

1 [Environment Code - Existing Buildings Energy Performance and Benchmarking]

2

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

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

12

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

14

15 Section 1. CEQA Findings.

16 The Planning Department has determined that the actions contemplated in this  
17 ordinance comply with the California Environmental Quality Act (California Public Resources  
18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
19 Supervisors in File No. 190142 and is incorporated herein by reference. The Board affirms  
20 this determination.

21

22 Section 2. Findings.

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

25

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-~~  
15 ~~1, R-2, R-2.1, R-3, R-3.1, R-4, and S, as defined by California Building Code Title 24 Section~~  
16 ~~302 (2016) as amended.~~ Nonresidential Building or a Residential Building, as these terms are  
17 defined in this Chapter 20.

18           ~~2.~~ “Building Owner”

19           \* \* \* \*

20           ~~3.~~ “Building Characteristics”

21           \* \* \* \*

22           ~~4.~~ “Director”

23           \* \* \* \*

24           ~~5.~~ “Energy”

25           \* \* \* \*

1           ~~6.~~ "Energy efficiency audit"

2           \* \* \* \*

3           ~~7.~~ "Energy Professional"

4           \* \* \* \*

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

6           \* \* \* \*

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

8           \* \* \* \*

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

10          \* \* \* \*

11          ~~11.~~ "kBTU"

12          \* \* \* \*

13          ~~12.~~ "Level I Audit"

14          \* \* \* \*

15          ~~13.~~ "Level II Audit"

16          \* \* \* \*

17          ~~14.~~ "Net Present Value"

18          \* \* \* \*

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

23           "Residential Building" means a facility composed of residential occupancy type(s) — including  
24 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)  
25 as amended where a gross area of 50,000 square feet or more is heated or cooled in its interior.

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

2           \* \* \* \*

3           ~~17.~~ "Retrofit Measures"

4           \* \* \* \*

5           ~~18.~~ "Simple Payback"

6           \* \* \* \*

7           ~~19.~~ "System"

8           \* \* \* \*

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

11  
12           **SEC. 2002. ENERGY PERFORMANCE EVALUATION AND REPORTING**  
13 **REQUIRED.**

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

20           (b) **Energy Efficiency Audit Standards.** Energy efficiency audits required by this  
21 Chapter 20 shall meet or exceed the American Society of Heating, Refrigerating, and Air-  
22 conditioning Engineers (ASHRAE) Procedures for Commercial Building Energy Audits  
23 (200411), or shall comply with Section 2006, as applicable. Energy efficiency audits must be  
24 performed by, or under the supervision of, an energy professional as defined in subsections  
25

1 (c) and (d), below. The level of detail required in an energy efficiency audit shall be  
2 proportionate to the scale of the ~~#~~Nonresidential ~~h~~Building, such that:

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

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

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

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

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

16 (B) ASHRAE Commissioning Process Management Professional Certification;

17 or

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

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

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

24 (A) BOC International Building Operator Certification; or

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

1 (4) Equivalent professional qualifications to manage, maintain, or evaluate  
2 building systems, as well as specialized training in energy efficiency audits and maintenance  
3 of building systems, as determined by the Director and set forth on the Department of  
4 Environment website.

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

13 (1) The date(s) that the audit was performed;

14 (2) A list of all retro-commissioning and retrofit measures available to the owner;

15 (3) An estimate of the approximate energy savings, avoided energy cost, and  
16 costs to implement each measure; and

17 (4) One of the following:

18 (A) A list of all retro-commissioning and retrofit measures available to the owner  
19 with a simple payback of not more than 5 years; or

20 (B) A list of all retro-commissioning and retrofit measures available to the owner  
21 with a positive net present value; or

22 (C) An integrated package of retro-commissioning and retrofit measures that in  
23 combination will equal or exceed the total combined reduction in energy consumption of  
24 implementing all retrofit and retro-commissioning measures with a simple payback of not more  
25 than 5 years.



1 (e) **Tracking and benchmarking energy performance.** Building owners shall use  
2 "EPA ENERGY STAR® Portfolio Manager" to track the total energy use of each ~~non-residential~~  
3 Nonresidential ~~b~~Building and obtain an ENERGY STAR® Portfolio Manager Energy  
4 Performance Rating for each applicable entire ~~n~~Nonresidential ~~b~~Building according to the  
5 schedule provided in Section 2004.  
6

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

8 (a) **Annual Energy Benchmark Summary Reporting.** The owner of every  
9 ~~nonresidential building of greater than 10,000 gross square feet~~ Building as defined in Section 2001  
10 of this Chapter in the City shall annually file with the Department of the Environment an  
11 Annual Energy Benchmark Summary report ("AEBS") for each ~~covered~~ ~~b~~Building using  
12 ENERGY STAR® Portfolio Manager and according to the schedule set forth in Section 2004  
13 ~~of this Chapter~~. The AEBS shall be based on assessment in Portfolio Manager of the entire  
14 ~~non-residential~~ ~~b~~Building and related facilities, and must use 12 continuous months of data  
15 ending no earlier than two months prior to submittal to the Department of the Environment.  
16 Data required in the AEBS shall ~~be limited to~~ include, at a minimum:

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

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

22 (A) The ENERGY STAR® Portfolio Manager Energy Performance Rating for the  
23 ~~b~~Building, wherever applicable;

24 (B) The nonresidential building energy rating established by the State of  
25 California for the ~~b~~Building, if applicable;

1 (C) The weather-normalized energy use intensity per unit area per year (kBTU  
2 per square foot per year) for the ~~h~~Building;

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

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

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

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

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

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

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

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

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

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

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

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

11 (D) An inventory of the significant energy-using systems and features of the  
12 buildingNon-residential Building, utilizing the United States Department of Energy’s “Audit  
13 Template,” or equivalent as determined by the Director and set forth on the Department of the  
14 Environment website.

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

19 (1) Summary statistics on energy use in ~~nonresidential~~ bBuildings in San Francisco  
20 derived from aggregation of Annual Energy Benchmark Summary reports, aggregation of  
21 Confirmation of Energy Efficiency Audits, and relevant additional aggregate data as available;

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

23 (3) For each ~~covered~~ bBuilding:

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

25

1                    (B) Annual summary statistics for the whole Building from the Annual Energy  
2 Benchmark Summary, including annual average energy use intensity, ENERGY STAR® Portfolio  
3 Manager Energy Performance Rating where available, California energy performance ratings if  
4 available, annual carbon dioxide emissions attributable to energy use in the Building, and additional  
5 data consistent with State regulations implementing California Public Resources Code 25402.10.

6                    (4) For each Nonresidential Building:

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

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

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

14                    (d) **Tenant Notification.** In order to engage *h*Building occupants in efforts to save  
15 energy, *h*Building owners must make the Annual Energy Benchmark Summary report  
16 available to all tenants occupying the *h*Building.

17                    (e) **Individually-Metered Tenant Spaces.** Where a unit or other space in a *covered*  
18 *h*Building is occupied by a tenant and such unit or space is separately metered by a utility  
19 company, the owner of the *h*Building shall acquire energy usage data for all meters in the  
20 *h*Building solely for the purpose of benchmarking the energy performance of the *h*Building as a  
21 whole, consistent with California Public Resources Code Section 25402.10. Nothing in this Chapter  
22 20 shall require or in any way change the ability of a *h*Building owner to report or disclose  
23 energy usage of individual tenants.

24                    (f) **Quality Assurance.** To assist with the reliability and utility of Annual Energy  
25 Benchmark Summary and Confirmation of Energy Efficient Audit report data, as well as to

1 verify good faith compliance with this Chapter 20, the Director shall have the authority to  
2 review relevant documents, including an ENERGY STAR® Statement of Energy Performance  
3 or equivalent signed by an energy professional, or Energy Efficiency Audit Report. The Director may  
4 promulgate regulations to require stamp and signature of such documents by an Engineer or Architect  
5 licensed to perform work in California. In the event an energy efficiency audit report or  
6 Statement of Energy Performance is found to have failed to meet the criteria in Section  
7 2002(a) through (d), ~~the~~ Director may apply the administrative penalties specified in Section  
8 2009, and the ~~h~~Building owner shall correct the errors and resubmit the energy efficiency audit  
9 report or Statement of Energy performance within 45 days of being notified by the Director of  
10 the insufficiencies of the original submission. Any energy-related information obtained in the  
11 course of Quality Assurance beyond items explicitly required to be made public in Section  
12 2003(c) shall remain confidential to the extent permitted by law, unless designated in writing  
13 by the building owner to be public or otherwise demonstrated to be common knowledge.

#### 14 15 **SEC. 2004. SCHEDULE FOR COMPLIANCE.**

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

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

24 (2) For a ~~n~~Non-residential ~~h~~Building with gross area greater than 25,000 square  
25 feet but less than or equal to 49,999 square feet, the owner must complete and submit the

1 initial AEBS on or before April 1, 2012, and annually no later than April 1 thereafter. Annual  
2 Energy Benchmark Summary report data submitted prior to January 1, 2013 for  
3 ~~Nonresidential~~ Buildings with gross area less than or equal to 50,000 square feet shall not be  
4 published, is exempt from Section 2003(c) and (d) of this Chapter, and shall remain  
5 confidential to the extent permitted by law, unless designated in writing by the building owner  
6 to be public or otherwise demonstrated to be common knowledge.

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

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

21 (b) **Energy Efficiency Audits and Reporting.**

22 (1) No later than 120 days after enactment of this Chapter 20, the Department of  
23 the Environment shall establish a schedule for energy efficiency audit reports for  
24 ~~Nonresidential~~ ~~Buildings~~ not covered by Section 2006, such that:  
25

1 (A) To ensure sufficient energy auditing capacity, due dates for initial energy  
2 efficiency audits for all ~~covered~~ Nonresidential ~~b~~Buildings shall be staggered over a three year  
3 rolling deadline, starting no later than 12 months after the effective date of this  
4 ~~ordinance~~Chapter, with subsequent energy efficiency audits and energy efficiency audit reports  
5 every five years thereafter.

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

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

11 (2) The owners of ~~covered~~ ~~b~~Nonresidential Buildings in existence on the effective  
12 date of this Chapter may comply with the first assigned due date for an energy efficiency audit  
13 by submitting records of audits, retro-commissioning, and retrofits performed not more than 3  
14 years prior to the effective date of this ~~ordinance~~Chapter, provided that the entire building was  
15 evaluated and that the energy efficiency audit reports performed prior to the completion of  
16 rule-making are signed and dated by a Professional Engineer, Certified Energy Manager,  
17 Certified Energy Auditor, or person with similar professional credentials as determined by the  
18 Director. Such submittals shall include certification that all work associated with the audit  
19 (including but not limited to surveys, inspections, and analyses) was completed not more than  
20 3 years prior to the effective date of this ~~ordinance~~Chapter, and meets at least one of the  
21 following criteria:

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

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

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

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

8  
9 **SEC. 2005. CONFIDENTIALITY.**

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

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

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



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

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

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

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

23 (d) Information designated as confidential ~~business information~~ may be disclosed to  
24 an officer or employee of the City and County of San Francisco, the City's contractors or  
25 utilities, the State of California, or the United States ~~of America~~ for use in connection with the

1 official duties of such officer or employee acting under authority of law, without liability on the  
2 part of the City.

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

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

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

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

24  
25 **SEC. 2008. EXCEPTIONS.**

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

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

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

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

14 \* \* \* \*

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

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

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

23  
24 **SEC. 2011. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

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

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

15  
16  
17 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

18  
19 By: \_\_\_\_\_  
NEHA GUPTA  
20 Deputy City Attorney

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