



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmember Johnny Khamis

**SUBJECT: ENERGY AND WATER
BUILDING PERFORMANCE
ORDINANCE**

DATE: December 10, 2018

Approved

Date

12/10/18

RECOMMENDATION

Approve staff recommendation, modifying recommendation (a) to conform to *Policy Alternative 1: set benchmarking and transparency size threshold higher at 50,000 square feet*, in alignment with the state requirements of AB 802.

ANALYSIS

As summarized in the Policy Alternative 1 narrative, setting the Energy and Water Building Performance Ordinance threshold at 50,000 sq. ft. will align the ordinance with AB 802, covering approximately 1,400 buildings, representing approximately 70 percent of commercial and multi-family building stock. On top of the many new regulations we have placed on small and mid-sized rental properties, we now propose to impose another time and resource-intensive mandate on them. Lowering the reporting threshold to all who own properties of 20,000 sq. ft. or more will cause owners to incur compliance costs that will be passed on to renters and further drive up rents. Owners will also be compelled to obtain utility usage data from their renters, who may have privacy concerns around releasing their usage data. With a subset of reported ESPM data that will be made publicly available, this is a valid privacy concern for some.

We already have the state-mandated benchmarking and transparency program of AB 802 in place, and I see no need to go beyond the state mandate to make the program more complex across jurisdictions. In addition to ensuring commercial and multifamily building owners and operators have access to monthly whole-building energy usage information, AB 802 currently enables energy efficiency programs that provide incentives for customers to bring existing buildings up to, and beyond, California efficiency standards and removes the state benchmarking policy known as AB 1103, which requires building owners to disclose building energy use to

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tenants or buyers only at the time of a whole-building lease, sale or refinance. In its place, AB 802 authorizes the California Energy Commission to implement a comprehensive benchmarking policy — including both multifamily and commercial buildings — that will require building energy use to be reported publicly, on a regular basis, subject to requirements that will be determined through a public rulemaking process.¹ This new policy sets the reporting threshold at 50,000 sq. ft.

The City of San José should be consistent with the State mandate and not contribute to a messy patchwork of local laws that will increase building owner compliance costs and drive rents higher. I urge my colleagues to set the reporting threshold at 50,000 sq. ft., rather than lowering it to 20,000 sq. ft. as recommended by Staff.

¹ <http://energycenter.org/blog/california-legislation-aims-big-gains-energy-efficiency>