

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 13, 2019

File No. 190142

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On February 5, 2019, Supervisor Brown introduced the following proposed legislation:

File No. 190142

Ordinance amending the Environment Code to require owners of certain nonresidential and residential buildings to annually measure and disclose energy performance; to require the Department of the Environment to collect and make public summary statistics about the energy performance of such buildings; and affirming the Planning Department's determination under the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment. The ordinance is establishing procedures for collecting energy performance data.

Laura C. Lynch 2/19/2019

[Environment Code - Existing Buildings Energy Performance and Benchmarking]

Ordinance amending the Environment Code to require owners of certain nonresidential and residential buildings to annually measure and disclose energy performance; to require the Department of the Environment to collect and make public summary statistics about the energy performance of such buildings; and affirming the Planning Department's determination under the California Environmental Quality Act.

NOTE: **Unchanged Code text and uncoded text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. CEQA Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this determination.

Section 2. Findings.

1. San Francisco is one of the oldest urban areas in California. Many buildings in the City were built before energy efficiency codes were enacted. Systems for lighting, heating,

1 cooling, ventilation, and other services in commercial and multifamily buildings require regular
2 tuning as well as periodic retrofits to meet modern standards for energy efficiency.

3 2. San Francisco's buildings use electricity partially supplied by fossil-fuel burning
4 power plants and heat primarily supplied by the combustion of natural gas. The emission of
5 carbon dioxide due to building energy use accounted for 45% of citywide greenhouse gas
6 emissions in 2016, contributing to global warming.

7 3. The City has established high environmental performance standards for new
8 construction. To minimize the pollution and carbon emissions of energy consumption, as well
9 as demands upon the electrical grid, enhanced energy efficiency is necessary for existing
10 buildings as well.

11 4. Environment Code Chapter 20, the Existing Commercial Buildings Energy
12 Performance Ordinance, was enacted in 2011 in light of the recommendation of the Existing
13 Commercial Buildings Task Force to use measurement and transparency as tools to motivate
14 effective management of resources by requiring that building performance data be publicly
15 reported and available to all building stakeholders.

16 5. Nonresidential private sector buildings compliant with Environment Code Chapter
17 20 reduced energy use by an average of 6.3% between 2013 and 2017, and municipal
18 buildings benchmarked by the San Francisco Public Utilities Commission have cut their
19 carbon footprint by 26.5% since 2009.

20 6. San Francisco was one of the earliest adopters of building energy benchmarking,
21 along with New York City, Washington, D.C., and Seattle. Based on these early examples, 25
22 cities across the country have adopted similar policies, including Berkeley and Los Angeles.

23 7. San Francisco's success with building energy benchmarking inspired the California
24 legislature in 2015 to pass Assembly Bill 802 that, in concert with implementing regulations,
25

1 requires statewide mandatory annual benchmarking and public disclosure for large
2 commercial and multifamily residential buildings.

3 8. When Environment Code Chapter 20 was enacted in 2011, California utilities
4 required consent from every utility customer prior to providing building owners with energy
5 usage data for benchmarking. Under this circumstance, it was infeasible for San Francisco to
6 require multifamily buildings to benchmark energy use. But since 2016, California has
7 required utilities to provide energy usage data for benchmarking to owners of nonresidential
8 and multifamily buildings upon request.

9 9. Jurisdictions that require energy benchmarking for large multifamily buildings have
10 experienced energy savings that are similar or even greater than energy savings experienced
11 in commercial buildings, reducing greenhouse gas emissions and utility costs.

12 10. In recognition that San Francisco's benchmarking and public disclosure
13 requirements for non-residential buildings exceed those of the state program, and that
14 information reported to San Francisco is publicly available, the California Energy Commission
15 has affirmed that compliance with Environment Code Chapter 20 fulfills the State's
16 benchmarking requirement without need for separate reporting to the State. Expanding
17 Chapter 20 to apply to large multifamily buildings will maintain a single point of reporting
18 energy usage for building owners in San Francisco.

19
20 Section 3. Chapter 20 of the Environment Code is hereby amended by revising the
21 chapter title, and Sections 2000, 2001, 2002, 2003, 2004, 2005, and 2008, to read as follows:

22
23 **CHAPTER 20: EXISTING ~~COMMERCIAL~~ BUILDINGS ENERGY PERFORMANCE**

24
25 **SEC. 2000. TITLE AND PURPOSE.**

1 (a) This Chapter 20 may be referred to as the Existing ~~Commercial~~ Buildings Energy
2 Performance Ordinance.

3 (b) To encourage efficient use of energy, this Chapter requires owners of
4 nonresidential buildings in San Francisco to obtain energy efficiency audits, as well as
5 requiring owners of nonresidential and multifamily residential buildings to annually measure and
6 disclose energy performance. It also requires the Department of the Environment to collect
7 summary statistics about the energy performance of nonresidential and multifamily residential
8 buildings and make those statistics available to the public.

9
10 **SEC. 2001. DEFINITIONS.**

11 For purposes of this Chapter 20, the following terms shall have the following meanings:

12 ~~1.~~ "Annual Energy Benchmark Summary"

13 * * * *

14 "Building" means a facility composed of any occupancy types A, B, E, I-1, I-2, I-3, M, R-1, R-2,
15 R-2.1, R-3, R-3.1, R-4, and S, as defined by California Building Code Title 24 Section 302 (2016) as
16 amended.

17 ~~2.~~ "Building Owner"

18 * * * *

19 ~~3.~~ "Building Characteristics"

20 * * * *

21 ~~4.~~ "Director"

22 * * * *

23 ~~5.~~ "Energy"

24 * * * *

25 ~~6.~~ "Energy efficiency audit"

* * * *

~~7.~~ "Energy Professional"

* * * *

~~8.~~ "ENERGY STAR ® Portfolio Manager"

* * * *

~~9.~~ "ENERGY STAR® Portfolio Manager Energy Performance Rating"

* * * *

~~10.~~ "Gross Floor Area" or "Area"

* * * *

~~11.~~ "kBTU"

* * * *

~~12.~~ "Level I Audit"

* * * *

~~13.~~ "Level II Audit"

* * * *

~~14.~~ "Net Present Value"

* * * *

~~15.~~ "Nonresidential ~~b~~Building" ~~and "building"~~ means a facility ~~of~~ composed of occupancy type(s) other than residential — including type A, B, E, I-1, I-2, I-3, M, R1, and S, as defined by California Building Code Title 24 Section 302 (2010~~6~~) as amended — where a gross area of 10,000 square feet or more is heated or cooled in its interior.

"Residential Building" means a facility composed of residential occupancy type(s) — including type R-2, R-2.1, R-3, R-3.1, and R-4 as defined by California Building Code Title 24 Section 302 (2016) as amended where a gross area of 50,000 square feet or more is heated or cooled in its interior.

~~16.~~ "Retro-Commissioning Measures"

* * * *

~~17.~~ "Retrofit Measures"

* * * *

~~18.~~ "Simple Payback"

* * * *

~~19.~~ "System"

* * * *

~~20.~~ "Tenant" means a person, as defined by California Public Resources Code 25116 or any successor legislation, who leases space in a ~~nonresidential~~ building.

SEC. 2002. ENERGY PERFORMANCE EVALUATION AND REPORTING REQUIRED.

(a) **Energy Efficiency Audits and Energy Efficiency Audit Reports.** The owner of any ~~n~~Nonresidential ~~b~~Building with a gross area of 10,000 square feet or greater shall conduct a comprehensive energy efficiency audit for each such building. Energy efficiency audits shall comprehensively examine whole buildings, and must be completed on the schedule set forth in Section 2004 ~~of this Chapter~~, or as described in Section 2006, as applicable.

(b) **Energy Efficiency Audit Standards.** Energy efficiency audits required by this Chapter 20 shall meet or exceed the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Procedures for Commercial Building Energy Audits (200411), or shall comply with Section 2006, as applicable. Energy efficiency audits must be performed by, or under the supervision of, an energy professional as defined in subsections (c) and (d), below. The level of detail required in an energy efficiency audit shall be proportionate to the scale of the ~~n~~Nonresidential ~~b~~Building, such that:

1 (1) Nonresidential Buildings greater than 50,000 square feet in gross area shall
2 receive a comprehensive audit of the whole building which meets or exceeds the Level II
3 Audit standard or equivalent as determined by the Director.

4 (2) Nonresidential Buildings greater than 10,000 square feet and less than or
5 equal to 49,999 square feet in gross area receive a walkthrough audit of the whole building
6 which meets or exceeds the Level I audit standard, or equivalent as determined by the
7 Director.

8 (c) **Energy Efficiency Auditor Qualifications.** An energy professional performing
9 or supervising energy efficiency audits must be able to demonstrate possession in good
10 standing of at least one of the following minimum qualifications:

11 (1) Licensed Engineer and one of the following:

12 (A) At least 2 years of experience performing energy efficiency audits or
13 commissioning of existing buildings; or

14 (B) ASHRAE Commissioning Process Management Professional Certification;
15 or

16 (C) Similar qualifications in energy efficiency analysis or commissioning.

17 (2) Association of Energy Engineers Certified Energy Manager (CEM), and at
18 least 2 years of experience performing energy efficiency audits or commissioning of existing
19 buildings;

20 (3) At least 10 years of experience as a building operating engineer, or at least 5
21 years of experience as a chief operating engineer and one of the following:

22 (A) BOC International Building Operator Certification; or

23 (B) International Union of Operating Engineers Certified Energy Specialist; or

24 (4) Equivalent professional qualifications to manage, maintain, or evaluate
25 building systems, as well as specialized training in energy efficiency audits and maintenance

1 of building systems, as determined by the Director and set forth on the Department of
2 Environment website.

3 **(d) Energy Efficiency Audit Report.** The energy professional shall prepare, sign,
4 and deliver to the owner of the ~~covered~~Nonresidential ~~b~~Building a report of the energy efficiency
5 audit which meets or exceeds the reporting standards set forth in ASHRAE Procedures for
6 Commercial Building Energy Audits (200411 or later), or equivalent as determined by the
7 Director pursuant to this Section 2002 or Section 2006, as applicable. The signed report shall
8 be delivered to the owner of the ~~covered~~Nonresidential ~~b~~Building. In the course of meeting the
9 relevant ASHRAE standards for communication, the energy efficiency audit report shall
10 include:

- 11 (1) The date(s) that the audit was performed;
- 12 (2) A list of all retro-commissioning and retrofit measures available to the owner;
- 13 (3) An estimate of the approximate energy savings, avoided energy cost, and
14 costs to implement each measure; and
- 15 (4) One of the following:
- 16 (A) A list of all retro-commissioning and retrofit measures available to the owner
17 with a simple payback of not more than 5 years; or
- 18 (B) A list of all retro-commissioning and retrofit measures available to the owner
19 with a positive net present value; or
- 20 (C) An integrated package of retro-commissioning and retrofit measures that in
21 combination will equal or exceed the total combined reduction in energy consumption of
22 implementing all retrofit and retro-commissioning measures with a simple payback of not more
23 than 5 years.

24 **(e) Tracking and benchmarking energy performance.** Building owners shall use
25 "EPA ENERGY STAR® Portfolio Manager" to track the total energy use of each ~~non-residential~~

1 ~~Nonresidential~~ bBuilding and obtain an ENERGY STAR® Portfolio Manager Energy
2 Performance Rating for each applicable entire ~~nonresidential~~ bBuilding according to the
3 schedule provided in Section 2004.
4

5 **SEC. 2003. DISCLOSURE OF ENERGY PERFORMANCE INFORMATION.**

6 (a) **Annual Energy Benchmark Summary Reporting.** The owner of every
7 ~~nonresidential building of greater than 10,000 gross square feet~~ Building in the City shall annually
8 file with the Department of the Environment an Annual Energy Benchmark Summary report
9 ("AEBS") for each ~~covered~~ bBuilding using ENERGY STAR® Portfolio Manager and according
10 to the schedule set forth in Section 2004 ~~of this Chapter~~. The AEBS shall be based on
11 assessment in Portfolio Manager of the entire ~~non-residential~~ bBuilding and related facilities,
12 and must use 12 continuous months of data ending no earlier than two months prior to
13 submittal to the Department of the Environment. Data required in the AEBS shall ~~be limited~~
14 ~~to include, at a minimum:~~

15 (1) **Descriptive Information.** Basic descriptive information to track compliance
16 with this ~~ordinance~~ Chapter 20, including but not limited to the bBuilding address, the individual
17 or entity responsible for the energy performance summary and energy efficiency audit, and
18 similar information required by the Director for purposes of tracking and reporting compliance.

19 (2) **Energy Benchmark Information.**

20 (A) The ENERGY STAR® Portfolio Manager Energy Performance Rating for the
21 bBuilding, wherever applicable;

22 (B) The nonresidential building energy rating established by the State of
23 California for the bBuilding, if applicable;

24 (C) The weather-normalized energy use intensity per unit area per year (kBtu
25 per square foot per year) for the bBuilding;

(D) The energy use intensity per unit area per year (kBtu per square foot per year) for the ~~h~~Building;

(E) Energy consumption by fuel, including electricity, natural gas, and/or steam where applicable for the Building, on the same frequency as required by the California Energy Commission in Title 20 of the California Code of Regulations at Section 1683, or other applicable regulations, and specified on the Department of the Environment website;

(F) The annual carbon dioxide equivalent emissions due to energy use for the ~~h~~Building as estimated by ENERGY STAR® Portfolio Manager or other tools approved by the Director in a manner consistent with Department Climate Action Plan Reporting procedures; ~~and~~

(FG) Similar metrics calculated by ENERGY STAR Portfolio Manager;

(H) Descriptive information required by Portfolio Manager to assess the property, such as facility gross square footage; ~~and~~

(I) Additional data consistent with regulations adopted by the California State Energy Resources Conservation and Development Commission in implementation of California Public Resources Code 25402.10.

(b) **Energy Efficiency Audit Reporting.** The owner of every ~~n~~Non-residential ~~h~~Building shall file a Confirmation of Energy Efficiency Audit for each ~~covered~~ ~~h~~Building with the Department of the Environment according to the schedule set forth in Section 2004 or Section 2006 ~~of this Chapter~~, as applicable. The Confirmation of Energy Efficiency Audit shall be limited to:

(1) Acknowledgement of the type of energy efficiency audit required for the ~~n~~Nonresidential ~~h~~Building.

(2) For the most recent energy efficiency audit meeting these requirements, a summary of:

1 (A) The date(s) that the audit was performed, along with affirmation by the
2 energy professional and building owner that the audit meets the applicable standards;

3 (B) A list of all retro-commissioning and retrofit measures available to the owner
4 with a simple payback of not more than 3 years, or with a beneficial net present value, or in an
5 integrated package of measures; ~~and~~,

6 (C) The sum of estimated costs, as well as the sum of estimated energy savings
7 if the list of identified measures, and indication which measures at the option of the owner
8 have been implemented; and

9 (D) An inventory of the significant energy-using systems and features of the building,
10 utilizing the United States Department of Energy's "Audit Template," or equivalent as determined by
11 the Director and set forth on the Department of the Environment website.

12 (c) **Publication of Limited Summary Data.** The Department of the Environment
13 shall make available to the public, ~~and~~ update at least annually, and report to the California
14 Energy Commission for compliance with California Public Resources Code Section 25402.10, the
15 following information:

16 (1) Summary statistics on energy use in ~~nonresidential b~~Buildings in San Francisco
17 derived from aggregation of Annual Energy Benchmark Summary reports, aggregation of
18 Confirmation of Energy Efficiency Audits, and relevant additional aggregate data as available;

19 (2) Summary statistics on overall compliance with this Chapter 20;

20 (3) For each ~~covered b~~Building:

21 (A) The status of compliance with the requirements of this Chapter; and

22 (B) Annual summary statistics for the whole Building from the Annual Energy
23 Benchmark Summary, including annual average energy use intensity, ENERGY STAR® Portfolio
24 Manager Energy Performance Rating where available, California energy performance ratings if
25

1 available, annual carbon dioxide emissions attributable to energy use in the Building, and additional
2 data consistent with State regulations implementing California Public Resources Code 25402.10.

3 (4) For each Nonresidential Building:

4 (BA) The minimum required ASHRAE level for an energy efficiency audit;

5 (CB) The most recent date when an energy efficiency audit meeting the required
6 ASHRAE level was completed;

7 ~~—— (D) Annual summary statistics for the whole building from the Annual Energy~~
8 ~~Benchmark Summary, including annual average energy use intensity, ENERGY STAR® Portfolio~~
9 ~~Manager Energy Performance Rating where available, California nonresidential energy performance~~
10 ~~ratings if available, and annual carbon dioxide emissions attributable to energy use in the building.~~

11 (d) **Tenant Notification.** In order to engage *b*Building occupants in efforts to save
12 energy, *b*Building owners must make the Annual Energy Benchmark Summary report
13 available to all tenants occupying the *b*Building.

14 (e) **Individually-Metered Tenant Spaces.** Where a unit or other space in a ~~covered~~
15 *b*Building is occupied by a tenant and such unit or space is separately metered by a utility
16 company, the owner of the *b*Building shall acquire energy usage data for all meters in the
17 *b*Building solely for the purpose of benchmarking the energy performance of the *b*Building as a
18 whole, consistent with California Public Resources Code Section 25402.10. Nothing in this Chapter
19 20 shall require or in any way change the ability of a *b*Building owner to report or disclose
20 energy usage of individual tenants.

21 (f) **Quality Assurance.** To assist with the reliability and utility of Annual Energy
22 Benchmark Summary and Confirmation of Energy Efficient Audit report data, as well as to
23 verify good faith compliance with this Chapter 20, the Director shall have the authority to
24 review relevant documents, including an ENERGY STAR® Statement of Energy Performance
25 or equivalent signed by an energy professional, or Energy Efficiency Audit Report. The Director may

1 promulgate regulations to require stamp and signature of such documents by an Engineer or Architect
2 licensed to perform work in California. In the event an energy efficiency audit report or
3 Statement of Energy Performance is found to have failed to meet the criteria in Section
4 2002(a) through (d), ~~T~~the Director may apply the administrative penalties specified in Section
5 2009, and the ~~b~~Building owner shall correct the errors and resubmit the energy efficiency audit
6 report or Statement of Energy performance within 45 days of being notified by the Director of
7 the insufficiencies of the original submission. Any energy-related information obtained in the
8 course of Quality Assurance beyond items explicitly required to be made public in Section
9 2003(c) shall remain confidential to the extent permitted by law, unless designated in writing
10 by the building owner to be public or otherwise demonstrated to be common knowledge.
11

12 **SEC. 2004. SCHEDULE FOR COMPLIANCE.**

13 **(a) Annual Energy Benchmark Summary Reports from Portfolio Manager.**

14 (1) For a ~~n~~Non-residential ~~b~~Building with gross area greater than or equal to 50,000
15 square feet, the owner must complete and submit the initial Annual Energy Benchmark
16 Summary report on or before October 1, 2011, and annually no later than April 1 thereafter.
17 Annual Energy Benchmark Summary report data submitted prior to January 1, 2012 shall not
18 be published, is exempt from Section 2003(c) and (d) of this Chapter 20, and shall remain
19 confidential to the extent permitted by law, unless designated in writing by the building owner
20 to be public or otherwise demonstrated to be common knowledge.

21 (2) For a ~~n~~Non-residential ~~b~~Building with gross area greater than 25,000 square
22 feet but less than or equal to 49,999 square feet, the owner must complete and submit the
23 initial AEBS on or before April 1, 2012, and annually no later than April 1 thereafter. Annual
24 Energy Benchmark Summary report data submitted prior to January 1, 2013 for
25 bNonresidential Buildings with gross area less than or equal to 50,000 square feet shall not be

published, is exempt from Section 2003(c) and (d) of this Chapter, and shall remain confidential to the extent permitted by law, unless designated in writing by the building owner to be public or otherwise demonstrated to be common knowledge.

(3) For a ~~n~~Non-residential ~~b~~Building with gross area greater than 10,000 square feet but less than or equal to 24,999 square feet, the owner must complete and submit the initial AEBS on or before April 1, 2013, and annually no later than April 1 thereafter. Annual Energy Benchmark Summary report data submitted prior to January 1, 2013 for ~~b~~Buildings with gross area less than or equal to 25,000 square feet shall not be published, is exempt from Section 2003(c) and (d) of this Chapter, and shall remain confidential to the extent permitted by law, unless designated in writing by the building owner to be public or otherwise demonstrated to be common knowledge.

(4) For Residential Buildings with a gross area greater than 50,000 square feet, the owner must complete and submit the initial AEBS on or before July 1, 2019, and annually no later than April 1 thereafter. Annual Energy Benchmark Summary report data submitted prior to January 1, 2020 for Residential Buildings shall not be published, is exempt from Section 2003(c) and (d) of this Chapter, and shall remain confidential to the extent permitted by law, unless designated in writing by the building owner to be public or otherwise demonstrated to be common knowledge.

(b) Energy Efficiency Audits and Reporting.

(1) No later than 120 days after enactment of this Chapter 20, the Department of ~~the~~ Environment shall establish a schedule for energy efficiency audit reports for ~~n~~Nonresidential ~~b~~Buildings not covered by Section 2006, such that:

(A) To ensure sufficient energy auditing capacity, due dates for initial energy efficiency audits for all ~~covered~~ Nonresidential ~~b~~Buildings shall be staggered over a three year rolling deadline, starting no later than 12 months after the effective date of this

1 ~~ordinance~~Chapter, with subsequent energy efficiency audits and energy efficiency audit reports
2 every five years thereafter.

3 (B) All Nonresidential ~~b~~Buildings required to undertake an energy efficiency audit
4 shall be assigned a specific date when a completed energy efficiency audit is due.

5 (C) The Department of the Environment shall notify the owner of each ~~covered~~
6 Nonresidential Building of the requirements of this ~~article~~Chapter one year prior to the date an
7 energy efficiency audit is required to be completed.

8 (2) The owners of ~~covered~~ Nonresidential Buildings in existence on the effective
9 date of this Chapter may comply with the first assigned due date for an energy efficiency audit
10 by submitting records of audits, retro-commissioning, and retrofits performed not more than 3
11 years prior to the effective date of this ~~ordinance~~Chapter, provided that the entire building was
12 evaluated and that the energy efficiency audit reports performed prior to the completion of
13 rule-making are signed and dated by a Professional Engineer, Certified Energy Manager,
14 Certified Energy Auditor, or person with similar professional credentials as determined by the
15 Director. Such submittals shall include certification that all work associated with the audit
16 (including but not limited to surveys, inspections, and analyses) was completed not more than
17 3 years prior to the effective date of this ~~ordinance~~Chapter, and meets at least one of the
18 following criteria:

19 (A) For Nonresidential ~~b~~Buildings greater than or equal to 50,000 square feet in
20 gross area, energy efficiency audits performed prior to the completion of rule-making must
21 meet the Level II audit standard.

22 (B) For Nonresidential ~~b~~Buildings 49,999 square feet in gross area or less,
23 energy efficiency audits performed prior to the completion of rule-making must meet the Level
24 I audit standard.

1 (C) An energy efficiency audit of the entire Nonresidential ~~b~~Building for work
2 implemented under the San Francisco Energy Watch program. ~~or~~

3 (D) Other comprehensive energy efficiency audit of the entire Nonresidential
4 ~~b~~Building, subject to approval by the Director.

5
6 **SEC. 2005. CONFIDENTIALITY.**

7 (a) Consistent with the provisions of this Section 2005 and to the extent permitted by
8 law, the Department of the Environment shall maintain the confidentiality of any information
9 submitted by building owners under this Chapter 20, where the owner has informed the
10 Department in writing within 15 business days of the submittal of such information that the
11 information is confidential business information of the owner or of a building tenant. ~~Lists of~~
12 ~~cost-effective energy efficiency measures as well as associated e~~Estimated costs and benefits for
13 ~~energy conservation measures identified in~~ individual ~~b~~Buildings shall be presumed confidential,
14 unless otherwise indicated in writing by the building owner or it can be demonstrated that the
15 information is already available to the public.

16 (b) The owner shall not be required by this Chapter 20 to disclose to third parties or
17 the public confidential business information of the owner or individual tenants. However, the
18 following limited summary information is not to be considered confidential:

19 (1) Confirmation that the ~~nonresidential~~ ~~b~~Building is in compliance with this ~~chapter,~~
20 Chapter 20 ~~of the San Francisco Environment Code;~~

21 (2) The minimum ASHRAE audit level required in an energy efficiency audit of the
22 Nonresidential ~~b~~Building, and the most recent date when an energy efficiency audit meeting the
23 relevant standard was completed; ~~and,~~

1 (3) Basic information describing the scale and use of the Nonresidential Building, and the
2 major energy-consuming components of the building as collected via the U.S. Department of Energy
3 Asset Score Audit Template or equivalent; and

4 (4) Aggregate annual summary statistics for a whole ~~b~~Building, including annual
5 average energy use intensity, ENERGY STAR® Portfolio Manager Energy Performance
6 Ratings, California ~~nonresidential~~ energy performance ratings, and annual carbon dioxide
7 emissions attributable to energy use in the building, and additional data consistent with State
8 regulations implementing California Public Resources Code Section 25402.10.

9 (c) If a building owner believes that any information required to be reported or
10 disclosed by this Chapter 20 includes confidential business information, the owner shall
11 provide the information to the Director and shall notify the Director in writing of that belief,
12 detailing the basis of the belief as to each specific item of information the person claims is
13 confidential business information. For purposes of this Chapter, "confidential business
14 information" shall have the same meaning as "trade secret" under California Civil Code
15 Section 3426.1, as amended. The owner designating information as confidential business
16 information shall also provide the Director with a name and street address for notification
17 purposes and shall be responsible for updating such information. The Director shall not
18 disclose any properly substantiated confidential business information which is so designated
19 by an owner except as required by this Chapter or as otherwise ~~required~~ permitted by law.

20 (d) Information designated as confidential ~~business information~~ may be disclosed to
21 an officer or employee of the City and County of San Francisco, the City's contractors or
22 utilities, the State of California, or the United States ~~of America~~ for use in connection with the
23 official duties of such officer or employee acting under authority of law, without liability on the
24 part of the City.

1 (e) When the Director or other City official or employee receives a request for
2 information that has been designated as, or which the City determines may be, confidential
3 business information, the City shall notify the building owner of the request. The City may
4 request further evidence or explanation from the owner as to why the information requested is
5 confidential business information. If the City determines that the information does not
6 constitute confidential business information, the City shall notify the owner of that conclusion
7 and that the information will be released by a specified date in order to provide the owner the
8 opportunity to obtain a court order prohibiting disclosure.

9 (f) In adopting this Chapter 20, the Board of Supervisors does not intend to
10 authorize or require the disclosure to the public of any confidential business information
11 protected under the laws of the State of California.

12 (g) This Section 2005 is not intended to empower a person or business to refuse to
13 disclose any information, including but not limited to confidential business information, to the
14 Director as required under this Chapter 20.

15 (h) Notwithstanding any other provision of this Chapter, any officer or employee of
16 the City and County of San Francisco, or former officer or employee or contractor with the City
17 or employee thereof, who by virtue of such employment ~~of~~ official position has obtained
18 possession or has had access to information, the disclosure of which is prohibited by this
19 Section 2005, and who, knowing that disclosure of the information is prohibited, knowingly and
20 willfully discloses the information in any manner to any person or business not entitled to
21 receive it, shall be guilty of a misdemeanor.

22 23 **SEC. 2008. EXCEPTIONS.**

24 (a) **Energy Efficiency Audit.** No energy efficiency audit is required if any one of the
25 following exceptions apply:

1 (1) **New Construction.** The Nonresidential ~~b~~Building was newly constructed less
2 than five years prior to the date an energy performance summary is due;

3 (2) **Regular ENERGY STAR®.** The ~~covered b~~Nonresidential Building has received
4 the EPA ENERGY STAR® label from the U.S. Environmental Protection Agency for at least
5 three of the five years preceding the filing of the building's energy performance summary; or,

6 (3) **LEED Existing Buildings Operations and Maintenance.** The ~~covered~~
7 bNonresidential Building has been certified under the Leadership in Energy and Environmental
8 Design (LEED) rating system for Existing Buildings Operation and Maintenance published by
9 the United States Green Building Council or other LEED rating system for whole existing
10 buildings as determined by the Department of the Environment, within five years prior to the
11 date the building's energy performance summary would otherwise be due.

12 * * * *

13
14 Section 4. Chapter 20 of the Environment Code is hereby amended by adding
15 Sections 2010 and 2011, to read as follows:

16 **SEC. 2010. UNDERTAKING FOR THE GENERAL WELFARE.**

17 In enacting and implementing this ordinance, the City is assuming an undertaking only to
18 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
19 obligation for breach of which it is liable in money damages to any person who claims that such breach
20 proximately caused injury.

21
22 **SEC. 2011. NO CONFLICT WITH FEDERAL OR STATE LAW.**


23 Nothing in this ordinance shall be interpreted or applied so as to create any requirement,
24 power, or duty in conflict with any federal or state law.

1 Section 5. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.
5

6 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the "Note" that appears under
11 the official title of the ordinance.
12

13
14
15 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

16
17 By:



NEHA GUPTA
Deputy City Attorney

18
19 n:\leganalas2019\1900216\01335961.docx
20
21
22
23
24
25

LEGISLATIVE DIGEST

[Environment Code - Existing Buildings Energy Performance and Benchmarking]

Ordinance amending the Environment Code to require owners of certain nonresidential and residential buildings to annually measure and disclose energy performance; to require the Department of the Environment to collect and make public summary statistics about the energy performance of such buildings; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Environment Code Chapter 20 requires owners of certain commercial buildings to conduct energy efficiency audits of their properties and file annual energy benchmark summaries for their buildings with the Department of Environment. It also requires the Department of Environment to gather and make available to the public summary statistics about the energy performance of these buildings.

In 2015, the California Legislature passed Assembly Bill 802, which requires statewide mandatory benchmarking and public disclosure for large commercial buildings as well as multifamily residential buildings.

Amendments to Current Law

This ordinance expands Chapter 20 of the Environment Code to require large multifamily residential buildings and certain commercial buildings to measure and disclose energy performance data to the Department of Environment and for such data to be made publicly available. The required reporting will either meet or exceed State law requirements and obviate the need for building owners to report directly to State authorities.

n:\legana\as2019\1900216\01328612.docx