



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: March 15, 2021

Approved

Date

3/18/2021

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

RECOMMENDATION

Approve an ordinance amending sections 17.85.200, 17.85.300, 17.85.410, 17.85.420, 17.85.510, 17.85.520, and 17.85.540 of Chapter 17.85 of Title 17 of the San José Municipal Code related to the San José Energy and Water Building Performance Ordinance to make non-substantive changes, extend the time for Beyond Benchmarking reporting requirements, and grant the Environmental Services Department Director authority for further extensions that may be necessary.

OUTCOME

Approval of an extended reporting deadline will allow Energy and Water Building Performance Ordinance (BPO) reporters to have an equitable opportunity to submit accurate benchmarking data in response to changes in availability and quality of data due to Stay-At-Home State/County-mandated orders caused by COVID-19 and PG&E customer service issues.

COVID-19 necessitated numerous commercial buildings' vacancies or shift stagnations and increased the amount of time people spent at home. These government-mandated building occupancy and usage changes are expected to have caused irregular usage patterns for commercial and multifamily occupancy buildings in San José throughout 2020, and now moving into 2021. Many BPO reporters will have two years' worth of data that is either anomalous or exempt from reporting; an extension of two years will allow reporters to discard this data and instead have their first three years of benchmarking data that determines their Beyond Benchmarking requirements to be of known quality and comparable to typical years. The City recognizes the impacts of COVID-19, and that an extension will be more equitable to all covered building owners who must comply with Beyond Benchmarking requirements who may have different circumstances caused by COVID-19.

The Director of the Environmental Services Department will have the authority and flexibility to provide additional extensions under exceptional circumstances, such as impacts caused by COVID-19 in 2020 and 2021. Other changes listed in the proposed ordinance update correct typographical errors or will enhance ordinance understanding by its constituents.

BACKGROUND

The BPO was adopted in December 2018 as the first ordinance passed to address Climate Smart goals. Long term benefits of the ordinance include lowering greenhouse gas emissions (GHGs) from existing buildings, reduced long-term energy and water costs for building owners and tenants, improved public health, and increased demand for local jobs in sustainability and energy efficiency. Through a phased-in implementation schedule, the BPO requires that property owners of large commercial and multifamily properties 20,000 square feet (sqft) in size and above to benchmark these properties' energy and water use and report this to the City annually, using the US EPA ENERGYSTAR Portfolio Manager® (ESPM) platform. Starting in 2020, owners are also required to submit a reporting fee concurrently with their benchmarking report. The BPO builds on existing state law (CA Assembly Bill 802) that established a statewide building energy use benchmarking program for buildings 50,000 square feet in size and larger. Compliance with San José's BPO relieves building owners from reporting to the state.

Beginning in 2021, every five years, a subset of owners will also be required to comply with additional "Beyond Benchmarking" requirements: 1) demonstrating that their building meets key performance metrics for both energy and water, or 2) completing an audit, re-tuning or upgrades to improve their building's performance. There is no additional fee associated with the submission of documentation for compliance with "Beyond Benchmarking" requirements.

Per ordinance language, the Beyond Benchmarking requirements for an individual building will be determined through analyzing its previous three years' benchmarking data. Please refer to Municipal Code Chapter 17.85.400-410 – CITY OF SAN JOSE ENERGY AND WATER BUILDING PERFORMANCE ORDINANCE – Part 4; BEYOND BENCHMARKING: PATHWAYS FOR DEMONSTRATING AND INCREASING ENERGY AND WATER PERFORMANCE for more information.

ANALYSIS

Staff proposes to extend the reporting deadline for Beyond Benchmarking compliance for all buildings covered by the ordinance (*i.e.*, covered buildings) by two years to begin May 1, 2023 (See *Figure 1 – Proposed Updated BPO Implementation Schedule and Ordinance, Section 17.85.20.*). This change is proposed to address two main concerns: 1) Data reported in 2020 and 2021 may not reflect normal operational usage patterns due to impacts of COVID-19 and 2) PG&E data availability or quality concerns.

Energy/water use trends from one year must be analyzed upon collection the next year to determine how to treat that data towards Beyond Benchmarking requirements within a three-year span. Due to COVID-19, the data from 2020 and 2021 are expected to have quality issues due to widespread building vacancy and/or irregular building use patterns. Santa Clara County Health Officer Orders impact building usage from at least March 2020 and continuing into 2021, and as of the date of this memorandum. Health Officer Orders necessitated commercial buildings' vacancies, or shift stagnations and/or more intense HVAC operation (to increase air circulation). Stay-at-Home Orders have significantly increased the amount of time people spend at home, temporarily increasing multifamily building utility usage. These government-mandated building occupancy and usage changes may have caused irregular usage patterns in the 2251 buildings covered by the BPO in 2020. Seventy-six percent (76%, or 1170) of those buildings will have Beyond Benchmarking requirements determined through data collected from 2020 and 2021.

As per feedback from the US EPA, and administrators of ENERGYSTAR Portfolio Manager®, benchmarking data from 2020 will likely not be usable due to effects of COVID-19. Since Santa Clara County Health Officer Orders remain in effect as of February 2021, 2021 data is likely to be anomalous as well. Enforcing the ordinance within the adopted timeline would be ineffective and punitive. Compliance due dates should therefore be extended as suggested in the *Ordinance, Section 17.85.20* and requirements calculated as suggested in *Figure 2*.

Because exceptional circumstances (such as those caused by the COVID-19 pandemic) affect all covered buildings within a reporting year, it is proposed that the Director of the Environmental Services Department have the authority to exempt future anomalous years' data caused by extreme circumstances or government-mandated orders that affect occupancy or usage patterns determining a property's Beyond Benchmarking requirements, as stated in the recommended additional language to the *Ordinance, Section 17.85.540*.

This extension will also help to address availability and quality issues with utility data provided through PG&E's Data Building Benchmarking Portal. At the time the ordinance was adopted, PG&E provided multiple years of historical consumption data through their benchmarking services – recently they have ended this practice. Additionally, there have been multiple incidences of data provided through their portal that may contain missing, duplicate, or default values. Staff is working with customers, PG&E, other municipalities, and the state to rectify these issues.

Other proposed language changes are intended to increase ordinance understanding and clarity. Additions to the *Ordinance, Sections 15.85.300, and 15.85.510* are intended to clarify the dual annual requirement of covered building owners to submit both a benchmarking report and pay benchmarking fee(s). *Sections 15.85.200 and 17.84.420* will correct typographical errors.

Figure 1: Proposed Updated BPO Implementation Schedule

<i>Year</i>	<i>Properties</i>	<i>Benchmarking Report Requirement</i>	<i>Benchmarking Report Submission Fee</i>	<i>Beyond Benchmarking Requirement</i>
<i>2019 (Year 1)</i>	<i>50,000 sqft +</i>	<i>Yes</i>	<i>No</i>	<i>No</i>
	<i>20,000 - 49,999 sqft</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>2020 (Year 2)</i>	<i>50,000 sqft +</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
	<i>20,000 - 49,999 sqft</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
<i>2021 (Year 3)</i>	<i>50,000 sqft +</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
	<i>20,000 - 49,999 sqft</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
<i>2022 (Year 4)</i>	<i>50,000 sqft +</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
	<i>20,000 - 49,999 sqft</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
<i>2023 (Year 5)</i>	<i>50,000 sqft +</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes, and Every five years thereafter</i>
	<i>20,000 - 49,999 sqft</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>
<i>2024 (Year 6)</i>	<i>50,000 sqft +</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes, and Every five years thereafter</i>
	<i>20,000 - 49,999 sqft</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes, and Every five years thereafter</i>

Figure 2: Proposed Updated BPO Beyond Benchmarking Initial Schedule*Properties ≥ 50,000 square feet*

<i>Last digit of APN</i>	<i>First compliance due date</i>	<i>Years Determining First Beyond Benchmarking Requirement</i>
<i>0</i>	<i>May 1, 2023</i>	<i>2018, 2019, 2022</i>
<i>1</i>	<i>May 1, 2023</i>	<i>2018, 2019, 2022</i>
<i>2</i>	<i>May 1, 2024</i>	<i>2019, 2022, 2023</i>
<i>3</i>	<i>May 1, 2024</i>	<i>2019, 2022, 2023</i>
<i>4</i>	<i>May 1, 2025</i>	<i>2022, 2023, 2024</i>
<i>5</i>	<i>May 1, 2025</i>	<i>2022, 2023, 2024</i>
<i>6</i>	<i>May 1, 2026</i>	<i>2023, 2024, 2025</i>
<i>7</i>	<i>May 1, 2026</i>	<i>2023, 2024, 2025</i>
<i>8</i>	<i>May 1, 2027</i>	<i>2024, 2025, 2026</i>
<i>9</i>	<i>May 1, 2027</i>	<i>2024, 2025, 2026</i>

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

<i>Last digit of APN</i>	<i>First compliance due date</i>	<i>Years Determining First Beyond Benchmarking Requirement</i>
<i>0</i>	<i>May 1, 2024</i>	<i>2019, 2022, 2023</i>
<i>1</i>	<i>May 1, 2024</i>	<i>2019, 2022, 2023</i>
<i>2</i>	<i>May 1, 2025</i>	<i>2022, 2023, 2024</i>
<i>3</i>	<i>May 1, 2025</i>	<i>2022, 2023, 2024</i>
<i>4</i>	<i>May 1, 2026</i>	<i>2023, 2024, 2025</i>
<i>5</i>	<i>May 1, 2026</i>	<i>2023, 2024, 2025</i>
<i>6</i>	<i>May 1, 2027</i>	<i>2024, 2025, 2026</i>
<i>7</i>	<i>May 1, 2027</i>	<i>2024, 2025, 2026</i>
<i>8</i>	<i>May 1, 2028</i>	<i>2025, 2026, 2027</i>
<i>9</i>	<i>May 1, 2028</i>	<i>2025, 2026, 2027</i>

CONCLUSION

Staff recommends extending the reporting deadline for Beyond Benchmarking requirements by two years and granting the Director the authority to respond to future exceptional circumstances. Meanwhile, the City will continue to focus staffing efforts on outreach, education, and technical support to assist owners with compliance.

EVALUATION AND FOLLOW-UP

Staff will track data associated with the compliance of the City's BPO and provide progress updates to Transportation and Environment Committee and City Council on Climate Smart San José activities on a semi-annual basis.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals because it aligns the City's BPO enforcement policy with CA State Stay-At-Home Orders and County's Health Officer Orders during the pandemic.

Delaying Beyond Benchmarking actions by these two years is not expected to significantly slow emissions reductions that can be achieved through the ordinance in the next decade. All covered buildings will still be required to report their annual water and energy usage for 2020 and 2021 through ESPM benchmarking reports. The BPO's new Custom Solution through Overlay, LLC will allow BPO staff to improve data quality and reporting and communications processes, including providing owners a personal Scorecard to show their building's relative performance and potential for energy reductions. Research indicates that just the act of benchmarking

building energy usage leads to energy reductions¹, especially when owners can compare their energy usage to others in their cohort. In 2019-2020, through the American Cities Climate Challenge, the City piloted a voluntary benchmarking and building efficiency program called the Building Performance Leaders (BPL) that guided six organizations from various building sectors in taking actions that lowered their buildings' GHG emissions by 24% collectively.

POLICY ALTERNATIVES

Alternative 1: Extending Beyond Benchmarking Reporting Deadline by one year to May 1, 2022; holding all other suggested changes.

Pros: Extending the reporting deadline to one year would still allow some grace period during the time when State and County-mandated COVID restrictions were most strict.

Cons: Not extending the deadline by two years would not account for months of 2021 during which State or County Stay-at-Home Orders were in place.

Reason for not recommending: BPO reporters will likely have two years' worth of data that is either unusable or exempt from reporting; an extension of two years will allow all BPO reporters to discard this data and instead have their first three years of benchmarking data that determines their Beyond Benchmarking requirements be of known quality and comparable to typical years. Extending requirements by two years is the most equitable solution to deal with unprecedented COVID-19 impacts.

PUBLIC OUTREACH

Staff will provide information regarding the change in compliance schedule to BPO Covered Building Owners via mailed and/or emailed notifications, and publicly post the information on the BPO's compliance website: www.sanjoseca.gov/benchmarking.

This memorandum will be posted on the City's Council Agenda website for the March 30, 2021 Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the City Manager's Office, and the Planning, Building, and Code Enforcement Department.

¹ Zachary Hart Institute for Market Transformation (IMT) and Pacific Coast Collaborative; 2015; *The Benefits of Benchmarking Building Performance*. Viewed at https://www.imt.org/wp-content/uploads/2018/02/PCC_Benefits_of_Benchmarking.pdf

HONORABLE MAYOR AND CITY COUNCIL

March 15, 2021

Subject: Updated Energy and Water Building Performance Ordinance

Page 7

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

There is no additional fee to submit Beyond Benchmarking reports. No fiscal policy will be affected.

COST SUMMARY/IMPLICATIONS

No fiscal impact is expected from this recommendation.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions, please contact Jennifer Voccola-Brown, Sustainability & Compliance Division Manager, at (408) 975-2594.