

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. 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;
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.

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 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.

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.

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 compliance 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 Energy standards and one (1) or more of the water standards as set forth below for at least two (2) of the three (3) calendar years preceding the Property's compliance due date in Part 5:
 - 1. Energy Standards: The Property has a current Leadership in Energy and Environmental Design (LEED™) Existing Buildings Operations and Maintenance v4 Certification; or a California licensed engineer or architect, or Qualified Auditor or Retro-Commissioning Professional certified at least at least one (1) of the following:
 - a. The Property has received an ENERGY STAR® Score of 75 or greater from the US EPA; or
 - b. The Property has improved its ENERGY STAR® Score by fifteen (15) points or more relative to its performance during the baseline year; or

- c. 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. 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: A California licensed engineer or architect, or Qualified Auditor or Retro-Commissioning Professional certified 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. 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. 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 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;
- g. Acknowledgment that an ASHRAE Level 2, 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 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.

17.85.430 Exemption from Beyond Benchmarking Pathway for Water Efficiency

- A. The Owner of a Residential Property that is less than fifty thousand (50,000) square feet is exempt from the Performance Improvement Pathway for water efficiency in Section 17.85.420 if the Property is not sub-metered for water use.
- 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 Water Improvement Pathway 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 Property. Appeal of a determination that a Property is not exempt shall be made according to the procedures set forth in Part 6.

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, 11.32.070, 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, 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