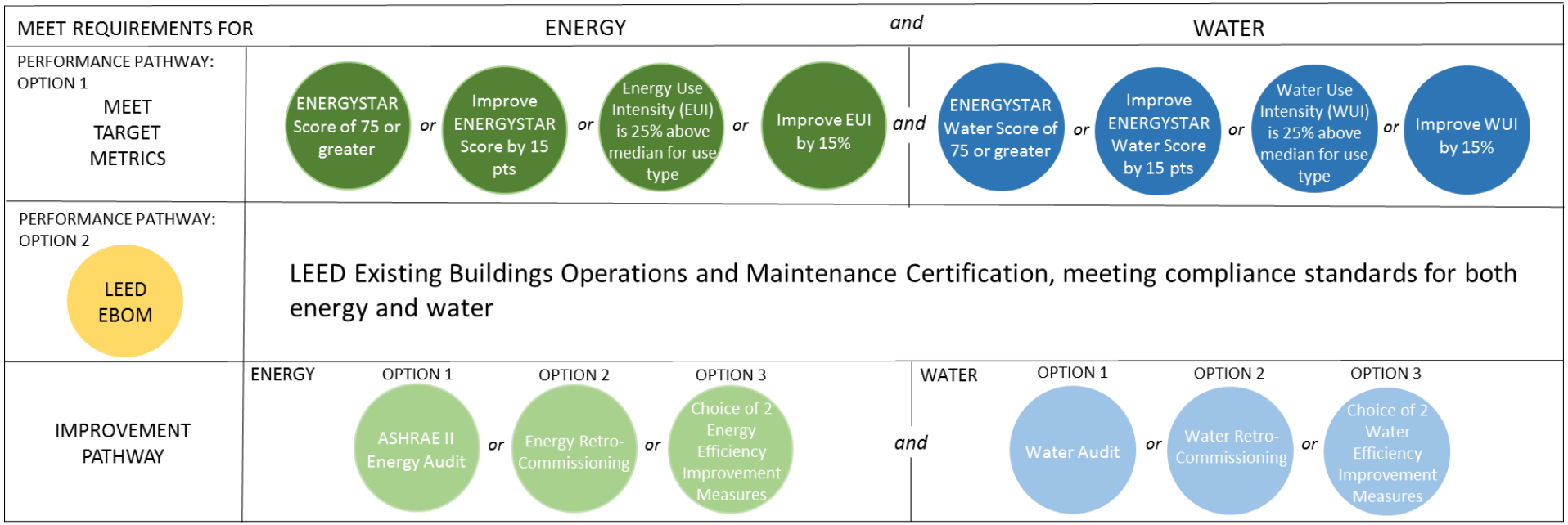
TONI J. TABER, CMC
City Clerk

Attachment C: Current U.S. Benchmarking and Transparency

Comparison of U.S. Commercial Building Energy Benchmarking and Transparency Policies

	Legislation	Public Data Available	Policy Impact			Buildings Included	Policy Schedule		Compliance		Additional Elements	
	Jurisdiction	Released	Number of Bldgs	Square Footage	Energy Savings	Types & Sizes	Reporting to Gov't	Transparency	By # of Buildings	By % of Sq. Ft.	Water Tracking	Other Requirements
Cities/Counties	Atlanta	-	2,900	402 million	-	Comm & MF ≥ 25K	Jun 1, 2017	(if Energy Star >55) Sept 2018	-	-	✓	Audits every 10 years
	Austin	-	2,800	113 million	-	Comm ≥ 10K MF ≥ 5 units	Jun 1, Annual	Time of transaction	-	-	-	Audits & mandatory upgrades for high energy use MF buildings
	Berkeley	-	257	13.7 million	-	Comm & MF ≥ 50K Comm & MF ≥ 25K	July 1, 2018 July 1, 2019	TBD TBD	-	-	✓	Periodic/time of sale energy reports for all buildings (timing based on size)
	Boston	Yes	1,600	250 million	-	Comm ≥ 35K MF ≥ 35K/35 units	May 15, Annual	Oct 1, Annual	-	84% (2014)	✓	Periodic energy assessments and/or actions
	Boulder	-	475	26 million	-	Comm ≥ 50K New Comm ≥ 10K Comm ≥ 30K Comm ≥ 20K	Aug 1, 2016 Aug 1, 2016 Jun 1, 2018 Jun 1, 2020	>Jun 1, 2019 >Jun 1, 2019 >Jun 1, 2021 >Jun 1, 2023	100% (2016)	100% (2016)	✓	Lighting upgrade; audits & RCx every 10 yrs (must invest in RCx measures w/ ≤2yr payback)
	Cambridge	Yes	1,100	78 million	-	Comm ≥ 50K MF ≥ 50 units	May 1, Annual	Sept 1, Annual	95% (2015)	93.5% (2014)	✓	-
	Chicago	Yes	3,500	900 million	10% (2010-15)	Comm ≥ 50K MF ≥ 50K	Jun 1, Annual	>Jun 1, Annual	84% (2014)	92% (2014)	-	Data verification by licensed professional 1st year & every 3 years
	Denver	-	3,000	360 million	-	Comm & MF ≥ 25K	Jun 1, Annual	TBD	-	-	-	-
	District of Columbia	Yes	2,000	357 million	9% (2010-13)	Comm ≥ 50K MF ≥ 50K	Apr 1, Annual	>Apr 1, Annual	83% (2013)	-	✓	-
	Evanston, IL	-	557	45.6 million	-	Comm & MF ≥100K Comm & MF ≥ 50K Comm & MF ≥ 20K	Jun 30, 2017 Jun 30, 2018 Jun 30, 2019	TBD	-	-	✓	Data verification by a certified professional 1st year and every 3 years
	Kansas City	Yes	~1,500	~400 million	-	Comm & MF ≥100K Comm & MF ≥ 50K	May 1, 2017 May 1, 2018	Sept 1, 2018 Sept 1, 2019	-	-	✓	-
	Los Angeles	-	14,000	900 million	-	Comm & MF ≥100K Comm & MF ≥ 50K Comm & MF ≥ 20K	Jul 1, 2017 Apr 1, 2018 Apr 1, 2019	TBD	-	-	✓	ASHRAE level II audit and RCx every 5 years
	Minneapolis	Yes	625	110 million	-	Comm ≥ 50K	Jun 1, Annual	Aug 31, Annual	87% (2013)	-	✓	-
	Montgomery Co., MD	Yes	~1,000	~110 million	-	Comm ≥ 50K	June 1, Annual	Oct, Annual	~75% (2015)	-	-	Data verification by licensed professional 1st year & every 3 years
	New York City	Yes	33,417	2.8 billion	6-14% (2010-14)	Comm & MF ≥ 50K Comm & MF ≥ 25K	May 1, Annual May 1, 2018	Sept 1, Annual Anticipated >2018	84% (2012)	84% (2012)	✓	Audits & RCx (LL 87), lighting upgrades & submetering (LL 88)
	Orlando	-	826	125.6 million	-	Comm & MF ≥ 50K	May 1, 2018	Sep 1, 2019	-	-	-	Energy audit or RCx every five years if ENERGY STAR <50. Benchmarking by qualified benchmarker
	Philadelphia	Yes	2,900	390 million	-	Comm ≥ 50K MF ≥ 50K	Jun 30, Annual Jun 30, 2016	>Jun 30, Annual >Jun 30, 2017	91% (2014)	91% (2014)	✓	-
	Pittsburgh	-	861	164 million	-	Comm ≥ 50K	June 1, 2018	>Jun 1, Annual	-	-	✓	-
	Portland, ME	-	284	-	-	Comm ≥ 20K MF ≥ 50 units	May 1, 2018	Sept 1, 2019	-	-	✓	-
	Portland, OR	Yes	1,024	87 million	-	Comm ≥ 20K	Apr 22, Annual	Oct 1, Annual	-	82% (2015)	-	-
	Salt Lake City	-	-	-	-	Comm ≥ 50K Comm ≥ 25K	May 1, 2019 May 1, 2020	Sept 1, 2019 Sept 1, 2020	-	-	-	Tune-ups every 5 years
	San Francisco	Commercial Municipal	2,312	203 million	7.9% (2010-14)	Comm ≥ 10K	Apr 1, Annual	>Apr 1, Annual	-	82% (2013)	-	ASHRAE level I/II audits or RCx every 5 years
	Seattle	Yes	3,352	323 million	3.7% (2014-16)	Comm & MF ≥ 20K	Apr 1, Annual	<Dec 31, Annual	99.2% (2013)	99.4% (2013)	-	Tune-ups every 5 years for Comm ≥50K
	South Portland, ME	-	-	-	-	Comm ≥ 5K MF ≥ 10 units	May 1, Annual	TBD	-	-	✓	Verification every 5 years by professional engineer
	St. Louis	-	900	143 million	-	Comm & MF ≥ 50K	Apr 1, Annual	Aug 1, Annual	-	-	✓	-
States	California	-	20,573	2.4 billion	-	Comm ≥ 50K MF ≥ 50k	June 1, 2018 June 1, 2019	TBD	-	-	-	Mandatory upgrades TBD under AB 758
	New Jersey	-	-	-	-	Comm ≥ 25K	TBD	TBD	-	-	-	-
	Washington State	-	4,600	247 million	-	Comm ≥ 10K	None	Time of transaction	-	-	-	Audits for public buildings with low ratings

Attachment D: Beyond Benchmarking Pathways



Improvement Pathway Option 3: Choice of 2 Energy Efficiency Improvement Measures

1. Demonstrate that common area and exterior lighting fixtures have been installed in accordance with current CA Title 24 requirements
2. Demonstrate that domestic hot water heater has been installed in accordance with current CA Title 24 requirements
3. Replace all existing refrigerators with current ENERGY STAR certified models
4. Replace all gas stoves with electric induction stoves
5. Replace all gas water heaters with electric water heaters
6. Install a smart thermostat
7. Install a solar thermal heating/cooling system
8. Demonstrate enrollment in an approved utility demand response program
9. Demonstrate participation in an approved energy utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades)

Water Improvement Pathway Option 3: Choice of 2 Water Efficiency Improvement Measures

1. Demonstrate that plumbing has been installed in accordance with current CA Title 24 requirements
2. Demonstrate that outdoor landscaping and irrigation has been installed in accordance with the current San José Municipal Code Chapter 15.11 – Water Efficient Landscape Standards for New and Rehabilitated Landscaping

3. Complete the installation of a greywater system
4. Install insulation on all hot water pipes in accessible building locations
5. Demonstrate participation in an approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades)