

1 [Environment Code - Existing Commercial Buildings Energy Performance]

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3 **Ordinance amending the San Francisco Environment Code by adding Chapter 20,**  
4 **Sections 2000 through 2009, to adopt the San Francisco Existing Commercial Buildings**  
5 **Energy Performance Ordinance, requiring owners of nonresidential buildings to**  
6 **conduct Energy Efficiency Audits of their properties and file Annual Energy Benchmark**  
7 **Summaries for their buildings, and making environmental findings.**

8 NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.  
10 Board amendment additions are double-underlined;  
11 Board amendment deletions are ~~strike-through normal~~.

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

13 Section 1. **Environmental Findings.** The Planning Department has determined that  
14 the actions contemplated in this ordinance are in compliance with the California  
15 Environmental Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on  
16 file with the Clerk of the Board of Supervisors in File No. 101105 and is incorporated herein by  
17 reference.

18 Section 2. **Findings.**

19 1. San Francisco is one of the oldest urban areas in California. Many of the City’s  
20 buildings were built before energy efficiency codes were enacted.

21 2. Systems for lighting, heating, cooling, ventilation, and other services in commercial  
22 buildings require regular tuning to operate as designed, as well as periodic retrofits to meet  
23 modern standards for energy efficiency.

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1           3. San Francisco's buildings use electricity partially supplied by fossil-fuel burning  
2 power plants and heat that is primarily supplied by the combustion of natural gas – both of  
3 which emit carbon dioxide, a cause of global warming.

4           4. Building energy use accounts for almost half of San Francisco's overall carbon  
5 dioxide emissions, and buildings account for sixty-three percent of the City's carbon dioxide  
6 emissions. Reducing energy use also reduces carbon dioxide emissions and San Francisco's  
7 contribution to global warming.

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

12           6. San Francisco began delivering energy efficiency services to the private sector in  
13 2002, prioritizing incentives to small business. These services provided upgraded equipment  
14 to more than 8,000 businesses and have reduced commercial energy costs by more than \$20  
15 million per year.

16           7. The City and County of San Francisco is conducting an aggressive municipal  
17 building energy efficiency program administered by the Public Utilities Commission.  
18 Since 2002, the City's energy efficiency program has completed more than 140 investment-  
19 grade energy audits and upgraded more than 100 municipal buildings, investing more than  
20 \$35 million in municipal energy efficiency improvements.

21           8. The Existing Commercial Buildings Task Force established in 2009 has  
22 recommended systematically identifying all cost-effective opportunities to improve the energy  
23 efficiency of commercial buildings citywide.

24           9. Recognizing the value of measurement and transparency as tools to enable  
25 effective management of resources, the Existing Commercial Buildings Task Force

1 recommended that energy audits and public disclosure of building performance data be made  
2 available to all building stakeholders.

3 10. By ensuring that every non-residential building owner, operator, manager, tenant,  
4 and their agents is informed about the full set of opportunities to cost effectively improve  
5 energy efficiency, the numerous subsidies and incentives available, and how each building is  
6 performing relative to its peers, non-residential building decision makers will have every  
7 incentive to make decisions in their own interest, to reduce utility costs and improve the  
8 competitiveness of San Francisco properties.

9 11. The Department of Environment operates energy efficiency programs that have  
10 provided free energy audits for more than 8,000 small businesses and multifamily buildings.  
11 These programs upgrade lighting, heating, cooling, and refrigeration systems at a discount  
12 averaging in excess of 50 percent of total cost of the upgrade.

13 12. The Department of Environment estimates that energy efficiency audits and public  
14 sharing of energy performance information, in combination with existing financing and  
15 incentive programs, will double the pace of energy efficiency retrofit activity in commercial  
16 sector for the first five years after adoption of this ordinance.

17 13. Cost-effective investments in energy efficiency are anticipated to reduce citywide  
18 carbon dioxide emissions by more than 70,800 tons over the first five years after adoption,  
19 with a net present value to the private sector exceeding \$600 million dollars.

20 14. The evaluation, upgrade, and optimized operation of commercial buildings will  
21 expand opportunities for skilled jobs in construction trades, engineering, operations, sales,  
22 and innovative technologies. Investing in energy efficiency will contribute to stable, long-term  
23 economic growth, encourage job creation, and enhance stewardship of natural resources.

1 Section 3. The San Francisco Environment Code is hereby amended, by adding  
2 Chapter 20, Sections 2000 through 2009, to read as follows:

3 **SEC. 2000. TITLE AND PURPOSE.**

4 *This Chapter may be referred to as the Existing Commercial Buildings Energy Performance*  
5 *Ordinance.*

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

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11 **SEC. 2001. DEFINITIONS.**

12 *For purposes of this Chapter, the following terms shall have the following meanings:*

13 *1. "Annual Energy Benchmark Summary" means a report to the Department of Environment*  
14 *summarizing the annual energy performance of a whole building for purposes of verifying compliance*  
15 *with this chapter, tracking improvement, motivating improved energy performance, targeting incentives*  
16 *and resources, and enabling comparison to similar facilities.*

17 *2. "Building Owner" means a person, as defined by California Public Resources Code Section*  
18 *25116 or any successor legislation, possessing title to the building. For buildings owned or primarily*  
19 *occupied by City departments, the department or entity responsible for annual greenhouse gas*  
20 *emissions reporting for the building under Section 904 of this Code may act as the "building owner"*  
21 *for purposes of this Chapter.*

22 *3. "Building Characteristics" means basic descriptive information and reasonable estimates of*  
23 *factors affecting energy use in the building, including but not limited to building type and space*  
24 *attributes as defined by the benchmarking tool(s).*

25 *4. "Director" means the Director of the Department of the Environment, or his or her designee.*

1           5. "Energy" means electricity, natural gas, steam, heating oil, or other product sold by a utility  
2 to a customer of a nonresidential building, or renewable on-site electricity generation, for purposes of  
3 providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the  
4 building and related facilities.

5           6. "Energy efficiency audit" means a systematic evaluation to identify modifications and  
6 improvements to building equipment and systems which utilize energy, meeting or exceeding the  
7 Procedures for Commercial Building Energy Audits published by the American Society of Heating,  
8 Refrigerating, and Air-conditioning Engineers Inc. (ASHRAE), or similar comprehensive whole-  
9 building evaluation, as determined by the Director, or, in the case of municipal buildings, as  
10 determined by the General Manager of the Public Utilities Commission.

11          7. "Energy Professional" means an individual qualified to perform energy efficiency audits  
12 required by this Chapter, as further detailed in Section 2002(c) of this Chapter.

13          8. "ENERGY STAR<sup>®</sup> Portfolio Manager" means the US Environmental Protection Agency's  
14 online tool for managing building data, used to create a US EPA Energy Performance Rating.

15          9. "ENERGY STAR<sup>®</sup> Portfolio Manager Energy Performance Rating" means the US  
16 Environmental Protection Agency's 1-to-100 building energy efficiency measurement, normalized for a  
17 building's characteristics, operations, and weather, according to methods established by US EPA's  
18 ENERGY STAR<sup>®</sup> Portfolio Manager.

19          10. "Gross Floor Area" or "Area" means the total number of square feet measured between the  
20 principal exterior surfaces of enclosing fixed walls.

21          11. "kBTU" means kilo (thousand) British thermal units, a common unit of energy measurement  
22 utilized to convert and combine other common energy measurements such as kilowatt hours of  
23 electricity, therms of natural gas, and pounds of steam.

24          12. "Level I Audit" means a brief on-site survey of a building which identifies and provides cost  
25 analysis for low-cost and no-cost energy saving measures, and lists potential capital improvements.

1 meeting the Level I standard of Procedures for Commercial Building Energy Audits published by the  
2 American Society of Heating, Refrigerating, and Air-conditioning Engineers Inc. (ASHRAE)

3 13. "Level II Audit" means a detailed on-site survey and energy analysis which identifies and  
4 provides savings and cost analysis of all practical measures and meets the Level II standard of  
5 Procedures for Commercial Building Energy Audits published by the American Society of Heating,  
6 Refrigerating, and Air-conditioning Engineers Inc. (ASHRAE).

7 14. "Net Present Value" means the value in today's dollars of all future costs and benefits from  
8 an investment, after compensating for the effects of interest.

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

13 16. "Retro-Commissioning Measures" mean non-capital work such as repairs, maintenance,  
14 adjustments, changes to controls or related software, or operational improvements that optimize a  
15 building's energy performance and that have been identified by a systematic process of investigating  
16 and analyzing the performance of a building's equipment and systems that impact energy consumption.

17 17. "Retrofit Measures" mean capital alterations of building systems involving the installation  
18 of energy efficiency technologies that reduce energy consumption and improve the efficiency of such  
19 systems.

20 18. "Simple Payback" means the number of years it takes for the projected annual energy  
21 savings to pay back the amount invested in the energy efficiency measure, as determined by dividing the  
22 investment by the annual energy savings.

23 19. "System" means a building assembly made up of various components that serve a specific  
24 function, including but not limited to exterior walls, windows, doors, roofs, ceilings, floors, lighting,  
25

1 pipng, ductwork, insulation, HVAC system equipment or components, electrical appliances and  
2 plumbing appliances.

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

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6 **SEC. 2002. ENERGY PERFORMANCE EVALUATION AND REPORTING REQUIRED.**

7 (a) Energy Efficiency Audits and Energy Efficiency Audit Reports. The owner of any  
8 nonresidential building with a gross area of 10,000 square feet or greater shall conduct a  
9 comprehensive energy efficiency audit for each such building not less than once every 5 years, as  
10 applicable. Energy efficiency audits shall comprehensively examine whole buildings, and must be  
11 completed on the schedule set forth in Section 2004, ~~subds. (a) through (c),~~ of this Chapter, or as  
12 described in Section 2006, as applicable.

13 (b) Energy Efficiency Audit Standards. Energy efficiency audits required by this Chapter  
14 shall meet or exceed the American Society of Heating, Refrigerating, and Air-conditioning Engineers  
15 (ASHRAE) Procedures for Commercial Building Energy Audits (2004), or shall comply with  
16 Section 2006, as applicable. Energy efficiency audits must be performed by, or under the supervision  
17 of, an energy professional as defined in subsections 9c) and (d), below. The level of detail required in  
18 an energy efficiency audit shall be proportionate to the scale of the nonresidential building, such that:

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

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

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

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

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

7                           (B) ASHRAE Commissioning Process Management Professional Certification;  
8 or

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

10                   (2) Association of Energy Engineers Certified Energy Manager (CEM), and at least  
11 2 years experience performing energy efficiency audits or commissioning of existing buildings;

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

14                           (A) BOC International Building Operator Certification; or

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

16                   (4) Equivalent professional qualifications to manage, maintain, or evaluate building  
17 systems, as well as specialized training in energy efficiency audits and maintenance of building  
18 systems, as determined by the Director.

19           (d) **Energy Efficiency Audit Report.** The energy professional shall prepare, sign, and deliver  
20 to the owner of the covered building a report of the energy efficiency audit which meets or exceeds the  
21 reporting standards set forth in ASHRAE Procedures for Commercial Building Energy Audits (2004 or  
22 later), or equivalent as determined by the Director pursuant to this Section or Section 2006, as  
23 applicable. The signed report shall be delivered to the owner of the covered building. In the course of  
24 meeting the relevant ASHRAE standards for communication, the energy efficiency audit report shall  
25 include:



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

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

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

5 (4) One of the following:

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

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

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

13 (e) **Tracking and benchmarking energy performance.** Building owners shall use "EPA  
14 ENERGY STAR<sup>®</sup> Portfolio Manager" to track the total energy use of each non-residential building and  
15 obtain an ENERGY STAR<sup>®</sup> Portfolio Manager Energy Performance Rating for each applicable entire  
16 nonresidential building according to the schedule provided in Section 2004.

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

19 (a) **Annual Energy Benchmark Summary Reporting.** The owner of every non-residential  
20 building of greater than 10,000 gross square feet in the City shall annually file with the Department of  
21 the Environment an Annual Energy Benchmark Summary report ("AEBS") for each covered building  
22 using ENERGY STAR<sup>®</sup> Portfolio Manager and according to the schedule set forth in Section 2004 of  
23 this Chapter. The AEBS shall be based on assessment in Portfolio Manager of the entire non-  
24 residential building and related facilities, and must use 12 continuous months of data ending no earlier  
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1 than two months prior to submittal to the Department of the Environment. Data required in the AEBS  
2 shall be limited to:

3 **(1) Descriptive Information.**

4 Basic descriptive information to track compliance with this ordinance, including but not  
5 limited to the building address, the individual or entity responsible for the energy performance  
6 summary and energy efficiency audit, and similar information required by the Director for purposes of  
7 tracking and reporting compliance.

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

9 (A) The ENERGY STAR<sup>®</sup> Portfolio Manager Energy Performance Rating for the  
10 building, wherever applicable;

11 (B) The nonresidential building energy rating established by the State of  
12 California for the building, if applicable;

13 (C) The weather-normalized energy use intensity per unit area per year (kBtu  
14 per square foot per year) for the building;

15 (D) The energy use intensity per unit area per year (kBtu per square foot per  
16 year) for the building;

17 (E) The annual carbon dioxide equivalent emissions due to energy use for the  
18 building as estimated by ENERGY STAR<sup>®</sup> Portfolio Manager or other tools approved by the Director  
19 in a manner consistent with Department Climate Action Plan Reporting procedures; and

20 (F) Descriptive information required by Portfolio Manager to assess the  
21 property, such as facility gross square footage.

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

1 (1) Acknowledgement of the type of energy efficiency audit required for the  
2 nonresidential building.

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

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

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

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

13 (c) **Publication of Limited Summary Data.** The Department of the Environment shall make  
14 available to the public, and update at least annually, the following information:

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

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

19 (3) For each covered building:

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

21 (B) The minimum required ASHRAE level for an energy efficiency audit;

22 (C) The most recent date when an energy efficiency audit meeting the required  
23 ASHRAE level was completed;

24 (D) Annual summary statistics for the whole building from the Annual Energy  
25 Benchmark Summary, including annual average energy use intensity, ENERGY STAR® Portfolio

1 Manager Energy Performance Rating where available, California nonresidential energy performance  
2 ratings if available, and annual carbon dioxide emissions attributable to energy use in the building.

3 (d) **Tenant Notification.** In order to engage building occupants in efforts to save energy,  
4 building owners must make the Annual Energy Benchmark Summary report available to all tenants  
5 occupying the building.

6 (e) **Individually-Metered Tenant Spaces.** Where a unit or other space in a covered building is  
7 occupied by a tenant and such unit or space is separately metered by a utility company, the owner of  
8 the building shall acquire energy usage data for all meters in the building solely for the purpose of  
9 benchmarking the energy performance of the building as a whole. Nothing in this Chapter shall  
10 require or in any way change the ability of a building owner to report or disclose energy usage of  
11 individual tenants.

12 (f) **Quality Assurance.** To assist with the reliability and utility of Annual Energy Benchmark  
13 Summary and Confirmation of Energy Efficient Audit report data, as well as to verify good faith  
14 compliance with this Chapter, the Director shall have the authority to review relevant documents,  
15 including an ENERGY STAR<sup>®</sup> Statement of Energy Performance signed by an energy professional, or  
16 Energy Efficiency Audit Report. In the event an energy efficiency audit report or Statement of Energy  
17 Performance is found to have failed to meet the criteria in Section 2002(a) through (d), The Director  
18 may apply the administrative penalties specified in Section 2009, and the building owner shall correct  
19 the errors and resubmit the energy efficiency audit report or Statement of Energy performance within  
20 45 days of being notified by the Director of the insufficiencies of the original submission.

21 Any energy-related information obtained in the course of Quality Assurance beyond items  
22 explicitly required to be made public in Section 2003(c) shall remain confidential to the extent  
23 permitted by law, unless designated in writing by the building owner to be public or otherwise  
24 demonstrated to be common knowledge.

1 **SEC. 2004. SCHEDULE FOR COMPLIANCE.**

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

3 (1) For a non-residential building with gross area greater than 50,000 square feet, the  
4 owner must complete and submit the initial Annual Energy Benchmark Summary report on or before  
5 October 1, 2011, and annually no later than April 1 thereafter. Annual Energy Benchmark Summary  
6 report data submitted prior to January 1, 2012 shall not be published, is exempt from Section 2003(c)  
7 and (d) of this Chapter, and shall remain confidential to the extent permitted by law, unless designated  
8 in writing by the building owner to be public or otherwise demonstrated to be common knowledge.

9 (2) For a non-residential building with gross area greater than 25,000 square feet but  
10 less than or equal to 49,999 square feet, the owner must complete and submit the initial AEBS on or  
11 before April 1, 2012, and annually no later than April 1 thereafter. Annual Energy Benchmark  
12 Summary report data submitted prior to January 1, 2013 for buildings less than or equal to 50,000  
13 square feet shall not be published, is exempt from Section 2003(c) and (d) of this Chapter, and shall  
14 remain confidential to the extent permitted by law, unless designated in writing by the building owner  
15 to be public or otherwise demonstrated to be common knowledge.

16 (3) For a non-residential building with gross area greater than 10,000 square feet but  
17 less than 24,999 square feet, the owner must complete and submit the initial AEBS on or before April 1,  
18 2013, and annually no later than April 1 thereafter. Annual Energy Benchmark Summary report data  
19 submitted prior to January 1, 2013 for buildings less than or equal to 25,000 square feet shall not be  
20 published, is exempt from Section 2003(c) and (d) of this Chapter, and shall remain confidential to the  
21 extent permitted by law, unless designated in writing by the building owner to be public or otherwise  
22 demonstrated to be common knowledge.

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

2                   (1) No later than 120 days after enactment of this Chapter, the Department of  
3 Environment shall establish a schedule for energy efficiency audit reports for nonresidential buildings  
4 not covered by Section 2006, such that:

5                   (A) To ensure sufficient energy auditing capacity, due dates for initial energy  
6 efficiency audits for all covered buildings shall be staggered over a ~~three~~ five year rolling deadline,  
7 starting no later than ~~12~~ 18 months after the effective date of this ordinance, with subsequent energy  
8 efficiency audits and energy efficiency audit reports ~~due~~ every five years thereafter,

9                   (B) All buildings required to undertake an energy efficiency audit shall be  
10 assigned a specific date when a completed energy efficiency audit is due,

11                   (C) The Department of Environment shall notify the owner of each covered  
12 building of the requirements of this article one year prior to the date an energy efficiency audit is  
13 required to be completed.

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

1                                    (A) For buildings greater than 50,000 square feet in gross area, energy  
2 efficiency audits performed prior to the completion of rule-making must meet the Level II audit  
3 standard.

4                                    (B) For buildings 49,999 square feet in gross area or less, energy efficiency  
5 audits performed prior to the completion of rule-making must meet the Level I audit standard.

6                                    (C) An energy efficiency audit of the entire building for work implemented under  
7 the San Francisco Energy Watch program, or

8                                    (D) Other comprehensive energy efficiency audit of the entire building, subject  
9 to approval by the Director.

10  
11 **SEC. 2005. CONFIDENTIALITY.**

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

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

23                                    (1) Confirmation that the nonresidential building is in compliance with this chapter,  
24 Chapter 20 of the San Francisco Environment Code;

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

4                   (3) Aggregate annual summary statistics for a whole building, including annual  
5 average energy use intensity, ENERGY STAR<sup>®</sup> Portfolio Manager Energy Performance Ratings,  
6 California nonresidential energy performance ratings, and annual carbon dioxide emissions  
7 attributable to energy use in the building.

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

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

22                   (e) When the Director or other City official or employee receives a request for information that  
23 has been designated as, or which the City determines may be, confidential business information, the  
24 City shall notify the building owner of the request. The City may request further evidence or  
25 explanation from the owner as to why the information requested is confidential business information. If



1 the City determines that the information does not constitute confidential business information, the City  
2 shall notify the owner of that conclusion and that the information will be released by a specified date in  
3 order to provide the owner the opportunity to obtain a court order prohibiting disclosure.

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

7 (g) This Section is not intended to empower a person or business to refuse to disclose any  
8 information, including but not limited to confidential business information, to the Director as required  
9 under this Chapter.

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

16  
17 **SEC. 2006. MUNICIPAL FACILITIES.**

18 (a) The General Manager of the Public Utilities Commission (PUC) may elect to develop a  
19 compliance plan for municipally owned buildings greater than 10,000 square feet, on or before July 1,  
20 2011. The goal of a compliance plan shall be to apply the results of energy audits and benchmarking  
21 to prioritize the implementation of energy efficiency upgrades in municipal buildings and to maximize  
22 energy savings. The compliance plan shall constitute the entirety of regulatory compliance with this  
23 Chapter for municipal buildings and shall include all of the following:

24 (1) Consultation with City Departments. The compliance plan shall be developed in  
25 consultation with relevant City departments including the Department of the Environment, the

1 Department of Real Estate and the Capital Planning Committee established in Administrative Code  
2 Section 3.21, so as to leverage existing energy data collection processes;

3 (2) Benchmarking tools applicable to municipal building types. Benchmarking shall  
4 include, but is not limited to, information substantially equivalent to the Energy Benchmark  
5 Information in Section 2003(a)(2) as determined by the General Manager of the Public Utilities  
6 Commission. For the purpose of benchmarking municipally owned buildings greater than 10,000  
7 square feet, each City department head or agency general manager shall provide to the General  
8 Manager of the Public Utilities Commission the data required by the compliance plan for all municipal  
9 buildings under the respective department or agency jurisdiction. Benchmarking municipal facilities  
10 shall be completed according to the compliance schedule in Section 2004(a);

11 (3) Energy audit protocols;

12 (4) Reporting protocols; and,

13 (5) A timeline for compliance with energy audit requirements.

14 (b) If a compliance plan for municipally owned buildings is not developed and implementation  
15 initiated pursuant to paragraph (a), each City department head or agency general manager shall be  
16 responsible for compliance with the provisions of this Chapter for all municipally owned buildings  
17 under the respective department or agency jurisdiction.

18  
19 **SEC. 2007. IMPLEMENTATION.**

20 (a) The Director may adopt rules and regulations for the implementation of this Chapter,  
21 including rules for the electronic submittal of Annual Energy Benchmark Summary Reports and  
22 Confirmations of Energy Efficient Audits, as well as verification that the Department has received an  
23 Annual Energy Benchmark Summary or Confirmation of Energy Efficient Audit.

24 (b) The Director may modify or suspend the requirements of this Chapter if:  
25

1                   (1) The State of California or Federal government adopts a similar or more  
2 comprehensive building energy performance rating program, and such regulation requires  
3 comprehensive rating and/or public identification of existing building stock; or,

4                   (2) The Director makes written finding to the Commission on the Environment that a  
5 technological deficiency in the evaluation tool or tools specified under this Chapter precludes  
6 compliance with this Chapter. The Director may lift all or part of such suspension upon the written  
7 finding that any such deficiency has been corrected.

8  
9 **SEC. 2008. EXCEPTIONS.**

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

12                   (1) **New Construction.** The building was newly constructed less than five years prior to  
13 the date an energy performance summary is due;

14                   (2) **Regular ENERGY STAR®.** The covered building has received the EPA ENERGY  
15 STAR® label from the US Environmental Protection Agency for at least three of the five years  
16 preceding the filing of the building's energy performance summary; or,

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

23                   (4) **Financial Distress.** Owners of financially distressed buildings may apply for  
24 extensions of not more than one year in each instance for completion of an Energy Efficiency Audit and  
25 submittal of Confirmation of Energy Efficiency Audit, and for not more than one year in each instance

1 for submittal of an Energy Benchmark Summary. Buildings in financial distress at the time an Energy  
2 Efficiency Audit or Energy Benchmark Summary are due include:

3 (A) Properties qualified for sale at public auction by the Treasurer and Tax  
4 Collector due to arrears of property taxes that resulted in the property's qualification for sale at public  
5 auction or acquisition by a public agency within two years prior to the due date of an energy efficiency  
6 audit report;

7 (B) Buildings where a court appointed receiver is in control of the asset due to  
8 financial distress;

9 (C) Buildings owned by a financial institution through default by the borrower;

10 (D) Buildings acquired by a deed in lieu of foreclosure; and

11 (E) Buildings where the senior mortgage is subject to a notice of default.

12 (5) **Three or More Buildings Under Common Ownership.** Where the same person or  
13 entity owns three or more buildings subject to this Chapter, and the Energy Efficiency Audit due dates  
14 for more than one-third of those buildings fall within a single twelve-month period, the building owner  
15 may apply to the Director for, and shall be granted, an extension, not to exceed one year, of the due  
16 dates for the Energy Efficiency Audits and Confirmations of Energy Efficiency Audits for up to two-  
17 thirds of the buildings under common ownership. The application shall specify which buildings are to  
18 be covered by the extension.

19 (b) **Confirmation of Energy Efficiency Audit.** Where an energy efficiency audit is not  
20 required due to one of the exceptions in Section 2008(a), the Confirmation of Energy Efficiency Audit  
21 shall be filed, shall include reference to the exception that applies, and shall include a copy of relevant  
22 documentation for verification by the Department of Environment:

23 (1) Date of New Construction may be verified using a copy of the Certificate of  
24 Occupancy issued by the Department of Building Inspection.

1                   (2) ENERGY STAR<sup>®</sup> label may be verified using a report from Portfolio Manager  
2 signed by the professional engineer, or confirmation of listings on the US Environmental Protection  
3 Agency list of ENERGY STAR labeled buildings.

4                   (3) LEED for Existing Buildings Operation and Maintenance certification may be  
5 verified using a copy of the relevant certificate or confirmation of listing on the Green Building  
6 Certification Institute's LEED Certified Projects List; and

7                   (4) Financial distress may be verified using a record of sale at public auction or an  
8 affidavit from the Treasurer Tax Collector.

9                   (5) Exceptions under subsection (a)(5) may be verified using a copy of the extension  
10 granted by the Director.

11                   (c) **Annual Energy Benchmark Summary.** Exceptions to energy efficiency audit requirements  
12 do not affect the date when an AEBS report is due. However, benchmarking with Energy Star Portfolio  
13 Manager is not required under the following conditions:

14                   (1) **New Buildings.** New buildings may receive an extension to the date of submittal of  
15 an initial Annual Energy Benchmark Summary report of not less than 24 months from the date that a  
16 Certificate of Occupancy is issued by the Department of Building Inspection, or the applicable deadline  
17 in the Department of the Environment compliance schedule, whichever is greater. AEBS reports shall  
18 be due annually thereafter.

19                   (2) **Unoccupied Buildings.** Benchmarking with Energy Star Portfolio Manager is not  
20 required if the building had less than one full-time equivalent occupant for the twelve-month period  
21 preceding the due date of an Annual Energy Benchmark Summary.

22  
23 **SEC. 2009. ENFORCEMENT.**

24                   (a) **Written Warning of Violation.** The Director shall issue a written warning to any building  
25 owner he or she determines is violating any provision of this Chapter. In the event a building owner

1 fails to file an AEBS report for 30 days or more after the relevant deadline, the Director shall indicate  
2 that building's compliance status via the publicly accessible electronic reporting interface. If 45 days  
3 after issuing a written warning of violation from the Director, the Director finds that building owner  
4 continues to violate any provisions of this Chapter, the Director may impose administrative fines as  
5 provided in this Section.

6 (b) **Administrative Fines.** Violations of the provisions of this Chapter, or of any regulations  
7 issued by the Director pursuant to Section 2007, may be punished by administrative fines as follows:

8 (1) For buildings of 50,000 square feet and greater, up to \$100.00 per day for a  
9 maximum of 25 days in one twelve-month period for each building in violation.

10 (2) For buildings of 49,999 square feet or less, up to \$50.00 per day for a maximum of  
11 25 days in one twelve-month period for each building in violation.

12 Except as to the amount of administrative fines, set forth above, Administrative Code  
13 Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as may be amended from  
14 time to time, is hereby incorporated in its entirety and shall govern the imposition, enforcement,  
15 collection, and review of administrative citations issued by the Department of the Environment to  
16 enforce this Chapter and any rule or regulation adopted pursuant to this Chapter.

17 (c) **Use of Proceeds.** Administrative fine collected under subsection (b) shall be used to fund  
18 implementation and enforcement of this Chapter.

19 (d) This Section shall not apply to the City or to any municipally owned buildings.

20  
21 **Section 4. Additional Provisions.**

22 (a) **General Welfare.** In adopting and implementing this Chapter, the City and County  
23 of San Francisco is assuming an undertaking only to promote the general welfare. It is not  
24 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
25

1 is liable in money damages to any building owner who claims that such breach proximately  
2 caused injury.

3 (b) **Conflict with State or Federal Law.** This Chapter shall be construed so as not to  
4 conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter  
5 shall authorize any City agency or department to impose any duties or obligations in conflict  
6 with limitations on municipal authority established by State or federal law at the time such  
7 agency or department action is taken.

8 (c) **Severability.** If any of the provisions of this Chapter or the application thereof to  
9 any building owner or circumstance is held invalid, the remainder of those provisions,  
10 including the application of such part or provisions to building owners or circumstances other  
11 than those to which it is held invalid, shall not be affected thereby and shall continue in full  
12 force and effect. To this end, the provisions of this Chapter are severable.

13

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

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18 By: \_\_\_\_\_  
19 THOMAS J. OWEN  
20 Deputy City Attorney

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