CITY ENERGY
A JOINT PROJECT of NRDC + IMT

Benchmarking and Disclosure:
Existing Ordinances

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Benchmarking

Rev. 1
February 2014

Benchmarking and Disclosure:
Austin

Summary Information:

Date Ordinance Passed: April 2011
Private Sector Size Threshold: 10,000 sf
Public Sector Size Threshold: 10,000 sf
Sectors Covered: Commercial
Disclosure: Transactional
Frequency: Annual
Water Included: Yes or No
City Report Required: Yes or No
Other: Also includes energy audit requirements

ORDINANCE NO. 20110421-002

AN ORDINANCE AMENDING CHAPTER 6-7 OF THE CITY CODE RELATING TO ENERGY CONSERVATION AUDIT AND DISCLOSURE REQUIREMENTS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Chapter 6-7 is amended to read:

CHAPTER 6-7. ENERGY CONSERVATION.

ARTICLE 1. General Provisions.

§ 6-7-1 DEFINITIONS.

In this chapter:

(1) COMMERCIAL FACILITY means a building used for ~~non-residential,~~ civic, ~~or~~ commercial, and/or industrial uses, excluding manufacturing [~~building and does not include an industrial building~~], with a gross floor area of 10,000 square feet or greater.

(2) CONDOMINIUM means a site that combines separate ownership of individual units with common ownership of other elements such as common areas.

(~~2~~3) DIRECTOR means the director of the Austin Electric Utility.

(4) GROSS FLOOR AREA means the total number of enclosed square feet measured between the exterior surfaces of the fixed walls within any structure used or intended for supporting or sheltering any use or occupancy.

(~~3~~5) MULTI-FAMILY FACILITY means a site with five or more dwelling units.

(4~~6~~) OWNER means a person with a freehold interest in a facility to which this chapter applies.

(~~5~~7) RESIDENTIAL FACILITY means a site with four or fewer dwelling units.

(~~6~~8) TIME OF SALE means the effective date of an executory contract [~~the recording of a deed~~] binding [~~transferring~~] the purchaser [~~legal title to real property~~] to purchase [~~implement~~] the [~~sale of~~] property.

§ 6-7-2 APPLICABILITY.

This chapter applies to a [~~commercial, residential, or multi-family facility if the~~] facility that receives electric service from the Austin Electric Utility[~~, as determined by the director~~].

§ 6-7-3 ADMINISTRATIVE RULES.

(A) The director shall adopt administrative rules for the implementation of this chapter.

(B) The rules shall be available for inspection at the Austin Electric Utility administrative offices during normal business hours.

§ 6-7-4 VARIANCES.

(A) The director [~~may~~]shall grant a variance from a requirement of this chapter if the director determines that either, (1) due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this chapter would cause undue hardship or (2), due to exhaustion of reasonable energy efficiency measures, full compliance would require performance of work excluded from the scope of section 6-7-23(B). A variance granted under this subsection (A) must be limited to the minimum change necessary to avoid the undue hardship or excluded work.

(B) In addition to the variance authorized in subsection (A), the director may grant a variance from a requirement in this chapter if the director determines that:

(1) application for a permit to substantially remodel or demolish the facility will be filed not later than 6 months after the time of sale; and

(2) in the case of remodel, the owner and the purchaser of the facility have entered into a binding agreement, in a form approved by the director, whereby the purchaser of the facility agrees to complete an energy audit within a specified period of time after remodel of the facility is complete.

(C) In addition to the variance authorized in subsection (A), the director may grant a variance from the requirements of Article 4 *Commercial Facilities* if the director determines that the facility [~~is a data center or other high energy~~

~~use facility that~~] cannot be adequately evaluated using currently available audit or rating tools.

(D) A person may seek a variance by filing an application with the director. The director may require the applicant to provide information the director determines is necessary to evaluate the variance request.

§ 6-7-5 ENERGY AUDIT REQUIREMENTS.

(A) A residential or multi-family energy audit required under this chapter must:

(1) be conducted by a person certified as a building performance analyst or equivalent by an agency approved by the director; and

(2) use the audit and disclosure forms prescribed by rule under § 6-7-3.

(B) A residential or multi-family energy audit [~~required under~~] performed in accordance with this chapter may be used to [~~will~~] meet the energy audit requirements of this chapter for a period of ten years after the audit is initially performed, unless a more recent audit meeting the requirements of this chapter has been conducted.

Article 2. Residential Facilities.

§ 6-7-11 RESIDENTIAL ENERGY AUDIT.

(A) The owner of a residential facility must, in order to meet the disclosure deadline requirements required under this article [~~before the time of sale of the facility~~], have an energy audit of the facility completed.

(B) The person conducting the audit must provide a copy of the energy audit to the director not later than 30 days after the audit is complete.

§ 6-7-12 DISCLOSURE REQUIRED.

The owner of a residential facility must provide a copy of the energy audit required under this article to the purchaser or prospective purchaser of the facility:

(1) if the contract for the sale of the facility provides an option period during which the prospective purchaser may terminate the contract for any reason, no later than 3 days prior to the termination of the option period; or

(2) if the contract for the sale of the facility does not provide for an option period during which the prospective purchaser may terminate the contract for any reason:

(a) concurrent with the seller's disclosure notice required under state law; or

(b) if no seller's disclosure notice is required under state law, before the time of sale [~~and the person performing the audit must provide a copy of the energy audit to the director not later than 30 days after the audit is complete~~].

§ 6-7-13 EXEMPTIONS.

(A) This article does not apply to transfers of title to real property in the following circumstances:

(1) through a foreclosure sale or trustee's sale, or a deed in lieu of foreclosure;

(2) through a pre-foreclosure sale where the seller has reached an agreement with the mortgage holder to sell the facility for an amount less than the amount owed on the mortgage;

(3) through the exercise of or under the threat of eminent domain;

(4) from one family member to another family member without consideration;

(5) under a court order or probate proceedings; or

(6) under a decree of legal separation or dissolution of marriage, or property settlement agreement incidental to such a decree.

(B) This article does not apply to a residential facility if one or more of the following apply:

(1) the facility was constructed no more than ten years before the time of sale;

(2) the facility participated in the Austin Energy Home Performance with Energy Star program, or an equivalent Austin Electric Utility program, not more than ten years before the time of sale and either:

(a) performed at least three of the efficiency measures,

(b) performed all recommended efficiency measures, as determined by the director, or

(~~b~~c) received from the Austin Electric Utility an energy efficiency rebate of [~~an amount prescribed by rule, but~~] not less than five hundred dollars ($500.00);

(3) the facility participated in the Austin Energy Free Weatherization Program, or an equivalent Austin Electric Utility program, not more than ten years before the time of sale;

(4) the purchaser of the facility qualifies for and has signed an agreement, in a form acceptable to the director, agreeing to participate in the Austin Energy Free Weatherization Program or an equivalent Austin Electric Utility program, not later than six months after the time of sale; or

(5) the facility is manufactured housing built on a permanent chassis and designed to be used without a permanent foundation.

Article 3. Multi-Family Facilities.

§ 6-7-21 MULTI-FAMILY ENERGY AUDIT.

(A) The owner of a multi-family facility which [~~is~~] will be at least ten years old on June 1, [~~2009~~] 2011 must have an energy audit of the facility performed not later than June 1, 2011.

(B) The owner of a multi-family facility not required to perform an energy audit under subsection (A) must have an energy audit of the facility performed not later than 10 years after construction of the facility is complete.

(C) The owner of a multi-family facility required to have an energy audit of the facility performed under subsection (A) or (B) must have subsequent energy audits performed not later than ten years after the date of the most recent required audit for the facility.

§ 6-7-22 DISCLOSURE REQUIRED.

The owner of a multi-family facility must post and provide to current and prospective tenants the results of the energy audit required under this article. The results must be on a form and in locations prescribed by rule. In addition, the owner must provide a copy of the required audit to the director not later than 30 days after the audit is complete.

§6-7-23 HIGH ENERGY USE FACILITIES.

(A) Regardless of the date of construction of the facility, the director shall issue a notice to the owner of a multi-family facility that the director determines has an average per-square-foot energy usage exceeding 150% of the average for multi-family facilities within the Austin Electric Utility service area.

(B) An owner who receives a notice issued under subsection (A) shall implement energy efficiency improvements to the facility sufficient to reduce [~~bring~~] the average per-square-foot energy usage of the facility [~~to within 110%~~] by 20%[~~of the average per-square-foot energy usage of multi-family facilities within the City~~] not later than eighteen months after receipt of the notice. Energy efficiency improvements required under this section shall not include replacement of windows or heating or air-conditioning units, work that requires remediation of hazardous materials (other than incidental lead paint removal), or extensive deconstruction work.

(C) An owner required to implement improvements under this section may apply to the director for additional time to complete the improvements, but must file the application not later than 90 days after receipt of the notice. If the director determines that more than eighteen months is required to complete the improvements, the owner may execute a contract in a form acceptable to the director whereby the improvements required under this section will be completed within a period of time determined by the director.

(D) Beginning 30 days after receipt of notice under Subsection 6-7-23(A), the owner shall disclose to prospective tenants, in addition to the notice requirements under Section 6-7-22, that the facility has been designated as having higher than average energy usage, the percentage by which the facility's energy usage exceeds the average per-square foot energy usage for multi-family facilities within the Austin Electric Utility service area, and that the facility's high average energy usage may result in a higher electric bill than would be incurred by the prospective tenant in a similar unit in an average energy use facility. The disclosure shall accompany the notice required by Texas Property Code Section 92.3515 and be on a form prescribed by rule. The owner's duty under this Subsection shall continue

until the director determines that the facility no longer has an average per-square-foot energy usage in excess of that requiring notice under Subsection 6-7-23(A).

§ 6-7-24 EXEMPTIONS.

This article does not apply to a multi-family facility if:

(1) the owner completed comprehensive duct remediation work on the facility though participation in an Austin Electric Utility rebate program no more than ten years before [~~June 1, 2009~~] the otherwise applicable audit deadline under this Article;

(2) HVAC equipment was replaced through an Austin Electric Utility rebate program in all units of the facility no more than ten years before [~~June 1, 2009~~] the otherwise applicable audit deadline under this Article; or

(3) HVAC equipment was replaced with equipment meeting the requirements for an Austin Electric Utility rebate program, though not participating in the program, in all units of the facility no more than ten years before [~~June 1, 2009~~] the otherwise applicable audit deadline under this Article.

Article 4. Commercial Facilities.

§ 6-7-31 COMMERCIAL FACILITY RATING.

(A) The owner of a commercial facility that [~~is at least ten years old on June 1, 2009~~] has a gross floor area of 75,000 square feet or greater must calculate an energy use rating for the facility not later than June 1, [~~2011~~]2012, using an audit or rating system approved by the director.

(B) The owner of a commercial facility that has a gross floor area of 30,000 square feet or greater, but less than 75,000 square feet, must calculate an energy use rating for the facility not later than June 1, 2013, using an audit or rating system approved by the director.

(C) The owner of a commercial facility that has a gross floor area of 10,000 square feet or greater, but less than 30,000 square feet, must calculate an energy use rating for the facility not later than June 1, 2014, using an audit or rating system approved by the director.

(~~B~~D) The owner of a commercial facility ~~not~~ required to calculate an energy use rating for the facility under subsection (A), (B), or (C) must calculate an energy use rating for the facility by June 1 of each year following the first rating required for the facility [~~not later than 10 years after construction of the facility is complete,~~] using an audit or rating system approved by the director.

§ 6-7-32 DISCLOSURE REQUIRED.

The owner of a commercial facility must make a copy of the energy rating calculation required under this article available to a purchaser or prospective purchaser of the facility before the time of sale and must provide a copy to the director not later than 30 days after the audit is complete.

Article 5. Condominiums.

§ 6-7-35 CONDOMINIUM AUDIT AND DISCLOSURE.

(A) The owner of five or more dwelling units located within one condominium is required to meet the energy audit and disclosure requirements of Article 3 *Multi-Family Facilities*, with the exception of § 6-7-23 *High Energy Use Facilities*, for all dwelling units within the condominium owned by the owner.

(B) The owner of any number dwelling units located within one condominium is required to meet the energy audit and disclosure requirements of Article 2 *Residential Facilities*, unless:

(1) an energy audit meeting the requirements of Article 3 *Multi-Family Facilities* has been performed for the condominium, and

(2) a copy of the energy audit performed on the condominium is disclosed to the purchaser or prospective purchaser prior to the time of sale.

Article ~~5~~ 6. Enforcement.

§ 6-7-41 PRESUMPTION OF VIOLATION.

The record owner of property is presumed to be responsible for a violation of this chapter that occurs at a facility on the property.

§ 6-7-42 PENALTY.

(A) A person commits a criminal offense if the person performs an act prohibited by this chapter or fails to perform an act required by this chapter. Each instance of a violation of this chapter is a separate offense.

(B) Each offense under this chapter is subject to a fine.

(1) Proof of culpable mental state is not required for a fine of up to $500.

(2) If the person acts with criminal negligence, a fine of up to $2,000.00 may be assessed.

(C) Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.

(D) Prosecution of an offense and enforcement of other remedies under this chapter are cumulative.

PART 2. This ordinance takes effect on May 2, 2011.

PASSED AND APPROVED

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§
April 21, , 2011 §

Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

Benchmarking and Disclosure:
Boston

Summary Information:

Date Ordinance Passed: February 2013
Private Sector Size Threshold: 35,000 sf or 35 dwelling units
Public Sector Size Threshold: All buildings
Sectors Covered: Multifamily, Non-residential, Public
Disclosure: Public
Frequency: Annual
Water Included: Yes
City Report Required: No
Other: Includes audit and retrocommissioning requirements

BOSTON CITY COUNCIL

Committee on Government Operations
Matt O'Malley, *Chair*

REPORT OF COMMITTEE CHAIR

May 8, 2013

Dear Councillors:

On May 1, 2013, **Docket #0726, an ordinance amending the Air Pollution Control Commission Ordinance in relation to reporting and disclosing the energy and water efficiency of buildings,** was referred to the Committee on Government Operations. This matter was sponsored by Mayor Thomas M. Menino and is a re-file of **Docket #0340, an ordinance amending Chapter 7-7.2 of the City of Boston Code – Ordinances, Air Pollution Control Commission.** The Committee on Government Operations held a public hearing on March 28, 2013 regarding **Docket #0340.** The Committee also held working sessions on April 9, 2013 and April 23, 2013. On April 24, 2013 the Committee rejected **Docket #0340** without prejudice in order to examine ways to eliminate burdens on owners and residential tenants, to review criteria for audit exemption, to establish collaboration with stakeholders, to examine the fine structure and to recognize the different types and uses of real estate with the objective of reducing greenhouse gas emissions.

Docket #0726 would amend the current ordinance, Chapter 7, Section 7-2 of the City of Boston Code (Air Pollution Control Commission) by requiring certain property owners and encouraging tenants to report annual energy use data to the Air Pollution Control Commission ("APCC"). The ordinance would apply to residential, non-residential, and city buildings. The APCC would be required to establish procedures for reporting, to enforce reporting requirements through fines and to disclose reported data to the public. The City of Boston would also be required to disclose energy and emissions data for its own facilities. The objective of the ordinance is to encourage energy efficiency and reduce greenhouse gas emissions. The annual reporting provides a mechanism to measure use to provide energy assessments.

Docket #0726 includes modifications of **Docket #0340** based upon discussions at the public hearing and working sessions. The proposed modifications addressed in **Docket #0726** include the following: making the purpose section more clear; removing the obligation to report for residential tenants by allowing residential building owners to use default values or formulas to determine energy use if tenants do not provide data; removing fines for residential tenants; expanding criteria for audit exemption; clarifying that only summary results of audit are reported; creating an advisory committee representing various sectors; modifying definitions of non-residential and residential buildings to include larger groups of buildings such as medical or university campuses; making it explicit that cost data will not be collected; allowing owners to review data prior to disclosure; and requiring timely promulgation of regulations.

Docket #0726 contains a series of ***Whereas*** clauses that identify the purposes and motivations of the ordinance. Residential tenants would have no obligation to report and would not be subject to fines. Specifically clauses (g) and (j) remove reporting requirements and possible fines for residential tenants including individual condo owners and provide for an alternative mechanism for residential building owners to estimate whole building use through formulas or values. Clause (f) provides for energy assessments and actions, clarifies the purpose of the assessment and action requirement, the types of assessments and actions, and the criteria for exemption. Under clause (f), high performing or continuously improving buildings would be exempt from the energy assessment and action requirement. Audit exemption is expanded by clarifying that an Energy Star score of 75 is only one possible criteria for exemption. Clause (f) also recognizes that other regulatory requirements may supersede

energy efficiency, such as hospitals. Clause (f) would also clarify that only summary results of assessments or actions would be reported.

Docket #0726 would establish stakeholder involvement by creating an advisory committee representing various sectors to review regulations. The definitions of non-residential and residential buildings would include larger groups of buildings such as medical or university campuses to enable such buildings to be treated as one for reporting purposes if they share a utility meter. Clause (d) expressly states that cost data will not be collected. Clause (i) provides for a disclosure process by allowing owners to review data at least 30 days prior to disclosure; limits disclosure in the first year of reporting to compliance status and general statistics; and, allows building owners to add contextual information to supplement energy and water data. **Docket #0726** would establish a reporting schedule. Clause (l) would require that regulations be promulgated at least 90 days before reporting deadlines. Clause (d) would require the APCC to develop a procedure for alternative reporting dates for building owners that are unable to comply with reporting deadlines due to extenuating circumstances.

Docket #0726 provides the following fines for non-compliance:

- For owners of non-residential buildings of 50,000 square feet or greater, up to $200.00 per violation;
- For owners of non-residential buildings of 35,000 to 49,999 square feet, up to $75.00 per violation;
- For owners of residential buildings equal to or greater than 50 units or 50,000 gross square feet, up to $200.00 per violation;
- For owners of residential buildings equal to or greater than 35 units or 35,000 gross square feet but less than 50 units or 50,000 square feet, up to $75.00 per violation;
- For non-residential tenants, up to $35.00 per violation.

Each day of non-compliance shall be considered a separate violation.

Docket #0726 contains changes from its initial filing. For example, the redraft provides for an increase in size threshold. In clause (d) and several other places, the smallest size of a building subject to this ordinance has been raised from 25,000 square feet or 25 residential units to 35,000 square feet or 35 residential units. This reduces the number of buildings that must report energy and water use by about a quarter. There is also a maximum annual fine for non-compliance. Clause (j)(4) now places a limit of $3,000 on the total annual fine.

Docket #0726 provides annual disclosure of energy use in order to encourage energy efficiency and reduce greenhouse gas emissions. **Docket #0726** eliminates burdens on owners and residential tenants by removing the obligation to report for residential tenants and allowing the use of default formulas, expands criteria for audit exemptions, expressly states that cost data will not be collected, establishes collaboration with stakeholders, provides for a disclosure process, and recognizes the different types and uses of real estate.

By the Chair of the Committee on Government Operations, to which the following was referred:

> **Docket #0726, an ordinance amending the Air Pollution Control Commission Ordinance in relation to reporting and disclosing the energy and water efficiency of buildings,**

submits a report recommending the ordinance **ought to pass in a new draft.**

For the Chair:

Matt O'Malley, *Chair*
Committee on Government Operations

AN ORDINANCE AMENDING THE AIR POLLUTION CONTROL COMMISSION ORDINANCE IN RELATION TO REPORTING AND DISCLOSING THE ENERGY AND WATER EFFICIENCY OF BUILDINGS.

Whereas, energy use in buildings accounts for approximately three-quarters of Boston's emissions of the gases that cause climate change, including sea-level rise, higher temperatures, and more intense storms; and

Whereas, the Boston Climate Action Plan calls for reducing greenhouse gas emissions in Boston 25 percent by 2020, and 80 percent by 2050; and

Whereas, the Boston Climate Action Leadership Committee recommended, in 2010, that the City of Boston adopt a building energy reporting and disclosure ordinance as one component of a comprehensive set of actions to increase energy efficiency and thus reduce greenhouse gas emissions, which recommendation was accepted in the City of Boston's 2011 Climate Action Plan; and

Whereas, other leading U.S. cities, such as New York City, Seattle, San Francisco, Minneapolis, Philadelphia, Austin, and Washington, D.C., have adopted building energy reporting and disclosure requirements, thus demonstrating the acceptability and feasibility of such requirements; and

Whereas, systematic energy measurement assists building owners in making cost-effective energy efficiency investments, thereby not only reducing greenhouse gas emissions, but also reducing operating costs, improving indoor comfort, and reducing air pollution from the burning of fossil fuels; and

Whereas, climate action and energy efficiency spurs Boston's green economy and job creation, makes Boston more attractive to people and businesses, and underlines Boston's innovative leadership across the country;

Therefore, City of Boston Code, Ordinances, Chapter VII, Section 7-2 is hereby amended by inserting the following language after subsection 7-2.1:

7-2.2 Energy Reporting and Disclosure.

(a) Purpose. It is the intent of this subsection to reduce the emissions of air pollutants, including greenhouse gases, from energy production, encourage efficient use of energy and water, and develop further investment in building a green economy by requiring the reporting and disclosure of annual energy and water use in all large buildings in accordance with this article.

The Air Pollution Control Commission has enforcement authority pursuant to, inter alia, Article 89 of the Massachusetts Constitution, M.G.L. c.111, s.31C, and this subsection.

(b) Definitions. When used in this subsection 7-2.2, unless a contrary intention clearly appears, the following terms shall have the following meaning:

City means the City of Boston.

Commission means the Air Pollution Control Commission.

Days means consecutive calendar days.

Owner means the owner of record, or designated agent, provided that the "owner" shall be deemed to include: (i) the net lessee in the case of a building subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options, (ii) the association or organization of unit owners responsible for overall management in the case of a condominium, and (iii) the board of directors in the case of a cooperative apartment corporation.

Tenant means any tenant, tenant-stockholder of a cooperative apartment corporation, and condominium unit owner.

Energy means electricity, natural gas, fuel oil, steam, and any other sources of energy that the Commission may designate.

City building means a building, as it appears in the records of the Boston Assessing Department, that is owned by the City or for which the City regularly pays all of the annual energy bills.

Non-residential building means, as it appears in the records of the Boston Assessing Department, a parcel with one or more buildings that equal or exceed 35,000 square feet in gross building area, and of which 50 percent or more of the gross building area, excluding parking, is used for commercial, retail, office, professional, educational or other non-residential purposes, or any grouping of non-residential buildings designated by the Commission as an appropriate reporting unit. *The term "non-residential building" shall not include any building that is a City building.*

Residential building means, as it appears in the records of the Boston Assessing Department, a parcel with one or more buildings with 35 or more total individual dwelling units that, together with hallways and other common space serving residents, comprise more than 50 percent of the gross building area, excluding parking, or any parcel with one or more buildings that equal or exceed 35,000 square feet in gross building area and that is not a City building or a non-residential building, or any grouping of residential buildings designated by the Commission as an appropriate reporting unit.

ENERGY STAR® Portfolio Manager means the U.S. Environmental Protection Agency's online tool for reporting and managing building energy data, used to create a U.S. EPA Energy Star Performance Rating.

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

This subsection shall refer to Chapter VII, Section 7-2.2 of the City of Boston Code.

(c) Energy and Water Disclosure Required for City Buildings. No later than May fifteenth of each year, the City shall publicly disclose the previous year's energy and water use of each City building.

The Commission shall coordinate the performance of this requirement.

(d) Energy and Water Reporting Required for Non-City Buildings. No later than May fifteenth of each year, building owners of each building subject to reporting requirements shall accurately report to the Commission the previous calendar year's energy and water use of each building and other building characteristics necessary to evaluate absolute and relative energy use intensity. Energy and water use data shall not include its associated cost. Building owners shall report this information by using the Energy Star Portfolio Manager or such alternative as the Commission may designate. The initial reports shall occur according to the following schedule:

(i) For every non-residential building equal to or greater than 50,000 gross square feet or two or more buildings on the same parcel that equal or exceed 100,000 gross square feet, the first report shall be submitted no later than May 15, 2014.

(ii) For every non-residential building equal to or greater than 35,000 gross square feet but less than 50,000 gross square feet, the first report shall be submitted no later than May 15, 2016.

(iii) For every residential building equal to or greater than 50 units or 50,000 gross square feet, or two or more buildings held in the same condominium form of ownership that are governed by the same board of managers that together equal or exceed 50 units or 50,000 gross square feet, the first report shall be submitted no later than May 15, 2015.

(iv) For every residential building equal to or greater than 35 units or 35,000 gross square feet, the first report shall be submitted no later than May 15, 2017.

Notwithstanding the foregoing, the Commission shall develop a procedure for establishing alternative reporting dates for building owners who supply timely notification of extenuating circumstances.

(e) Direct upload. Building owners may authorize an energy or water utility or other third party to report building-specific data on their behalf to the Commission. Such authorization shall not remove the obligation of building owners to comply with reporting requirements.

(f) Energy assessments or actions. Each building subject to reporting requirements of this subsection, if not meeting exemption criteria herein described, shall complete an energy assessment or action, such as the Commission shall specify, within five (5) years of its first energy reporting deadline and within every five-(5-)year period thereafter.

(i) *Energy assessment or action requirements.* In specifying energy assessment and action requirements, the Commission shall ensure that every building owner is receiving up-to-date information regarding energy efficiency opportunities or, at the owner's choice, taking significant action to increase energy efficiency.

a. In establishing requirements for energy assessments, the Commission shall look to the most recent edition of Procedures for Commercial Building Energy Audits published by ASHRAE for guidance, and may vary these requirements based on building size, age, energy performance, and other building characteristics as well as incentives in utility-administered or other energy efficiency programs and changes in energy assessment technology.

b. Energy actions may include significant investments in energy efficiency, development of comprehensive energy management plans, retrocommissioning of energy systems, and similar actions.

c. Summary results of energy assessments and actions shall be reported to the Commission in such form as the Commission shall specify.

(ii) *Energy assessment and action exemptions.* The Commission shall establish criteria for exempting buildings with high energy performance or significant energy improvement from the energy-assessment or action requirement. Such criteria shall be based on:

a. U.S. Environmental Protection Agency's Energy Star performance ratings, with a goal of incentivizing buildings to

attain a rating of at least the 75th percentile, for buildings that can obtain such a rating;

b. LEED (the Leadership in Energy and Environmental Design rating system published by the U. S. Green Building Council) designations;

c. patterns of significant and consistent improvements in energy efficiency or greenhouse gas emissions;

d. a building's comprehensive energy management plan or inclusion in an institutional comprehensive energy management plan; or

e. other factors that recognize the complexity of buildings and building management, other regulatory requirements, the costs and benefits of energy efficiency, and the City of Boston's climate goals.

(g) Obligation to Request and Report Information. Where a unit or other space is occupied by a tenant and such unit or space is separately metered by a utility company, the owner of such building may request from such tenant information relating to such tenant's separately metered energy and water use, use of space, and operating hours, and other information required for Portfolio Manager reporting, for the previous calendar year, and such tenant shall report such information to such owner. The Commission may designate and make available a form to be used to request and report such information. Notwithstanding the foregoing, individual residential tenants shall have no obligation to report energy and water use to building owners.

i. Such owner may request information related to such tenant's metered energy and water use and other related information for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to report such information.

ii. Upon receiving such request, a tenant shall report information relating to the tenant's separately metered energy and water use for the previous calendar year no later than February twenty-eighth of any year in which the owner is required to report such information.

iii. If a tenant vacates a unit or other space before the end of the calendar year without reporting metered energy and water use, such owner may immediately request such information for any period of occupancy relevant to such owner's obligation to report and the tenant shall respond within 30 days.

iv. Failure of any tenant to report the information required in this subsection does not relieve such owner of the obligation to report pursuant to this article.

v. Where an owner of a residential building is unable to obtain complete energy and water use due to the failure of any residential tenant to report the information required by this subsection, the owner shall use values or formulas established by the Commission to estimate whole building energy and water use.

(h) Preservation of documents. Owners reporting energy and water use shall maintain such records and for such time as the Commission shall determine are necessary as set forth in regulations of the Commission, and shall make such records available for inspection and audit by the Commission upon request.

(i) Disclosure. The Commission shall make energy- and water-use information for non-City buildings available to the public on the City of Boston website no later than October first of every year. Such disclosure shall include, at a minimum, building identification, energy intensity, greenhouse gas emissions per square foot, Energy Star rating, where available, and water consumption per square foot. Before any such disclosure, the Commission shall subject all data to a quality-assurance/quality-control process. Notwithstanding the foregoing, the Commission may choose to disclose more limited information in the first year of required reporting for each class of buildings.

i. At least 30 days prior to disclosure, the Commission shall provide building owners an opportunity to review the accuracy of information to be disclosed.

ii. The Commission shall invite building owners to submit contextual information related to energy and water use in their buildings, and shall disclose contextual information in such form as it shall determine.

iii. Notwithstanding the foregoing, in the first year of required reporting by non-City buildings, the Commission shall disclose only information related to reporting compliance by individual buildings and shall not disclose individual energy and water use data. It may report summary statistical data on energy and water use of buildings.

iv. The Commission shall also, from time to time, publicly report on implementation of, compliance with, and overall results from this ordinance; however, the first such report shall be issued no later than December 31, 2014.

(j) Enforcement and Penalties.

(1) Failure to comply with the provisions of this subsection shall result in the imposition of penalties by the Air Pollution Control Commission. For any failure to comply, the Commission, acting through its Executive Director, shall have the authority to: (i) issue a notice of violation subject to penalties if not corrected; and (ii) seek an injunction from a court of competent jurisdiction requiring a building owner or tenant to comply with the requirements of this subsection. However, this provision shall not apply to residential tenants.

(2) Notice of Violation. The Executive Director of the Commission shall issue a written notice of violation to any building owner or tenant violating this subsection by failing to comply with any of the provisions of this subsection or any regulation issued by the Air Pollution Control Commission pursuant to this subsection. The notice of violation shall indicate which obligations the building owner or tenant has not fulfilled and provide the building owner or tenant with 30 days to either: (i) correct the notice of violation by complying with this subsection and associated regulations; or (ii) send a written request to the Executive Director for a hearing for a determination of whether the building owner or tenant violated this subsection.

(3) If a building owner or tenant requests a hearing, the Commission or its designee shall hold such hearing within 60 days of the Executive Director's receipt of a written request for hearing. The hearing shall be conducted according to the requirements of M.G.L. c. 30A. If the Commission determines that the building owner or tenant violated this subsection, that person shall have 30 days from the issuance of a final decision to correct the violation.

(4) Failure to Comply with Notice of Violation. If a person who does not request a hearing fails to correct a noticed violation of this subsection within 30 days after the Executive Director issues a written notice of violation, that person has failed to comply with the notice of violation. If a person who requested a hearing fails to correct a noticed violation of this subsection within 30 days after the issuance of an adverse decision after a hearing, that person has failed to comply with the notice of violation. Any person who has failed to comply with a notice of violation shall be subject to a fine as set forth below:

i. For owners of non-residential buildings of 50,000 square feet or greater, up to $200.00 per violation.

ii. For owners of non-residential buildings of 35,000 to 49,999 square feet, up to $75.00 per violation.

iii. For owners of residential buildings equal to or greater than 50 units or 50,000 gross square feet, up to $200.00 per violation.

iv. For owners of residential buildings equal to or greater than 35 units or 35,000 gross square feet but less than 50 units or 50,000 square feet, up to $75.00 per violation.

v. For non-residential tenants, up to $35.00 per violation.

Each day of noncompliance shall count as a separate violation.

Notwithstanding the foregoing, no owner or non-residential tenant shall be liable for a total fine of more than $3,000 per calendar year per building or tenancy.

(5) Injunctive Relief. The Commission may seek an injunction from a court of competent jurisdiction instructing a building owner or tenant who has failed to comply with a notice of violation to comply with this subsection and regulations issued pursuant to this subsection.

(6) Fines. All fines and penalties issued under this subsection may be enforced pursuant to G. L. c. 40, section 21D, provided however, that this permission to utilize the noncriminal disposition procedures of section 21D shall not deprive the Commission of any other remedy or means of collecting the fine, including by indictment or complaint.

This *clause (j)* shall not apply to the City or any municipally owned buildings.

(k) Advisory committee. The Commission shall appoint an advisory committee comprised of property owners subject to the requirements of this sub-section, including, but not limited to, representatives of the following sectors:

i. Commercial/office
ii. Health care and hospitals
iii. Higher education
iv. Hospitality
v. Retail
vi. Residential

The Commission shall consult with the advisory committee prior to the release of proposed regulations and promulgation of final regulations and prior to any subsequent modifications.

(l) ***Power to Suspend.*** The Commission may suspend all or part of the requirements of this subsection upon a written finding that a significant obstacle interferes with their implementation, and may lift such suspension upon a written finding that the obstacle has been removed. The Commission shall suspend the requirements of this subsection as necessary to ensure that at least 90 days passes between the promulgation of regulations and any reporting deadline.

(m) ***Applicability.*** If any provision of this subsection imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy, then the provisions of this subsection control.

(n) ***Regulatory Authority.*** The Commission shall promulgate rules and regulations necessary to implement and enforce this subsection, pursuant to M.G.L., c. 30A.

(o) ***Severability.*** If any provision of this subsection is held invalid by a court of competent jurisdiction, then such provision should be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

(p) ***Implementation.*** The provisions of this subsection are effective immediately upon passage.

(q) ***Notice.*** Notification or attempted notification concerning reporting and disclosure procedures will be provided to all property owners subject to the requirements of this section.

Benchmarking and Disclosure:
Chicago

Summary Information:

Date Ordinance Passed: September 2013
Private Sector Size Threshold: 50,000 sf
Public Sector Size Threshold: 50,000 sf
Sectors Covered: Commercial, Multifamily, Public
Disclosure: Public
Frequency: Annual
Water Included: No
City Report Required: Yes
Other: Every third year the data must be verified by a licensed professional architect or engineer.

City of Chicago

SO2013-5384

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	6/26/2013
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Amendment of Title 18 of Municipal Code by adding new Chapter 18-14 regarding building energy use benchmarking
Committee(s) Assignment:	Committee on Zoning, Landmarks and Building Standards

MA 158

SUB.

SUBSTITUTE
ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Title 18 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 18-14, as follows:

Chapter 18-14. Building Energy Use Benchmarking

18-14-101 General.

18-14-101.1 Title.

This Chapter 18-4 of Title 18 shall be known as the Building Energy Use Benchmarking Ordinance of the City of Chicago, and shall be cited as such. It is referred to herein as "this chapter."

18-14-101.2 Scope.

This chapter applies to all covered buildings.

18-14-101.3 Definitions.

For purposes of this chapter the following definitions shall apply:

"Benchmark" means to track and input a building's energy consumption data and other relevant building information for twelve consecutive months, as required by the benchmarking tool, to quantify the building's energy use.

"Benchmarking tool" means the website-based software, commonly known as "ENERGY STAR Portfolio Manager," developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy use of buildings nationwide. This term also applies to any successor system thereto, including any change or addition made to such tool by the United States Environmental Protection Agency.

"Building" means a structure, or part thereof, enclosing any use or occupancy.

"Certificate of occupancy" means the certificate issued by the zoning administrator or the building commissioner allowing building occupancy or use.

"Commissioner" means the city's commissioner of business affairs and consumer protection.

"Covered building" means any Group 1 covered building or Group 2 covered building, as defined by this chapter. The term "covered building" does not include any building with more than 10 percent occupancy use classified as Class D open air assembly units, Class G industrial units, Class H storage units, Class I hazardous use units, or Class J miscellaneous buildings and structures, as defined by Chapter 13-56.

"Data center" means a space specifically designed and equipped to meet the needs of high density computing equipment such as server racks, used for data storage and processing, as defined by the benchmarking tool.

"Energy performance score" means the 1 to 100 numerical score produced by the benchmarking tool, also known as ENERGY STAR score, or any successor score thereto. The energy performance score assesses a building's energy performance relative to similar buildings, based on source energy use, operating characteristics, and geographical location.

"Energy use intensity" or "EUI" means a numeric value calculated by the benchmarking tool that represents the energy consumed by a building relative to its size.

"Group 1 covered building" means any building or group of buildings that have the same property identification or index number (PIN), containing 250,000 or more gross square feet, as identified by the commissioner.

"Group 2 covered building" means any building or group of buildings that have the same property identification or index number (PIN), containing 50,000 or more gross square feet but less than 250,000 gross square feet, as identified by the commissioner.

"Gross square feet" means the total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a building. The term "gross square feet" includes vent shafts, elevator shafts, flues, pipe shafts, vertical ducts, stairwells, light wells, basement space, mechanical or electrical rooms, and interior parking.

"Licensed professional" means a professional engineer or a registered architect licensed in the State of Illinois, or another trained individual as prescribed by rule.

"Owner" has the meaning ascribed to the term in Section 13-4-010.

"Reported benchmarking information" means descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool related to the building's energy consumption and efficiency, as prescribed by rule. Reported benchmarking information includes, but is not limited to, the building identification number, address, square footage, energy performance score, energy use intensity, and annual greenhouse gas emissions.

"Residential occupancy" means any building occupancy use classified as any combination of Class A residential units, as defined by Chapter 13-56.

18-14-101.4 Solicitation of compliance information.

Within 30 days of a request by the building owner, each tenant of a unit in a covered building shall provide all information that cannot otherwise be acquired by the building owner and that is necessary for the building owner to comply with the requirements of this chapter.

Any owner of a covered building shall request such information no later than March 1 of the years in which benchmarking is required by Section 18-14-102.1. If the owner of a covered building receives notice that a tenant intends to vacate a unit which is subject to the requirements of this section, the owner shall request the information specified in this section within 10 days of such notice, and the tenant shall provide such information within 30 days of the request.

The failure of any tenant to provide the information required under this section to the owner of a covered building shall not relieve such owner of the obligation to benchmark the building as provided in Section 18-14-102.1, using all information otherwise available to the owner.

Failure of any tenant to provide the information required under this section to the owner of a covered building shall create a rebuttable presumption that the owner, tenant, or both have not complied with the time limits specified in this section.

If a tenant of a unit in a covered building fails to provide information to the owner of the building as provided in this section, the owner shall be considered to be in compliance with Section 18-14-102.1 with respect to the building if: (1) the owner proves that the owner has requested the tenant to provide such information as specified in this section; and (2) the owner has benchmarked the building as provided in Section 18-14-102.1, using all information otherwise available to the owner.

18-14-101.5 Enforcement.

(a) The commissioner is authorized to enforce this chapter. The commissioner is also authorized to adopt rules and regulations for the proper administration and enforcement of this chapter.

(b) Any person who violates this chapter may be subject to a fine of up to $100.00 for the first violation, and an additional fine of up to $25.00 for each day that the violation continues.

18-14-102 Energy use benchmarking, verification, and disclosure requirements.

18-14-102.1 Benchmarking.

(a) No later than June 1, 2014, and no later than June 1st each year thereafter, the owner of any Group 1 covered building shall benchmark such building for the previous calendar year; provided, however, the owner of any Group 1 covered building with 10 percent or more residential occupancy shall benchmark such building for the previous calendar year no later than June 1, 2015, and no later than June 1st each year thereafter.

(b) No later than June 1, 2015, and no later than June 1st each year thereafter, the owner of any Group 2 covered building shall benchmark such building for the previous calendar year; provided, however, the owner of any Group 2 covered building with 10 percent or more residential occupancy shall benchmark such building for the previous calendar year no later than June 1, 2016, and no later than June 1st each year thereafter.

(c) The owner of any covered building shall retain all information tracked and input into the benchmarking tool for a minimum of three years beyond the date on which benchmarking was required.

Exception: The commissioner may exempt from the benchmarking requirement the owner of a covered building that submits documentation, in a form prescribed by rule, establishing any of the following:

(i) The building is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages, (2) the building is controlled by a court appointed receiver, or (3) the building has been acquired by a deed in lieu of foreclosure; or

(ii) The building had average physical occupancy of less than 50 percent throughout the calendar year for which benchmarking is required; or

(iii) The building is a new construction and the building's certificate of occupancy was issued during the calendar year for which benchmarking is required.

18-14-102.2 Data Verification.

Prior to the first benchmarking deadline prescribed by Section 18-14-102.1, and prior to each third benchmarking deadline thereafter, the owner of a covered building shall ensure that reported benchmarking information for that year is verified by a licensed professional. Such verification shall be in a form of a stamped and signed statement by a licensed professional attesting to the accuracy of the information. The owner of a covered building shall produce such statement for the most recent year in which verification of reported benchmarking information was required, in a form prescribed by rule, upon a written request by the commissioner.

Exception: The commissioner may exempt from the verification requirement the owner of a covered building that submits documentation, in a form prescribed by rule, establishing that compliance with this section will cause undue financial hardship. If no-cost or low-cost verification options are available, the commissioner may suggest that the covered building use such alternative options.

18-14-102.3 Disclosure.

(a) In accordance with the schedule prescribed by Section 18-14-102.1, the owner of any covered building shall submit reported benchmarking information for the previous calendar year, using the benchmarking tool, in a manner prescribed by the commissioner.

(b) The commissioner and the chief sustainability officer shall prepare and submit an annual report to the mayor and the city council reviewing and evaluating energy efficiency in covered buildings, including summary statistics on the most recent reported energy benchmarking information and a discussion of energy efficiency trends, cost savings, and job creation effects resulting from energy efficiency improvements.

(c) The commissioner is authorized to make reported benchmarking information readily available to the public.

Exception: To the extent allowable under applicable law, the commissioner shall not make readily available to the public any individually-attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark.

Exception: To the extent allowable under applicable law, the commissioner shall not make readily available to the public any individually-attributable reported benchmarking information pertaining to a covered building that contains a data center, television studio, or trading floor that together exceed ten percent of the gross square footage of any such building until the commissioner determines that the benchmarking tool can make adequate adjustments for such facilities. When the commissioner determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the city council.

SECTION 2. This ordinance shall take effect 10 days after passage and publication.

Benchmarking and Disclosure:
Minneapolis

Summary Information:

Date Ordinance Passed: January 2013
Private Sector Size Threshold: 50,000 sf
Public Sector Size Threshold: 25,000 sf
Sectors Covered: Commercial, Public
Disclosure: Public
Frequency: Annual
Water Included: Yes
City Report Required: Yes
Other:

2012-Or-___

AN ORDINANCE of the CITY OF MINNEAPOLIS

By Glidden

Amending Title 3, Chapter 47 of the Minneapolis Code of Ordinances relating to Air Pollution and Environmental Protection: Air Pollution.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That the title of Chapter 47 of the Minneapolis Code of Ordinances be amended to read as follows:

CHAPTER 47. <u>ENERGY AND</u> AIR POLLUTION

Section 2. That Chapter 47 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 47.190 to read as follows:

47.190. Commercial building rating and disclosure. (a) *Definitions.* The following words shall have the meaning ascribed to them, unless the context clearly indicates a different meaning:

Benchmark means to input the total energy consumed for a building and other descriptive information for such building as required by the benchmarking tool.

Benchmarking information means information related to a building's energy consumption as generated by the benchmarking tool, and descriptive information about the physical building and its operational characteristics. The information shall include, but need not be limited to:

(1) Building address;

(2) Energy use intensity (EUI);

(3) Annual greenhouse gas emissions;

(4) Water use; and

(5) The energy performance score that compares the energy use of the building to that of similar buildings, where available.

Benchmarking tool means the United States Environmental Protection Agency's Energy Star Portfolio Manager tool, or an equivalent tool adopted by the director.

Building owner means an individual or entity possessing title to a building, or an agent authorized to act on behalf of the building owner.

City-owned building means any building, or group of buildings on the same tax lot, owned by the City of Minneapolis containing 25,000 or more gross square feet of an occupancy use other than residential or industrial.

Covered building means:

(1) Any building containing at least 50,000 but less than 100,000 gross square feet of an occupancy use other than residential or industrial shall be classified as a Class 1 covered building;

(2) Any building containing 100,000 or more gross square feet of an occupancy use other than residential or industrial shall be classified as a Class 2 covered building.

The term "covered building" shall not include any building owned by the local, county, state, or federal government or other recognized political subdivision.

Director means the head of the department to which the environmental services division of the city reports or the director's designee.

Energy means electricity, natural gas, steam, heating oil, or other product sold by a utility for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

Energy performance score means the numeric rating generated by the Energy Star Portfolio Manager tool or equivalent tool adopted by the director that compares the energy usage of the building to that of similar buildings.

Energy Star Portfolio Manager means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

Tenant means a person or entity occupying or holding possession of a building or premises pursuant to a rental agreement.

Utility means an entity that distributes and sells natural gas, electric, or thermal energy services for buildings.

(b) *Benchmarking required for city-owned buildings.* No later than May first, 2013, and no later than every May first thereafter, each city-owned building shall be benchmarked for the previous calendar year by the entity primarily responsible for the management of such building, in coordination with the director.

(c) *Benchmarking required for covered buildings.* Building owners shall annually benchmark for the previous calendar year each covered building and obtain an energy performance score as available according to the following schedule:

(1) All Class 2 covered buildings by May first, 2014 and by every May first thereafter; and

(2) All Class 1 covered buildings by May first, 2015 and by every May first thereafter.

(d) *Disclosure and publication of benchmarking information.* The building owner shall annually provide benchmarking information to the director, in such form as established by the director's rule, by the date provided by the schedule in subsections (b) and (c).

(1) The director shall make readily available to the public, and update at least annually, benchmarking information for the previous calendar year according to the following schedule:

a. Each city-owned building by July thirtieth, 2013 and by every July thirtieth thereafter;

b. Each Class 2 covered building by July thirtieth, 2015 and by every July thirtieth thereafter;

c. Each Class 1 covered building by July thirtieth, 2016 and by every July thirtieth thereafter.

(2) The director shall make available to the public, and update at least annually, the following information:

a. Summary statistics on energy consumption in city-owned buildings and covered buildings derived from aggregation of benchmarking information for those buildings;

b. Summary statistics on overall compliance with this section;

c. For each city-owned building and covered building:

1. The status of compliance with the requirements of this chapter;

2. Annual summary statistics for the building, including energy use intensity, annual greenhouse gas emissions, water use per gross square foot, and an energy performance score where available; and

3. A comparison of benchmarking information across calendar years for any years such building was benchmarked.

(e) *Exemptions.* The director may exempt a building owner from the benchmarking requirements of subsection (c) if the building owner submits documentation establishing any of the following:

(1) The building is presently experiencing qualifying financial distress in that the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages, the building is controlled by a court-appointed receiver based on financial distress, the building is owned by a financial institution through default by the borrower, the building has been acquired by a deed in lieu of foreclosure, or the building has a senior mortgage which is subject to a notice of default; or

(2) The building or areas of the building subject to the requirements of this section have been less than fifty (50) percent occupied during the calendar year for which benchmarking is required; or

(3) The building is new construction and the certificate of occupancy was issued less than two (2) years prior to the applicable benchmarking deadline established pursuant to subsection (c).

(f) *Providing benchmarking information to the building owner.* Each tenant located in a covered building subject to this chapter shall, within 30 days of a request by the building owner and in a form to be determined by the director, provide all information that cannot otherwise be acquired by the building owner and that is needed by the building owner to comply with the requirements of this section. Where the building owner is unable to benchmark due to the failure of any or all tenants to report the information required by this subsection, the owner shall complete benchmarking using such alternate values as established by the director. The director shall periodically evaluate the quality of any alternate values established pursuant to this subsection and propose revisions that increase the quality of such values.

(g) *Violations.* It shall be unlawful for any entity or person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this section.

(h) *Enforcement.* The director and authorized representatives and designees shall enforce the provisions of this section. If it is determined that a building owner or any person subject to the provisions of this section fails to meet any requirement of this section, the director or the director's designee shall mail a warning notice to the building owner or person. The notice shall specify the reasons why the building owner or person fails to meet the requirements set forth in this section. The notice shall indicate that the person has forty-five (45) business days to comply with the applicable requirement. Any building owner or person who fails, omits, neglects, or refuses to comply with the provisions of this section after the period of compliance provided for in the required warning notice shall be subject to an administrative penalty pursuant to Chapter 2 and the schedule of civil fines adopted by the city council. The provisions of Chapter 2 shall govern the appeal and hearing rights afforded to any such person. Additionally, failure to comply with this section may constitute good cause for the denial, suspension, revocation or refusal to issue the certificate of commercial building registration provided for pursuant to Chapter 174, Article IV of this Code or any applicable business license held by the building owner or person. This section may also be enforced by injunction, abatement, mandamus, or any other appropriate remedy in any court of competent jurisdiction.

(i) *Rules.* The director shall promulgate and publish such rules as deemed necessary to carry out the provisions of this section.

(j) *Severability*. If any portion of this section is determined to be invalid or unconstitutional by a court of competent jurisdiction, that portion shall be deemed severed from the regulations, and such determination shall not affect the validity of the remainder of the section. If the application of any provision of this section to a particular person or property is determined to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall not affect the application of said provision to any other person or property.

Benchmarking and Disclosure:
New York City

Summary Information:

Date Ordinance Passed: December 2009
Private Sector Size Threshold: 50,000 sf
Public Sector Size Threshold: 10,000 sf
Sectors Covered: Commercial, Multifamily, Public
Disclosure: Public
Frequency: Annual
Water Included: Yes
City Report Required: Yes
Other: Local Law 84 is one of the four energy efficiency bills that make up the Greener, Greater Buildings Plan, which includes audit and retrocommissioning requirements. Encourages utilities to upload data to Portfolio Manager as soon as practical.

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2009

No. 84

Introduced by Council Members Mark-Viverito, the Speaker (Council Member Quinn), Recchia Jr., Avella, Brewer, Fidler, Gentile, James, Liu, Nelson, Seabrook, Weprin, White Jr., Garodnick, Lappin, Yassky, Sears, Mendez, de Blasio, Katz, Mitchell, Vann, Gioia, Vacca, Vallone Jr., Jackson, Ferreras, Koppell, Comrie, Barron, Arroyo, Crowley, Gennaro, Mealy and Reyna.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to benchmarking the energy and water efficiency of buildings.

Be it enacted by the Council as follows:

Section 1. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 309 to read as follows:

ARTICLE 309

BENCHMARKING ENERGY AND WATER USE

§ 28-309.1 General. *The energy and water use of city buildings and covered buildings shall be benchmarked in accordance with this article.*

§ 28-309.2 Definitions. *As used in this article, the following terms shall have the following meanings:*

BENCHMARK. *To input and submit to the benchmarking tool the total use of energy and water for a building for the previous calendar year and other descriptive information for such building as required by the benchmarking tool.*

BENCHMARKING TOOL. *The internet-based database system developed by the*

United States environmental protection agency, and any complementary interface designated by the office of long-term planning and sustainability, to track and assess the energy and water use of certain buildings relative to similar buildings.

CITY BUILDING. *A building that is more than 10,000 gross square feet, as it appears in the records of the department of finance, that is owned by the city or for which the city regularly pays all or part of the annual energy bills, provided that two or more buildings on the same tax lot shall be deemed to be one building.*

Exception: The term "city building" shall not include:

1. *Any building not owned by the city in which the city is a tenant and for which the city does not pay all the energy bills;*
2. *Any building owned by the city that participates in the tenant interim lease apartment purchase program; or*
3. *Any building owned by the city that (i) is 50,000 gross square feet or less, as it appears in the records of the department of finance, and (ii) participates in a program administered by the department of housing preservation and development.*

COVERED BUILDING. *As it appears in the records of the department of finance: (i) a building that exceeds 50,000 gross square feet, (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet, or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet.*

Exception: The term "covered building" shall not include:

1. *Any building that is a city building.*

2. Any building that is owned by the city.

3. Real property classified as class one pursuant to subdivision one of section 1802 of the real property tax law.

***DATA CENTER**. A room or rooms used primarily to house high density computing equipment, such as server racks, used for data storage and processing.*

***DWELLING UNIT.** A single unit consisting of one or more habitable rooms, occupied or arranged to be occupied as a unit separate from all other units within a building, and used primarily for residential purposes and not primarily for professional or commercial purposes.*

***ENERGY**. Electricity, natural gas, fuel oil and steam.*

***OWNER**. The owner of record, provided that "owner" shall be deemed to include: (i) the net lessee in the case of a building subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options, (ii) the board of managers in the case of a condominium, and (iii) the board of directors in the case of a cooperative apartment corporation.*

***TENANT.** Any tenant, tenant-stockholder of a cooperative apartment corporation, condominium unit owner or other occupant.*

***§ 28-309.3 Benchmarking required for city buildings.** No later than May 1, 2010, and no later than every May first thereafter, any city building shall be benchmarked by the agency or entity primarily responsible for the management of such building, in coordination with the department of citywide administrative services with respect to energy use, and with the department of environmental protection with respect to water use. Benchmarking of water use shall not be required unless the building was equipped*

with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year. The city shall maintain such documents as the department determines are necessary for the purpose of carrying out the provisions of this article.

§ 28-309.4 Benchmarking required for covered buildings. *The owner of a covered building shall annually benchmark such covered building no later than May 1, 2011, and no later than every May first thereafter. Benchmarking of water use shall not be required unless the building was equipped with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year. The owner or the owner's representative performing the benchmarking shall consult with the operating staff of the building, as appropriate.*

§ 28-309.4.1 Obligation to request and to report information. *Where a unit or other space in a covered building, other than a dwelling unit, is occupied by a tenant and such unit or space is separately metered by a utility company, the owner of such building shall request from such tenant information relating to such tenant's separately metered energy use for the previous calendar year and such tenant shall report such information to such owner.*

§ 28-309.4.1.1 Owner solicitation of tenant information. *Such owner shall request information relating to such tenant's separately metered energy use for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to benchmark such building. The office of long-term planning and sustainability may require that such owner provide such tenant with a form designated by the office of long-term*

planning and sustainability to report such information.

§ 28-309.4.1.2 Tenant reporting of information. *Such tenant shall report information relating to such tenant's separately metered energy use for the previous calendar year no later than February fifteenth of any year in which the owner is required to benchmark such building. Such information shall be reported in a form and manner determined by the office of long-term planning and sustainability.*

§ 28-309.4.1.3 Provision of information prior to vacating a unit or other space. *Where such owner receives notice that such tenant intends to vacate such unit or other space before reporting information in accordance with sections 28-309.4.1 and 28-309.4.1.2, such owner shall request information relating to such tenant's energy use for any period of occupancy relevant to such owner's obligation to benchmark. Any such tenant shall report such information to the owner of such building prior to vacating such unit or other space or, if such information is not available prior to vacating such unit or other space, as soon as practicable thereafter, regardless of whether such owner has requested information pursuant to this section. Such information shall be reported in a form and manner determined by the office of long-term planning and sustainability.*

§ 28-309.4.1.4 Continuing obligation to benchmark. *The failure of any or all tenants to report the information required by sections 28-309.4.1, 28-309.4.1.2, and 28-309.4.1.3 to the owner shall not relieve such owner of the obligation to benchmark pursuant to this article, provided that such owner shall not be required to benchmark such information not reported by a tenant unless*

otherwise available to such owner.

§ 28-309.4.2 Preservation of documents, inspection, and audit. *Owners of covered buildings shall maintain such records as the department determines are necessary for carrying out the purposes of this article, including but not limited to energy and water bills and reports or forms received from tenants. Such records shall be preserved for a period of three years, provided that the commissioner may consent to their destruction within that period or may require that such records be preserved longer than such period. At the request of the department, such records shall be made available for inspection and audit by the department at the place of business of the owner or at the offices of the department during normal business hours.*

§ 28-309.4.3 Violations. *It shall be unlawful for the owner of a covered building to fail to benchmark pursuant to section 28-309.4. The commissioner shall classify such violation as a lesser violation.*

§ 28-309.5 Direct upload. *Information shall be directly uploaded to the benchmarking tool in accordance with the following:*

§ 28-309.5.1 Direct upload by a utility company or other source. *The office of long-term planning and sustainability shall encourage and facilitate any utility company or any other source authorized by the office of long-term planning and sustainability to upload directly to the benchmarking tool, as soon as practicable, information necessary to benchmark a building. Where information is uploaded directly to the benchmarking tool by a utility company or other authorized source, owners and tenants shall not be obligated to request and report such information pursuant to section 28-309.4.1.*

§ 28-309.5.2 Direct upload by the department of environmental protection. *The department of environmental protection shall upload directly to the benchmarking tool information on water use at all buildings that were equipped with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year and that are subject to the benchmarking requirements of this article.*

§ 28-309.6 Suspension. *The director of the office of long-term planning and sustainability may suspend all or part of the requirement to benchmark pursuant to this article upon a written finding that a technological deficiency in the benchmarking tool precludes compliance with this article. The director of the office of long-term planning and sustainability may lift all or part of any such suspension upon a written finding that such deficiency has been corrected. The office of long-term planning and sustainability shall notify the speaker of the city council, the department, the department of citywide administrative services, the department of environmental protection and the department of finance promptly upon issuing a suspension or lifting a suspension pursuant to this section.*

§ 28-309.7 Notification and transmission of information. *The department of finance shall:*

1. *Annually notify owners of covered buildings of their obligation to benchmark pursuant to section 28-309.4, provided that the failure of the department of finance to notify any such owner shall not affect the obligation of such owner to benchmark pursuant to such section.*
2. *Notify owners of covered buildings of any suspension or lifting of a suspension*

pursuant to section 28-309.6.

3. Make available to the department information regarding owners of covered buildings for which no benchmarking information was generated by the benchmarking tool.

§ 28-309.8 Disclosure. *The department of finance shall make information generated by the benchmarking tool available to the public on the internet no later than September 1, 2011, and no later than every September first thereafter for city buildings, no later than September 1, 2012, and no later than every September first thereafter for covered buildings whose primary use is not residential, as determined by the department of finance, and no later than September 1, 2013, and no later than every September first thereafter for covered buildings whose primary use is residential, as determined by the department of finance. Such information shall include, but need not be limited to: (i) the energy utilization index, (ii) the water use per gross square foot, (iii) where available, a rating that compares the energy and water use of the building to that of similar buildings, and (iv) a comparison of data across calendar years for any years such building was benchmarked. Information generated by the benchmarking tool for the 2009 calendar year for city buildings, for the 2010 calendar year for covered buildings, and for the 2011 calendar year for covered buildings whose primary use is residential, as determined by the department of finance, shall not be disclosed.*

Exception: Ratings generated by the benchmarking tool for a covered building that contains a data center, television studio, and/or trading floor that together exceed ten percent of the gross square footage of any such building shall not be disclosed until the office of long-term planning and sustainability determines that the benchmarking

tool can make adequate adjustments for such facilities. When the office of long-term planning and sustainability determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the speaker of the city council. Until such determination is made, the office of long-term planning and sustainability shall report biennially to the mayor and the speaker of the city council that the benchmarking tool is unable to make such adjustments.

§ 28-309.9 Report. *No later than December 31 of 2011, 2012 and 2013, respectively, the office of long-term planning and sustainability shall prepare, submit to the mayor and the speaker of the city council, and post on the internet a report reviewing and evaluating the administration and enforcement of this article and analyzing data obtained from the benchmarking tool. Such report shall contain information regarding: (i) the energy and water efficiency of buildings in the city, (ii) the accuracy of benchmarked data and whether there is a need to train and/or certify individuals who benchmark, (iii) compliance with the requirements of this article, (iv) any administrative and legislative recommendations for strengthening the administration and enforcement of this article, (v) the effectiveness of the benchmarking tool in accounting for New York city conditions, including, but not limited to, high density occupancies, use of steam, large building size, and specific high-energy uses such as data centers, television studios, and trading floors, and (vi) such other information and analyses as the office of long-term planning and sustainability deems appropriate.*

§ 28-309.10 Rules. *The department, the department of finance and the office of long-term planning and sustainability may promulgate such rules as deemed necessary to carry out the provisions of this article.*

§ 2. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on ……December 9, 2009……..……. and approved by the Mayor on ……December 28, 2009…….

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 84 of 2009, Council Int. No. 476-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 9, 2009:
50 for, 0 against, 0 not voting.
Was signed by the Mayor on December 28, 2009
Was returned to the City Clerk on December 28, 2009

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.

Benchmarking and Disclosure:
Philadelphia

Summary Information:

Date Ordinance Passed: June 2013
Private Sector Size Threshold: 50,000 sf
Public Sector Size Threshold: 50,000 sf
Sectors Covered: Commercial
Disclosure: Public
Frequency: Annual
Water Included: Yes
City Report Required: Yes
Other:

City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 120428-A
(As Amended on Floor 6/14/2012)

Introduced May 17, 2012

Councilmembers Reynolds Brown and Kenney

Referred to the
Committee on the Environment

AN ORDINANCE

Amending Chapter 9-3400 of The Philadelphia Code, entitled "Energy Conservation," to provide for the benchmarking and reporting of energy and water usage data for certain buildings, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-3400 of The Philadelphia Code is hereby amended to add a new Section 9-3402, as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

* * *

CHAPTER 9-3400. ENERGY CONSERVATION

* * *

§ 9-3402. Benchmarking Energy and Water Use.

(1) Definitions. As used in this Section, the following terms shall have the following meanings:

Benchmarking Application. The internet-based database system known as "Portfolio Manager," or any successor system thereto, developed by the

United States Environmental Protection Agency, to track and assess the energy and water use of a building.

Covered Building. Either of the following:

(i) Any commercial building with indoor floor space of 50,000 square feet or more.

(ii) All commercial portions of any mixed-use building where a total of at least 50,000 square feet of indoor floor space is devoted to any commercial use.

Energy. Electricity, natural gas, steam, and heating oil.

Office of Sustainability. The Mayor's Office of Sustainability, or such other agency as the Mayor may designate to administer this Section.

Statement of Energy Performance. A statement of energy performance generated by Portfolio Manager.

(2) Benchmarking required. The owner of a covered building shall, no later than June 30 of each year, enter the following information, for the previous calendar year, in the Benchmarking Application, as specified by the Benchmarking Application:

(a) Building Energy usage.

(b) Building water usage.

(c) Building characteristics and use attributes as required by the Benchmarking Application. This information includes, but is not limited to, building street address, year built, type of use or uses, gross floor area, operating hours, and, as applicable, use-specific information such as percent of building area heated and air conditioned, number of computers, uninterruptible power supply usage and characteristics, and number of refrigeration/freezer units. Building characteristic and use attributes shall be annually updated in the Benchmarking Tool by the deadline imposed by this subsection (2).

(3) Tenant Information. Where a unit or other space in a covered building is occupied by a tenant, and to the extent such unit or space is separately metered by a utility company, the owner shall request from the tenant any information necessary for the owner to comply with the benchmarking requirement imposed under subsection (2).

(a) An owner shall request information under this subsection (3) for the previous calendar year no earlier than February first and no later than the last day of February of each year, and tenants shall provide such information no later than the following March fifteenth. Whenever an owner receives notice that a tenant intends to vacate any space or unit, the owner shall request information relating to the tenant's Energy and water use for any period of occupancy for which the owner is required to provide benchmarking information under subsection (2), and the tenant shall report such information to the owner as soon as practicable.

(b) The failure of any tenant to report the information required under this subsection (3) to the owner shall not relieve the owner of the obligation to benchmark pursuant to this Section, provided that an owner shall not be required to report information a tenant has failed or refused to report and that is not otherwise lawfully available to the owner.

(4) Electronic Usage Reporting.

(a) Owners may arrange for usage information required under subsection (2)(a) and (b) to be electronically transmitted to the Benchmarking Application by the utility or other Energy supplier by the deadline imposed under subsection (2), provided that electronic usage reporting shall not affect the owner's obligation to report building characteristic and use attribute information required under subsection (2)(c).

(b) Information supplied by a utility or other Energy supplier pursuant to this subsection (4) that reflects the aggregate water or Energy usage of an entire Covered Building shall be deemed to satisfy the owner's reporting obligation under subsection (2)(a) and (b) with respect to such building for the water usage or the type of Energy usage so reported.

(c) Utilities and other Energy suppliers may require building owners requesting electronic transmittal to the Benchmarking Application to create and maintain lists of buildings and utility account numbers for which electronic transmittal is requested, and to provide such information to the utility or Energy supplier in the manner specified thereby.

(d) With respect to utilities or other Energy suppliers, nothing in this subsection shall be construed (i) to require that electronic usage reporting services be offered; or (ii) to prohibit the imposition of terms and conditions, consistent with applicable law, on any agreement to transmit usage information electronically.

(5) Disclosure of Benchmarking Data.

(a) The seller or lessor of any Covered Building shall, upon request, provide prospective purchasers or prospective lessees with a copy of the building's most recent Statement of Energy Performance.

(b) The Council calls on the Administration to implement a Citywide program to provide for the reporting of Citywide benchmarking data online and in a manner that permits owners and tenants of Covered Buildings, prospective purchasers and lessees, and the public to view and compare Energy and water usage among comparable buildings and uses.

(c) Any person requesting electronic transmittal of usage data to the Benchmarking Tool by a utility or other Energy supplier must waive in writing all legal action against the utility related to disclosure of usage information into the Benchmarking Tool in advance of any electronic transmittal of data.

(6) Enforcement and Penalties. Violations of this Section, or of any regulation issued pursuant to this Section, shall be subject to the penalties set forth under § 1-109(1), except that violations of subsection (2) shall be subject to a fine of $300 for failure to comply during the first 30 days following the compliance date set forth in subsection (2); each day that the failure to comply with subsection (2) persists following the initial 30 days shall constitute a separate violation, subject to a fine of $100 per day.

(7) Administration.

(a) Regulations. The Office of Sustainability may promulgate such regulations as are necessary to carry out the provisions of this Section, including, but not limited to, regulations altering any deadline set forth in this Section, and regulations setting forth extraordinary circumstances under which any requirement of this Section may be waived.

(b) Suspension. The Office of Sustainability may suspend all or part of the requirement to benchmark pursuant to this Section upon making a written finding that a technological deficiency in the Benchmarking Application, or the discontinuation of the Benchmarking Application, precludes compliance with this Section. The Office of Sustainability shall notify the Mayor and the President of City Council upon issuing or lifting a suspension.

(c) Privacy. Council calls on the Office of Sustainability to convene, within 60 days of passage of this Ordinance, a collaborative stakeholder working group of building owners, lessees, lessors, utilities, and other interested parties to determine if regulations are necessary to ensure customer privacy under applicable law, regarding the release of customer usage data to third parties; and the Office of Sustainability is

hereby authorized to promulgate such regulations as may be necessary to ensure customer privacy under applicable law.

(8) Reporting. The Office of Sustainability shall, annually, submit to Council a report reviewing and evaluating the administration and enforcement of this Section and analyzing data obtained from the Benchmarking Application. The report shall address (a) the energy and water efficiency of buildings in the City, (b) the accuracy of benchmarked data and whether there is a need to train individuals required to benchmark, (c) compliance with the requirements of this Section, (d) any administrative and legislative recommendations for strengthening the administration and enforcement of this Section, (e) the effectiveness of the Benchmarking Application in accounting for City conditions, including, but not limited to, high density occupancies, large building size, and high-energy uses such as data centers and television studios, and (f) such other information and analysis as the Office of Sustainability deems appropriate.

SECTION 2. This Ordinance shall take effect immediately, except that Section 9-3402(2) shall take effect June 1, 2013.

_____

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

Benchmarking and Disclosure:
San Francisco

Summary Information:

Date Ordinance Passed: February 2011
Private Sector Size Threshold: 10,000 sf
Public Sector Size Threshold: 10,000 sf
Sectors Covered: Non-residential
Disclosure: Public
Frequency: Annual
Water Included: No
City Report Required: Yes
Other: Includes audit requirements, and provisions to prioritize the implementation of energy efficiency upgrades in municipal buildings.

File Nos. 101105 Committee Item Nos. 4
Board Item No.

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development **Date** January 24, 2011

Board of Supervisors Meeting **Date**

Cmte	Board	
☐	☐	**Motion**
☐	☐	**Resolution**
☒	☐	**Ordinance**
☒	☐	**Legislative Digest**
☐	☐	**Budget Analyst Report**
☐	☐	**Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form (for hearings)**
☒	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☐	☐	**Form 126 – Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☒	☐	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

☒	☐	Environmental Review Determination, dtd 09/28/10
☒	☐	Small Business Commission Recommendation, dtd 09/17/10
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Completed by: Alisa Somera **Date** January 21, 2011
Completed by: **Date**

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Environment Code - Existing Commercial Buildings Energy Performance]

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

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

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

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

Section 2. **Findings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2000. TITLE AND PURPOSE.

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

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

SEC. 2001. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. "Nonresidential building" and "building" mean 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) as amended – where a gross area of 10,000 square feet or more is heated or cooled in its interior.

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

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

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

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

piping, ductwork, insulation, HVAC system equipment or components, electrical appliances and plumbing appliances.

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

(b) ***Energy Efficiency Audit Standards.*** *Energy efficiency audits required by this Chapter shall meet or exceed the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Procedures for Commercial Building Energy Audits (2004), 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 9c) and (d), below. The level of detail required in an energy efficiency audit shall be proportionate to the scale of the nonresidential building, such that:*

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

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

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

(1) Licensed Engineer and one of the following:

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

(B) ASHRAE Commissioning Process Management Professional Certification; or

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

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

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

(A) BOC International Building Operator Certification; or

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

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

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

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

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

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

(4) One of the following:

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

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

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

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

SEC. 2003. DISCLOSURE OF ENERGY PERFORMANCE INFORMATION.

*(a) **Annual Energy Benchmark Summary Reporting.** The owner of every non-residential building of greater than 10,000 gross square feet in the City shall annually file with the Department of the Environment an Annual Energy Benchmark Summary report ("AEBS") for each covered building using ENERGY STAR® Portfolio Manager and according to the schedule set forth in Section 2004 of this Chapter. The AEBS shall be based on assessment in Portfolio Manager of the entire non-residential building and related facilities, and must use 12 continuous months of data ending no earlier*

than two months prior to submittal to the Department of the Environment. Data required in the AEBS shall be limited to:

(1) Descriptive Information.

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

(2) Energy Benchmark Information.

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

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

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

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

(E) The annual carbon dioxide equivalent emissions due to energy use for the 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

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

(b) ***Energy Efficiency Audit Reporting.*** *The owner of every non-residential building shall file a Confirmation of Energy Efficiency Audit for each covered 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 nonresidential building,

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

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

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

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

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

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

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

(3) For each covered building:

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

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

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

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

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

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

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

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

Any energy-related information obtained in the course of Quality Assurance beyond items explicitly required to be made public in Section 2003(c) 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.

SEC. 2004. SCHEDULE FOR COMPLIANCE.

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

(1) For a non-residential building with gross area greater than 50,000 square feet, the owner must complete and submit the initial Annual Energy Benchmark Summary report on or before October 1, 2011, and annually no later than April 1 thereafter. Annual Energy Benchmark Summary report data submitted prior to January 1, 2012 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.

(2) For a non-residential building with gross area greater than 25,000 square feet but less than or equal to 49,999 square feet, the owner must complete and submit the initial AEBS on or before April 1, 2012, and annually no later than April 1 thereafter. Annual Energy Benchmark Summary report data submitted prior to January 1, 2013 for buildings 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 non-residential building with gross area greater than 10,000 square feet but less than 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 buildings 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.

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

(1) No later than 120 days after enactment of this Chapter, the Department of Environment shall establish a schedule for energy efficiency audit reports for nonresidential 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 buildings shall be staggered over a three ~~five~~ *year rolling deadline, starting no later than* 12 ~~18~~ *months after the effective date of this ordinance, with subsequent energy efficiency audits and energy efficiency audit reports* ~~due~~ *every five years thereafter.*

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

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

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

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

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

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

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

SEC. 2005. CONFIDENTIALITY.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2006. MUNICIPAL FACILITIES.

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

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

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

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

(3) Energy audit protocols;

(4) Reporting protocols; and,

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

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

SEC. 2007. IMPLEMENTATION.

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

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

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

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

SEC. 2008. EXCEPTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2009. ENFORCEMENT.

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

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

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

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

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

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

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

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

Section 4. **Additional Provisions.**

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

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

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

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

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

By: _____
THOMAS J. OWEN
Deputy City Attorney

FILE NO. 101105

REVISED LEGISLATIVE DIGEST

(As amended in committee, 12/13/2010)

[Environment Code - Existing Commercial Buildings Energy Performance]

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

Existing Law

The City currently does not have any laws requiring energy efficiency audits or reporting for buildings.

Amendments to Current Law

The proposal would require owners of nonresidential buildings in San Francisco to obtain energy efficiency audits, as well as to annually measure and disclose energy performance. It would also require the Department of Environment to collect summary statistics about the energy performance of nonresidential buildings and make those statistics available to the public.

The proposal would require the owner of any nonresidential building in San Francisco with a gross area of 10,000 square feet or greater to conduct a comprehensive energy efficiency audit for each such building. The audits would have to meet specified industry standards and be conducted by a qualified energy professional in accordance with rules promulgated by the Director of the Department of the Environment. The size of the building would determine the scope of the audit.

The energy professional would prepare a signed report of the energy efficiency audit meeting industry standards. The report would include, among other things: a list of capital and non-capital measures that would improve the building's energy efficiency; an estimate of the approximate energy savings, avoided energy cost, and costs to implement those measures; and an estimate of the economic value of the corrective measures. The ordinance would require the building owner to file with the Department of the Environment a report confirming that the energy efficiency audit had been completed.

Building owners would also be required to use the "ENERGY STAR® Portfolio Manager"— the Environmental Protection Agency's online tool for managing building data—to track the total energy use of each non-residential building and obtain an "ENERGY STAR® Portfolio Manager Energy Performance Rating" for each entire nonresidential building. The owner would then file an Annual Energy Benchmark Summary report ("AEBS") for each covered building with the Department of the Environment. The AEBS would be based on an assessment of the entire non-residential building and related facilities made using Portfolio Manager.

No energy efficiency audit would be required for: (a) a building newly constructed less than five years prior to the date an AEBS was due; (b) a building that received the ENERGY STAR® label from the EPA for at least three of the last five years; or, (c) a building that was certified under the Leadership in Energy and Environmental Design (LEED) rating system for Existing Buildings Operation and Maintenance, within the past five years. Owners of financially distressed buildings could apply for extensions of the deadlines for completion of an energy efficiency audit or for submittal of an AEBS. If the same person owned three or more buildings subject to the Chapter, and the Energy Efficiency Audit due dates for more than one-third of those buildings fell within a single year, the building owner would only be required to complete audits for one-third of the buildings that year. The ordinance would not require an AEBS for an unoccupied building.

The Department of the Environment would annually report to the public summary statistics on Citywide energy use in nonresidential buildings and on overall compliance with the Chapter. For individual buildings covered by the ordinance, the department would report whether the building was in compliance with the Chapter, what level of energy audit was required for the building, the date of the most recent audit, and whole-building information on energy use and efficiency.

The ordinance would require building owners to make the Annual Energy Benchmark Summary report available to all tenants occupying the building in order to engage tenants in efforts to save energy.

The ordinance would set a staggered, 3-year schedule for compliance with the AEBS requirements, beginning October 1, 2011. The ordinance would also require the Department of the Environment to set a compliance schedule for energy efficiency audit reports. The first set of audits and reports would be phased in over a 3-year period, starting no later than 12 months after the effective date of the legislation. After that, energy efficiency audits and audit reports would be due on a rolling basis every five years.

Violations would be enforced through a system of administrative penalties, based in part on the size of the building, after written warning to the building owner.

The ordinance would also authorize the General Manager of the San Francisco to develop and implement an energy audit and benchmarking plan for municipally owned buildings of greater than 10,000 square feet.

* * *

There are only two significant differences between the substitute legislation on file, dated 11/23/2010, and the version as amended in committee on 12/13/2010.

First, under the substitute legislation, the energy efficiency audits and audit reports would be due after an 18-month preparation and notification period. As amended in committee, the preparation and notification period would be reduced to 12 months.

Second, under the substitute legislation, the initial set of energy efficiency audits and audit reports would be due over a 5-year period. Under the legislation as amended in committee, the initial set of energy efficiency audits and audit reports would be due over a 3-year period, and subsequent audits and reports would be due every 5 years.

BOARD of SUPERVISORS

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September 1, 2010

File No. 101105

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On August 10, 2010, Mayor Newsom introduced the following proposed legislation:

File No. 101105

Ordinance amending the San Francisco Environment Code by adding Chapter 20, Sections 2000 through 2008, to adopt the San Francisco Existing Commercial Buildings Energy Performance Ordinance, requiring owners of nonresidential buildings to conduct Energy Efficiency Audits of their properties and file Annual Energy Benchmark Summaries for their buildings, and making environmental findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Somera

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Non-physical per CEQA Guidelines Section 15060(c)(2).

Brett Bollinger 9/28/10

Approved Planning Dept. Brett Bollinger

2010.0861E

Benchmarking and Disclosure:
Seattle

Summary Information:

Date Ordinance Passed: September 2012
Private Sector Size Threshold: 20,000 sf
Public Sector Size Threshold: 20,000 sf
Sectors Covered: Non-residential, Multifamily
Disclosure: Transactional
Frequency: Annual
Water Included: No
City Report Required: No
Other: This ordinance modified provisions of the law passed in 2010, to raise the compliance thresholds, delay the implementation schedule, and refine the enforcement process and penalties. Although there is no requirement for public disclosure, buildings must report benchmarking data to the City annually. Requires utilities to maintain data in a format capable of being uploaded to Portfolio Manager.

CITY OF SEATTLE

ORDINANCE 123993

COUNCIL BILL 117575

AN ORDINANCE relating to energy use benchmarking in buildings; modifying the penalty system, administrative review and appeal process for failure to timely submit energy benchmarking reports and performance ratings; authorizing the establishment of grace periods; creating an exemption for buildings used in industrial manufacturing; authorizing the delegation of enforcement authority; amending Sections 22.920.010, 22.920.020, 22.920.030, 22.920.040, 22.920.060, 22.920.100, 22.920.110, 22.920.120, 22.920.130, 22.920.150, 22.920.160, 22.920.170, 22.920.180, and 22.920.190 of the Seattle Municipal Code; adding new Sections 22.920.125, 22.920.155 and 22.920.195; and repealing Section 22.920.140.

WHEREAS, the City has adopted Ordinance 123226 in 2010 relating to energy conservation requiring owners of nonresidential and multifamily buildings to measure, report and disclosure energy efficiency performance, and adding a new chapter 22.920 to Title 22 of the Seattle Municipal Code; and

WHEREAS, the City has a strong interest in helping building owners understand the energy performance of their building and invest in increasing their building's energy performance; and

WHEREAS, the City recognizes that building energy measurement and disclosure approaches need to be tailored to building type so that the information is accessible and actionable; and

WHEREAS, the City recognizes that a phased implementation of the energy benchmarking and reporting requirement, and a streamlined enforcement process, is needed to ensure a successful program and to provide support for building owners to understand and comply with the requirement;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 22.920.010 of the Seattle Municipal Code, which was enacted by Ordinance 123226, is amended as follows:

22.920.010 Applicability

A. This chapter applies to all nonresidential and multi-family benchmarking buildings as defined in the following table:

Description	**Reporting Requirements**
1. A structure or any portion of a structure which: a) Is subject to the provisions of the Seattle Building Code, and b) Has a gross area of more than ((~~10,000~~)) 20,000 square feet, excluding parking, and c) Is any classified occupancy under the Seattle Building Code other than Residential R-2 or R-3.	Nonresidential benchmarking
2. A structure or any portion of a structure which: ((~~containing five or more dwelling units and~~)) a) Has a gross area of more than ((~~10,000~~)) 20,000 square feet, excluding parking, and b) Is classified under the Seattle Building Code as a Residential Group R-2 occupancy.	Multi-family benchmarking
3. A structure or any portion of a structure which: a) Has a gross area of less than 20,000 square feet excluding parking. b) Is classified under the Seattle Building Code as a Residential Group R-2 occupancy.	Encourage voluntary benchmarking compliance
4. Buildings subject to the Seattle Residential Code.	Exempt
5. All others not listed	Exempt

B. Building owners shall comply with the nonresidential-benchmarking building standards when 50% or more of the gross building area, excluding parking, is used for nonresidential-benchmarking building uses; and

C. Building owners shall comply with the multi-family-benchmarking building standards when more than 50% of the gross building area, excluding parking, is used for multi-family-benchmarking building uses.

D. This Chapter shall not apply to buildings used primarily for industrial manufacturing purposes.

E. The Office of Sustainability shall investigate new approaches for energy benchmarking and reporting in commercial and multifamily buildings under 20,000 square feet and report back to the Seattle City Council by April 1, 2014.

F. The Director shall have the authority to provide for grace periods.

Section 2. Section 22.920.020 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.020 Definitions

For purposes of this chapter only, the following words shall mean:

((~~A.~~)) "Building Owner" means an individual or entity possessing a fee interest in an nonresidential or multi-family benchmarking building. Where a condominium is subject to this chapter, "Building Owner" means the owners' association. In a condominium where the powers of an owners' association are exercised by or delegated to a master association, as defined in RCW 64.34.276, "Building Owner" means the master association.

((~~B.~~)) "Certificate of Occupancy" means the certificate issued by the Director after final inspection, allowing the building to be occupied.

((~~C.~~)) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, as defined in RCW 64.34.020.

((~~D.~~)) "Director" means the Director of the Department of Planning and Development or his or her designee, and includes any person or agency or representative of such person or agency to whom authority is delegated under this Chapter.

((~~E.~~)) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

((~~F.~~)) "Energy Benchmarking" means the assessment of a building's energy use and efficiency.

((~~G.~~)) "Energy Performance Rating" means the score provided by the Energy Star Portfolio Manager program indicating the relative energy efficiency performance of a building as compared to similar buildings nationwide.

((~~H.~~)) "Energy Star Portfolio Manager" means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance of similar buildings nationwide.

((~~I.~~)) "Initial Occupancy Date" means the date that a certificate of occupancy was first issued for a building. If no certificate of occupancy was issued, the date any utility service was first billed for the building shall be the initial occupancy date.

"Notice of Violation" means a written notice issued to a building owner for failure to comply with the requirements of this chapter or for making any misrepresentation of any material fact in a document required to be prepared or disclosed by this chapter.

((~~J.~~))"Owners' Association" means the entity consisting exclusively of all the unit owners in a condominium, as defined under RCW 64.34.300.

((~~K.~~))"Tenant" means a person occupying or holding possession of a building or premises pursuant to a rental agreement

((~~L.~~))"Utility" means an entity that distributes and sells natural gas, electric, or thermal energy services for buildings.

Section 3. Section 22.920.030 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.030 Nonresidential-benchmarking buildings – preparing energy benchmarking reports

Building owners of each building subject to nonresidential benchmarking requirements shall provide to the Director, using the Energy Star Portfolio Manager or a similar rating system and in such form as established by Director's rule, ((~~an initial~~)) energy benchmarking reports and, where available, ((~~an~~)) energy performance ratings for each building according to the following schedule:

A. ((~~By April 1, 2011 for~~)) For buildings larger than 50,000 square feet and having an initial occupancy date before January 1, 2010, reports and ratings pertaining to benchmarking for the year 2011 shall be submitted by October 1, 2012. Reports and ratings pertaining to

benchmarking for the year 2012 shall be submitted by April 1, 2013, and thereafter, annual reports and ratings for each subsequent year shall be due each April 1st;

B. ((~~By April 1, 2012 for~~)) For buildings smaller than 50,000 square feet and larger than ((~~10,000~~)) 20,000 square feet and having an initial occupancy date before January 1, ((~~2011~~)) 2012, reports and ratings pertaining to benchmarking for the year 2012 shall be submitted by April 1, 2013, and thereafter, annual reports and ratings for each subsequent year shall be due each April 1st; and

C. By one year after the initial occupancy date for all other buildings having an initial occupancy date of January 1, ((~~2011~~))2012 or later.

Section 4. Section 22.920.040 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.040 Multi-family-benchmarking buildings – preparing energy benchmarking reports

Building owners of each building subject to multi-family benchmarking requirements shall provide to the Director, using the Energy Star Portfolio Manager or a similar rating system and in such form as established by Director's rule, ((~~an initial~~)) energy benchmarking reports and, where available, ((~~an~~)) energy performance ratings for each building according to the following schedule:

A. By ((~~April 1, 2012~~)) October 1, 2012 and by April 1 annually thereafter for buildings larger than 50,000 square feet having an initial occupancy date before January 1, 2011;

B. By April 1, 2013 and by April 1 annually thereafter for buildings larger than 20,000 square feet having an initial occupancy date after January 1, 2011 and before January 1, 2012; and

C. By one year after the date of initial occupancy for all other buildings having an initial occupancy date of January 1, 2011 or later.

Section 5. Section 22.920.060 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.060 Maintaining energy utility records

Utilities providing energy service to a nonresidential or multi-family benchmark building shall maintain energy consumption data for each building for at least the most-recent twelve months in a format capable of being uploaded to the United States Environmental Protection Agency's Energy Star Portfolio Manager.

On and after June 1, 2010, upon written or secure electronic authorization by an authorized representative of the building owner, the utility providing energy service to the building shall upload the utility consumption data for the accounts specified by an authorized representative of the building owner to the United States Environmental Protection Agency's Energy Star Portfolio Manager, in a form that does not disclose personally-identifying information. Utility companies have ((~~60~~))30 days from receipt of such written or secure electronic authorization to upload information to Energy Star Portfolio Manager.

Section 6. Section 22.920.100 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.100 Authority to enforce

A. The Director shall have the authority to enforce this chapter.

B. This chapter shall be enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.

C. It is the intent of this chapter to place the obligation of complying with its requirements upon the owners of the buildings and other persons subject to this chapter.

D. ((~~The Director should exercise discretion when~~)) When enforcing this chapter the Director ((~~and~~)) shall not seek to impose penalties on a utility that is exercising good faith efforts to comply with the requirements of this chapter.

E. No provision or term used in this chapter is intended to impose any duty upon the City or any of its officers or employees that would subject them to damages in a civil action.

F. The Director at his or her discretion may delegate the enforcement of any provision of this chapter to the Office of Sustainability and Environment or to its successor or to an otherwise suitable department or agency, including but not limited to the authority to investigate and determine if any building owner, tenant or other person subject to this chapter has not complied with its requirements, to issue notices of violation and to collect assessed fines.

Section 7. Section 22.920.110 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.110 Investigating violations and issuing ((~~citations or~~)) notices of violation

A. The Director is authorized to investigate and determine if any building owner, tenant or other person subject to this chapter has not complied with its requirements.

B. If after investigation, the Director determines that the requirements of this chapter have been violated, the Director may issue a ((~~citation or~~)) notice of violation as provided ((~~below~~)) in this Section 22.920.110 to the building owners, tenants or other persons subject to this chapter for failing to comply with this chapter.

C. The ((~~citation or)) notice of violation shall state the requirement that was violated, ((and~~)) what corrective action is necessary to remedy the violation, and shall state any penalties or fines imposed.

D. The ((~~citation or)) notice of violation shall be served on the building owners, tenants or other persons subject to this chapter as provided for in ((~~Seattle Municipal Code~~)) Section 23.90.006 C.

E. A copy of the ((~~citation or)) notice of violation may be filed with the King County Department of Records and Elections if any building owner fails to correct the violation or the Director requests the City Attorney take appropriate enforcement action.

F. Nothing in this section shall be deemed to limit or preclude any action or proceeding to enforce this chapter nor does anything in this section obligate the Director to issue a ((~~citation or~~)) notice of violation prior to initiating a civil enforcement action.

Section 8. Section 22.920.120 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.120 - ((~~Remedies~~))Sanctions

A. ((~~If the Director determines that a building owner has failed~~)) Fines for the failure of a building owner to prepare, submit or annually update ((~~an accurate~~)) energy benchmarking reports and energy performance ratings as required by ((~~this chapter, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies~~))Section 22.920.040 shall be imposed as follows:

((~~1. A $150 citation may be issued the first time a building owner fails to prepare or update an energy benchmarking report. The citation shall not be issued to the building owner when failure to prepare or report an energy benchmarking report is due to a tenant's failure to provide information required under Section 22.920.050;~~

~~2. If a benchmarking report is not filed within 15 days of the date the citation is issued, the City may issue a notice of violation with a penalty of $150 per day for the first 10 days of noncompliance, then $500 per day for each day in violation past the 10th day until compliance is achieved; and~~

~~3. If a building owner of a building subject to this chapter has been previously issued a citation under this chapter within the past four (4) years of the date the citation was issued, all subsequent violations for failing to prepare or update an energy benchmarking report shall be subject to a notice of violation.~~))

1. For Non-Residential buildings greater than 50,000 square feet having an initial occupancy date before January 1, 2011, upon the failure to submit the report and rating pertaining to benchmarking for the year 2011 by October 1, 2013, a fine of $2,000 shall be imposed; upon the failure to submit such report and rating by January, 1, 2013,

the fine shall be increased to $3,000; and upon the failure by April 1, 2013, the fine shall be increased to $4,000.

2. For multi-family buildings greater than 50,000 square feet having an initial occupancy date before January 1, 2011, upon the failure to submit the report and rating pertaining to benchmarking for the year 2011 by January 1, 2013, a fine of $1,000 shall be imposed; upon the failure to submit such report and rating by April, 1, 2013, the fine shall be increased to $2,000; upon the failure to submit such report and rating by July 1, 2013, the fine shall be increased to $3,000; and upon the failure by October 1, 2013, the fine shall be increased to $4,000.

3. For annual reports and ratings pertaining to benchmarking for the year 2012 and each subsequent year thereafter, for buildings greater than 50,000 square feet, for each annual energy benchmarking report (including a performance rating when available), the following fines shall be imposed for the failure to submit the report and performance rating by the following dates:

a. 90 days after April 1 due date - total fine of $1,000

b. 180 days after due date - total cumulative fine of $2,000

c. 270 days after due date - total cumulative fine of $3,000

d. 360 days after due date - total cumulative fine of $4,000

provided, however, that no fine shall be imposed when failure to prepare or report an energy benchmarking report is due to a tenant's failure to provide information required under Section 22.920.050;

4. For annual reports and ratings pertaining to benchmarking for the year 2012 and each subsequent year thereafter, for buildings fewer than 50,000 square feet, for each annual energy benchmarking report (including a performance rating when available), the following fines shall be imposed for the failure to submit the report and performance rating by the following dates:

a. 90 days after April 1 due date - total fine of $500

b. 180 days after due date - total cumulative fine of $1,000

c. 270 days after due date - total cumulative fine of $1,500

d. 360 days after due date - total cumulative fine of $2,000

provided, however, that no fine shall be imposed when failure to prepare or report an energy benchmarking report is due to a tenant's failure to provide information required under Section 22.920.050;

5. The Director shall have the authority by Director's rule to establish grace periods for imposing fines for any class of structure upon a finding that such grace period will facilitate the submission of energy benchmarking reports and energy performance ratings or otherwise further the purposes of this Chapter.

B. If the Director determines that a building owner has failed to disclose an energy benchmarking report or energy performance rating as required by ((~~this chapter~~))Section 22.920.080, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A $150 ((~~citation may be issued~~)) fine imposed for the first violation,

2. A $500 ((~~citation may be issued~~)) fine imposed for the second or subsequent violation, and

3. If a building owner of any building subject to this chapter has been previously issued a ((~~citation~~))notice of violation under this chapter within the past two (((~~2~~))) years, all subsequent violations by that building owner for failing to disclose an energy benchmarking report shall be subject to a $500 ((~~citation~~))fine.

C. If the Director determines that a tenant has failed to provide information to a building owner as required under Section 22.920.050, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A $150 ((~~citation may be issued~~)) fine imposed for the first violation,

2. A $500 ((~~citation may be issued~~)) fine imposed for the second or subsequent violation, and

3. If a tenant of any building subject to this chapter has been previously issued a ((~~citation~~)) notice of violation under this chapter within the past two (((~~2~~))) years, all subsequent violations by that tenant for failing to provide information to a building owner as required under Section 22.920.050 shall be subject to a $500 ((~~citation~~))fine.

D. If the Director determines that a building owner has submitted an inaccurate energy benchmarking report or energy performance rating as required by this chapter, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A $150 fine imposed for the first violation;

2. A $500 fine imposed for the second and any subsequent violations.

E. The fines set forth in subsection 22.920.120.A shall be imposed by serving a notice of violation that sets forth the specific violation, the amounts of each increase in fines and the specific dates upon which each increase in fines will accrue. A building owner shall have 30 days from the date of mailing or service of the notice of violation to seek an administrative review of the imposition of all such fines, including each increase in fines, contained within the notice of violation. The initiation of such an administrative review is governed by Section 22.920.130. The failure of a building owner to initiate such an appeal within 30 days of the date of mailing or service of the notice of violation shall be deemed a waiver of the right to such administrative review and any subsequent appeal or request for mitigation to the Hearing Examiner under Section 22.920.155 or Section 22.920.160 of all fines contained within the notice of violation including each increase in fines.

The fines set forth in subsections 22.920.120.B, C, and D shall be imposed by serving a notice of violation stating each violation and each corresponding penalty. Administrative review and appeal of all violations and penalties contained within a notice of violation shall be governed in accordance with Sections 22.920.130, 155 and 160.

Any other violation of this chapter shall be subject to the issuance of a notice of violation and corresponding penalty provisions.

Section 9. A new Section 22.920.125 is added to the Seattle Municipal Code as follows:

22.920.125 Response to Notice of Violations

A. A person must respond to a notice of violation in one of the following ways:

1. Pay the amount of the penalty specified in the notice of violation, in which case the record shall show a finding that the person cited committed the violation; or

2. Request in writing an administrative review in accordance with Section 22.920.130 and provide a mailing address to which a benchmarking and reporting program violation challenge form may be sent.

B. A response to a notice of violation must be received by the Department of Finance and Administrative Services no later than 30 days after the date the notice of violation is mailed or otherwise served. When the last day of the administrative appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day.

Section 10. Section 22.920.130 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.130 Administrative Review of Notice of Violation by Director

A. A notice of violation shall be ((~~final and not subject to further~~)) subject to administrative review ((~~unless an~~)) if the aggrieved party requests in writing a review by the Director within ((~~10~~)) 30 days after service of the notice of violation. When the last day of the review-request period is a Saturday, Sunday, or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.

B. To be considered by the Director, the written request for review must be submitted with the Energy Benchmarking and Reporting Violation Review Form, which will document the reason for the review.

((~~B~~))C. After receiving a request for review, the Director shall notify the requesting party, the building owners who were issued a notice of violation, and any person who requested notice of the review that a request for review has been received. ((~~Additional information to be considered by the Director shall be submitted to the Director no later than 15 days after the written request for a review is mailed.~~))

((~~C.~~))D. The Director will review the basis for issuing the notice of violation and the Violation Review Form. The Director may request clarification of information received ((~~and conduct a site visit~~)). After the review is completed, the Director may:

1. Sustain the notice of violation,
2. Withdraw the notice of violation,
3. Continue the review to a date certain for receipt of additional information, or
4. Modify or amend the notice of violation.

((~~D.~~))E. The Director's administrative review decision ((~~shall become~~)) is final but is subject to a request for a mitigation hearing or a contested hearing before the Hearing Examiner in accordance with Sections 22.920.155 and 22.920.160 ((~~and not subject to further administrative appeal~~)).

Section 11. Section 22.920.140 of the Seattle Municipal Code is repealed.

Section 12. Section 22.920.150 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.150 Failure to respond to ((~~citation~~)) an administrative review decision

If a person fails to respond to ((~~a citation~~)) an administrative decision within 15 days of service, an order shall be entered by the Director ((~~Hearing Examiner~~)) finding that the person cited committed the violation stated in the ((~~citation~~)) notice of violation and assessing the penalty specified in the ((~~citation~~)) notice of violation.

Section 13. A new Section 22.920.155 is added to the Seattle Municipal Code as follows:

22.920.155 Response to an administrative review decision.

A. A person must respond to an administrative decision in one of the following ways:

1. Pay the amount of the penalty specified in the notice of violation, in which case the record shall show a finding that the person cited committed the violation; or

2. Request in writing a mitigation hearing to explain the circumstances surrounding the commission of the violation and provide a mailing address to which notice of such hearing may be sent; or

3. Request in writing a contested hearing and specify the reason why the cited violation did not occur or why the person cited is not responsible for the violation, and provide a mailing address to which notice of such hearing may be sent.

B. A response to an administrative decision must be received by the Office of the Hearing Examiner no later than fifteen days after the date the administrative decision is mailed or served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day.

Section 14. Section 22.920.160 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.160 ((~~Citation~~)) Administrative decision mitigation hearings

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within ((~~thirty~~))30~~)~~)) days after a written response to the ((~~citation~~)) administrative decision requesting a hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent ((~~by first-class mail to the address provided in the request for hearing~~)) in accordance with Section 3.02.090 not less than ten days prior to the hearing date.

B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing which shall not be governed by the Rules of Evidence. The person cited may present witnesses, however, witnesses may not be compelled to attend. A representative from ((~~DPD~~)) the Director may also be present and may present additional information; however, attendance by a representative from ((~~DPD~~))the City of Seattle or the Director is not required.

C. Disposition. The Hearing Examiner shall determine whether the person's explanation justifies reduction of the penalty; however, the penalty may not be reduced unless ((~~DPD~~)) the Director affirms or certifies that the violation has been corrected prior to the mitigation hearing. Factors that may be considered in whether to reduce the penalty include whether the violation was caused by the act, neglect, or abuse of another; or whether correction of the violation was commenced promptly prior to ((~~citation~~)) notice of violation but that full compliance was prevented by a condition or circumstance beyond the control of the person cited.

Section 15. Section 22.920.170 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.170 Contested ((~~citation~~)) hearings

A. Date and Notice. If a person requests a contested hearing, the hearing shall be held within 60 days after the written response to the ((~~citation~~)) notice of violation requesting such hearing is received.

B. Hearing. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this section. The issues heard at the hearing shall be limited to those that are raised in writing in the response to the ((~~citation~~)) notice of violation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents.

C. Sufficiency. No ((~~citation~~)) notice of violation shall be deemed insufficient for failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed or by reason of defects or imperfections, provided such lack of detail, or defects or imperfections do not prejudice substantial rights of the person cited.

D. Amendment of ((~~Citation~~)) Notice of Violation. A ((~~citation~~)) notice of violation may be amended prior to the conclusion of the hearing to conform to the evidence presented if substantial rights of the person cited are not prejudiced.

E. Evidence at Hearing.

1. The certified statement or declaration authorized by RCW 9A.72.085 submitted by ((~~an inspector~~)) the Director shall be prima facie evidence that a violation

occurred and that the person cited is responsible. The certified statement or declaration of the ((~~inspector~~)) Director authorized under RCW 9A.72.085 and any other evidence accompanying the report shall be admissible without further evidentiary foundation.

2. Any certifications or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the ((~~DPD~~)) evidence and establish that the cited violation(s) did not occur or that the person contesting the ((~~citation~~)) notice of violation is not responsible for the violation.

F. Disposition. If the ((~~citation~~)) notice of violation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty. The Hearing Examiner may reduce the monetary penalty in accordance with the mitigation provisions in Section 22.920.160 if the violation has been corrected. If the Hearing Examiner determines that the violation did not occur, the Hearing Examiner shall enter an order dismissing the ((~~citation~~)) notice of violation.

G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any judicial review must be commenced in Seattle Municipal Court with review of any Municipal Court decision being subject to review under the Civil Rules for Courts of Limited Jurisdiction.

Section 16. Section 22.920.180 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.180. Failure to appear for ((~~citation~~)) notice of violation hearing

Failure to appear for a requested hearing will result in an order being entered finding that the person cited committed the violation stated in the ((~~citation~~)) notice of violation and assessing the penalty specified in the ((~~citation~~)) notice of violation. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

Section 17. Section 22.920.190 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.190 Collection of ((~~citation~~)) notice of violation penalties

If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may be referred to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

Section 18. A new Section 22.920.195 is added to the Seattle Municipal Code as follows:

22.920.195 Utilities - Recovery of costs.

Utilities may establish and require building owners to pay a reasonable charge to recover the costs of uploading a building's utility consumption data to the United States Environmental Protection Agency's Energy Star Portfolio Manager.

Section 19. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 20. Any act authorized by this ordinance and taken after its passage is ratified and confirmed.

Section 21. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of September, 2012, and signed by me in open session in authentication of its passage this 17th day of September, 2012.

President _____ of the City Council

Approved by me this 24th day of September, 2012.

Michael McGinn, Mayor

Filed by me this 26th day of September, 2012.

Monica Martinez Simmons, City Clerk

(Seal)

Rebecca Baker
OSE Energy Benchmarking and Disclosure ATT A
August 1, 2012
Version #1

Energy Benchmarking & Reporting Program

Why is the City proposing changes to the energy benchmarking program?

The City of Seattle was one of the first cities in the nation to enact an energy benchmarking requirement, and we've learned a lot from our experience and from the experience of others. The Office of Sustainability & Environment (OSE) is proposing the following changes to focus the requirement on buildings where it's the best fit, to simplify the enforcement process, and to provide time to refine data systems, conduct building outreach, and build general program awareness. The proposed changes are also necessary to ensure a successful benchmarking program within the limits of the City's current budget environment. OSE believes that changes outlined below will set the benchmarking and reporting program up for long-term success to achieve the desired energy efficiency outcomes in Seattle's existing buildings.

What are the proposed changes?

Issue	Current Policy	Proposed Policy
Building Size Threshold	• Non-residential buildings greater than 10,000 sq. feet. • Multifamily buildings with 5 units or more.	• Non-residential and multifamily buildings greater than 20,000 square feet. • Explore other policy options and approaches for smaller scale buildings
Benchmarking Requirement Timeline	Submit Energy Benchmarking Report by: <u>Non-residential buildings >50,000 sq. ft:</u> • April 1, 2012 (2011 data) <u>Non-residential buildings >10,000 sq. ft.:</u> • October 1, 2012 <u>Multifamily buildings with 5 units or more:</u> • October 1, 2012 <u>All required buildings:</u> • Update information annually on April 1	Submit Energy Benchmarking Report by: <u>Non-residential buildings >50,000 sq. ft:</u> • October 3, 2011 <u>Multifamily Buildings >50,000 sq. ft.:</u> • October 1, 2012 <u>Non-residential buildings & Multifamily buildings >20,000 sq. ft.:</u> • April 1, 2013 <u>All required buildings:</u> • Update information annually on April 1

Enforcement Process	Failure to submit benchmarking report: $150 citation. If report is not filed within 15 days of citation, the City may issue a notice of violation with a daily penalty ($150/day for first 10 days, $500/day thereafter). Option of administrative review or direct appeal to Hearing Examiner	Failure to submit benchmarking report: Buildings greater than 50,000 sq. ft.: • $1000 fine assessed quarterly up to a maximum of $4000/reporting year. Buildings between 20,000 and 50,000 sq. ft.: • $500 fine assessed quarterly up to a maximum of $2000/reporting year. Mandatory administrative review before appealing to Hearing Examiner

City of Seattle
Office of the Mayor

August 14, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill/Ordinance aimed at strengthening the City's energy benchmarking and reporting program, which was originally established in Ordinance 123226. This proposed Council Bill/Ordinance has been developed based on our first two years of program experience including consideration of national best practices and stakeholder feedback. The proposed Council Bill/Ordinance will ensure the City maintains a robust benchmarking and reporting program and is a foundational part of the City's strategy to increase energy efficiency in Seattle's buildings.

The proposed Council Bill/Ordinance amends Chapter 22.920 of the Seattle Municipal Code raising the building scale threshold to 20,000 square feet to focus the program on Seattle's building stock that is best suited to understand and respond to the information gained from benchmarking their building's energy performance using the U.S. Environmental Protection Agency's Energy Star Portfolio Manager tool. The proposal also outlines a staggered implementation timeline and streamlines the requirement's enforcement process. In addition, because the City is interested in energy efficiency in all buildings, the proposed Council Bill/Ordinance directs the Office of Sustainability to evaluate what energy benchmarking approaches are better suited for nonresidential and multifamily buildings under 20,000 square feet.

Thank you for your consideration of this important legislation. Should you have questions, please contact Jill Simmons, Director of the Office of Sustainability and Environment, at 684-9261 or Rebecca Baker, Benchmarking Program Manager, at 615-1171.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

Benchmarking and Disclosure:
Washington DC

Summary Information:

Date Ordinance Passed: August 2008
Private Sector Size Threshold: 50,000 sf
Public Sector Size Threshold: 10,000 sf
Sectors Covered: Commercial, Multifamily, Public
Disclosure: Public
Frequency: Annual
Water Included: No
City Report Required: No
Other: All new construction and major improvements over 50,000 sf must also estimate their energy performance using Energy Star® Target Finder.

ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Codification District of Columbia Official Code

2001 Edition

2008 Fall Supp.

West Group Publisher

To establish authority to contract with a private company to be known as a Sustainable Energy Utility to administer sustainable energy programs in the District of Columbia; to establish an advisory board for the Sustainable Energy Utility; to define the responsibilities of the Sustainable Energy Utility Advisory Board; to define the role of the Sustainable Energy Utility; to lay out the structure of the Sustainable Energy Utility contract; to require the Mayor to design and implement a brand for sustainable energy services in the District of Columbia; to require the Commission to rule on a portion of Formal Case 945; to require the incumbent distribution utilities to share certain customer energy use data with the Sustainable Energy Utility; to establish a renewable energy incentive program in the District of Columbia; to establish the Sustainable Energy Trust Fund and associated assessment; to establish the Energy Assistance Trust Fund and associated assessment; to amend the Retail Competition and Consumer Protection Act of 1999 to eliminate the Reliable Energy Trust Fund and associated charge; to amend the Omnibus Utility Amendment Act of 2004 to eliminate the Natural Gas Trust Fund and associated charge; to amend the Renewable Portfolio Standard Act of 2004 to increase the renewable requirement, allow solar thermal to count as a Tier 1 solar resource, and increase the alternative compliance payment; to amend the Green Building Act of 2006 to establish benchmarking requirements for all qualified public and private buildings; to amend An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes to amend the responsibilities of the Public Service Commission; to amend AN ACT To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes to amend the responsibilities of the Office of the People's Counsel; to require the Mayor to commission a study of the feasibility of District investment or involvement in the construction of a renewable energy generating facility; and to require lessors of nonresidential buildings to measure and bill each rental unit for energy costs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Clean and Affordable Energy Act of 2008".

TITLE I. DEFINITIONS.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Commission" means the Public Service Commission.

(2) "District Department of the Environment," "DDOE," or "Energy Office" means the District Department of the Environment Energy Office.

(3) "Electric company" shall have the same meaning as in the fifteenth unnumbered paragraph, beginning "The term "electric company"", of section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-209).

(4) "Energy Assistance Trust Fund" or "EATF" means the Energy Assistance Trust Fund established under section 211.

(5) "Existing electricity programs" means those programs operated by the District Department of the Environment under the names "Weatherization Plus," "Low Income Appliance Replacement Program," and "Weatherization and Rehabilitation."

(6) "Existing low-income programs" means those programs operated by the District Department of the Environment under the names "LIHEAP Expansion and Energy Education," "RAD Expansion," "RAD Arrearages Retirement and Education Program," and "Residential Essential Service Expansion and Awareness Program."

(7) "Existing natural gas programs" means those programs proposed or operated by the District Department of the Environment under the names "Heating System Repair, Replacement, and Tune-Up Program," "Residential Weatherization and Efficiency Program," "Energy Awareness Program," and "Saving Energy in D.C. Schools."

(8) "Fiscal Agent" means the Office of the Chief Financial Officer.

(9) "Gas company" shall have the same meaning as in the thirteenth unnumbered paragraph, beginning "The term "gas company"", of section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-209).

(10) "Green collar jobs" means jobs in the environmental sector of the economy which jobs may involve the implementation of environmentally-conscious design, policy, or technology.

(11) "OIML" means the International Association of Legal Metrology.

(12) "Request for Proposals" or "RFP" means the request for proposals prepared by the District Department of the Environment for the SEU.

(13) "Residential Aid Discount" means the utility discount program offered by the electric company to low-income electricity customers in the District of Columbia.

(14) "Residential Essential Service" means the utility discount program offered by the gas company to low-income natural gas customers in the District of Columbia.

(15) "Solar thermal systems" means systems which utilize the sun's radiation to efficiently heat fluids or air.

(16) "SRCC" means the Solar Rating and Certification Corporation.

(17) "Substantial improvement" has the same meaning as in section 202 of Title 12J of the District of Columbia Municipal Regulations (12J DCMR § 202).

(18) "Sustainable Energy Trust Fund" or "SETF" means the Sustainable Energy Trust Fund established under section 210.

(19) "Sustainable Energy Utility" or "SEU" means the private contractor selected to develop, coordinate, and provide programs for the purpose of promoting the sustainable use of energy in the District of Columbia.

(20) "Sustainable Energy Utility Advisory Board", "Advisory Board", or "Board" means the board established under section 203 that advises the DDOE on the procurement of the contract with the SEU and monitors the progress of the SEU under its contract.

(21) "Temporary electricity programs" means those programs operated by the District Department of the Environment under the names "Affordable Housing Energy Efficient Rebate Program", "Weatherization Rehabilitation Asset Partnership", and "Home Energy Rating System".

(21) "Utility or energy company" means a company distributing, supplying, or transmitting electricity or natural gas in the District of Columbia.

TITLE II. MANAGEMENT OF SUSTAINABLE ENERGY PROGRAMS.

Sec. 201. Contract with a Sustainable Energy Utility.

(a) The Mayor, by, and through DDOE, shall contract with a SEU to conduct sustainable energy programs on behalf of the District of Columbia.

(b) The SEU shall be a private entity.

(c) The SEU shall conduct the sustainable energy programs under a brand name to be determined by the District Department of the Environment.

(d) The SEU contract shall provide that the SEU shall, at a minimum, achieve the following:

(1) Reduce per-capita energy consumption in the District of Columbia;

(2) Increase renewable energy generating capacity in the District of Columbia;

(3) Reduce the growth of peak electricity demand in the District of Columbia;

(4) Improve the energy efficiency of low-income housing in the District of Columbia;

(5) Reduce the growth of the energy demand of the District of Columbia's largest energy users; and

(6) Increase the number of green-collar jobs in the District of Columbia.

(e) The SEU contract shall be funded by the SETF. The SEU contract may also be funded by any other source of funding available to the Mayor, including:

(1) Federal funds;
(2) Private funds, subject to DDOE approval; and
(3) Other District funds.

(f) All funds used to support the SEU contract shall be managed by the Fiscal Agent.

(g) The SEU contract shall permit coordination with any similar private entity operating in an adjacent or nearby jurisdiction.

(h) The use of private grant money by the SEU shall be subject to DDOE approval.

(i) Notwithstanding the provisions of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), the SEU contract shall be awarded pursuant to the procedure set forth under this title.

Sec. 202. Structure of the SEU contract.

(a) The initial SEU contract shall be for a period of not less than 5 years.

(b) The SEU contract shall be funded as provided in section 201(e).

(c) The SEU contract shall be performance-based and shall provide financial incentives for the SEU to surpass the performance benchmarks set forth in the SEU contract. The SEU contract shall also provide financial penalties to be applied to the SEU if the SEU fails to meet the required performance benchmarks.

(d) The SEU contract shall require that the SEU program shall, when taken as a whole, meet the societal benefit test on an annual and contract-term basis.

(e) Each bid shall detail how the contractor proposes to nearly meet, meet, or exceed each performance benchmark. The performance benchmarks shall be set forth in the bid.

(f) The SEU contract shall permit the programs, benchmarks, and level of funding to be changed at any time with the approval of both the SEU and the DDOE. No change to the funding shall allow the Mayor to exceed the SETF funding limits set forth in section 210.

(g) The SEU contract shall be revocable if the SEU fails to meet the performance benchmarks of the contract.

(h) The SEU contract shall provide that the annual expenditure on natural gas-related programs shall be no less than 75%, and no greater than 125%, of the amount provided in the contract from the assessment on the natural gas company.

(i) The SEU contract shall provide that the expenditure on electricity-related programs shall be no less than 75%, and no greater than 125%, of the amount provided in the contract from the assessment on the electricity company.

(j) Subsections (h) and (i) shall not apply to funds from a source other than an assessment on the gas company or the electric company.

(k) The SEU contract shall provide that the SEU shall submit, to the DDOE and Board, a quarterly report detailing expenditures under the contract and performance of SEU programs.

Sec. 203. Establishment of a Sustainable Energy Utility Advisory Board.

(a) There is established a Sustainable Energy Utility Advisory Board whose purpose shall be to:

(1) Provide advice, comments, and recommendations to the DDOE and Council regarding the procurement and administration of the SEU contract described in sections 201 and 202.

(2) Advise the DDOE on the performance of the SEU under the SEU contract; and

(3) Monitor the performance of the SEU under the SEU contract.

(b) The Board shall be comprised of:

(1) The Mayor, or his or her designee, who shall chair the Advisory Board;

(2) The People's Counsel or his or her designee;

(3) The Chair of the Public Service Commission or his or her designee;

(4) One member appointed by the Chairman of the Council committee with oversight of the Energy Office;

(5) One member appointed by the Chairman of the Council;

(6) One member, appointed by the Mayor, representing the renewable energy industry;

(7) One member, appointed by the Mayor, representing an environmental group;

(8) One member, appointed by the Mayor, representing the low-income community;

(9) One member, appointed by the Mayor, representing the building construction industry;

(10) One member, appointed by the Mayor, representing the building management industry;

(11) One member, appointed by the Mayor, representing the economic development community with particular expertise in the generation of green-collar jobs;

(12) One member, appointed by the Mayor, representing the electric company; and

(13) One member, appointed by the Mayor, representing the gas company.

(c) Each member of the Advisory Board appointed by the Mayor or Council shall have demonstrable expertise in energy efficiency or renewable energy.

(d) Board members shall be entitled to reimbursement for expenses, including transportation, parking, mileage expenses, and conference admission fees incurred in the performance of official duties of the Board. The reimbursement shall be limited to $2,000 per board member per year.

(e) Each member of the Board shall serve a 3-year term.

(f) The Mayor, Council Chairman, or Chairman of the Council committee with oversight of the Energy Office may replace any appointee at any time, but shall not replace the appointee to any individual position more than 2 times per calendar year.

(g) Any Board member who is an employee of the District government, or who serves on the Board as the representative of a particular organization, group, business, or other entity, including an elected official, shall be removed from the Board upon leaving the employment of the District government, elected office, or other entity, as applicable.

Sec. 204. Operations of the Sustainable Energy Utility Advisory Board.

(a) Within 45 days after the effective date of this act, the Mayor, Council Chairman, and Chairman of the Council committee with oversight of the Energy Office shall appoint the respective members of the Board.

(b) Within 120 days after the effective date of this act, the Board shall adopt rules and procedures governing its meetings and decisionmaking processes. The procedures shall include a formal means for members of the Board to submit their dissent from the recommendations of the Board with the comments of the Board provided to the DDOE.

(c) Within 210 days after the effective date of this act, the Board shall recommend to the Mayor performance benchmarks for the SEU contract based on the requirements set forth in section 201.

(d) Within 60 days after the submission of a draft RFP to the Board by the DDOE, pursuant to section 205(b), the Board shall submit to the DDOE and Council comments on the draft RFP.

(e) Within 60 days of the final submission of bids for the contract for the SEU, the Board shall submit to the DDOE and Council comments on the bids submitted for the SEU contract.

(f) During the term of a SEU contract, the Board shall meet quarterly with representatives from the SEU to monitor the performance of the SEU and programs operated by the SEU.

(g) The Board shall present a report on the progress of the SEU to the Council annually, with the 1st report being due 30 days after the conclusion of the 1st year of the SEU contract. The DDOE shall make this document available to the public on its website within 10 days of its submission to the Council.

(h) The Board may convene any subcommittees and working groups it considers appropriate without any limitation as to the membership of such groups.

(i) All Board meetings shall be subject to the open meeting provisions contained in section 742 of the District of Columbia Home Rule Act, effective December 24, 1973 (87 Stat. 831; D.C. Official Code §1-207.42).

(j) The DDOE shall provide staff resources to the Board and coordinate the involvement of staff from the Public Service Commission, Office of the People's Counsel, and any other appropriate agency or organization as necessary for the Board to fulfill its mandate.

Sec. 205. Implementation of the Sustainable Energy Utility contract.

(a) The District Department of the Environment shall be responsible for the procurement and monitoring of the contract for the SEU, including:

(1) Drafting and revising the RFP for the SEU;

(2) Staffing the Advisory Board;

(3) Accepting the bids for the SEU contract;

(4) Reviewing bids for the SEU contract; and

(5) All other responsibilities not otherwise expressly delegated to another entity for purposes of operation under this act.

(b) Within 180 days of the Board's recommendation of performance benchmarks for the SEU contract, pursuant to section 204(c), the DDOE shall prepare a draft RFP and submit the RFP to the Board for comments. In preparing the RFP, the DDOE shall consult with at least one person or organization that has had experience in the drafting of a RFP for the state-wide provision of end-user energy efficiency services, and shall hold an industry day to solicit the advice and input of private entities that may bid on the contract.

(c) Within 60 days of the receipt of the Board's comments on the RFP pursuant to section 204(d), the DDOE shall revise the RFP to the extent it considers necessary and shall issue the RFP for bids for such period as it considers appropriate.

(d) Within 30 days of the completion of the bidding period, the DDOE shall submit the bids to the Board. The Board shall have 30 days to recommend a bidder or, failing the submission of a bid considered adequate by the Board, recommend the modification of the RFP.

(e) If the DDOE determines that there is not a sufficient bid, DDOE shall modify the RFP, if necessary, and solicit additional bids.

(f) The DDOE shall maintain the brand name adopted pursuant to section 206.

(g) The DDOE shall administer the transition from one SEU to another.

(h) Prior to the execution of the contract with the SEU, $1 million shall be allocated annually for the purposes of:

(1) Preparing the RFP;

(2) Staffing the Board;

(3) Maintaining the brand name adopted pursuant to section 206; and

(4) Operating the renewable energy rebate program established by section 209.

(i) After the execution of the contract with the SEU, 10% of the annual cost of the SEU contract shall be allocated to DDOE for administrative costs.

(j) The DDOE shall submit to the Council, within 30 days following the end of each fiscal year, a report detailing the expenditures of money from the SETF and EATF during the previous fiscal year. The DDOE shall make this document available to the public on its website within 10 days of its receipt.

(k) The DDOE shall commission, on an annual basis, an independent review of the performance and expenditures of the SEU and shall provide the results of this review to the Board and Council within 6 months of the conclusion of each year of the SEU contract.

Sec. 206. Sustainable energy branding.

(a) Within 90 days after the effective date of this act, the DDOE shall determine a brand name for the provision of energy efficiency and renewable energy services in the District of Columbia.

(b) Within 90 days after the effective date of this act, the DDOE shall establish and maintain a website for the brand, with a web address of the brand name bracketed by www. and .org, .com, or .gov. The purpose of this website shall be to serve as a portal that will provide information about every energy efficiency and renewable energy program available to District residents and businesses, including those offered by:

(1) The DDOE;

(2) The SEU;

(3) The electricity or natural gas companies;

(4) The federal government;

(5) Nonprofit entities; and

(6) Any contractors or subcontractors for any of the entities set forth in paragraphs (1) through (5) of this subsection.

(c) The DDOE shall provide a phone number that shall serve as a hotline for the brand during normal business hours.

(d) The DDOE shall be responsible for working with providers of energy efficiency and renewable energy services to ensure that all information is accurate and up-to-date.

Sec. 207. Electric company.

(a) Within 90 days of the completion of the record on Formal Case 945, the Commission shall issue an order regarding the demand-side management programs proposed by the electric company.

(b) In considering Formal Case 945, the Commission shall seek to approve those programs that:

(1) Can be implemented most quickly;

(2) Take advantage of the electric company's frequent contact with customers; and

(3) Do not replicate the efforts of sustainable energy programs operated by the DDOE.

(c) The programs that the Commission approves may be funded by the SETF under section 210.

(d)(1) Within 30 days after the execution of a contract with the SEU, the electric company shall disclose, or allow access to, the aggregate energy use data for every rate class for electric company customers in the District of Columbia. Customer-specific information, including the customer's name, account number, service address, phone number, and energy use data, shall not be provided without the customer's express written consent.

(2) The electric company shall ensure the privacy of any and all customer information, including the electric company customer's name, account number, service address, billing address, phone number, and energy use data, in making the disclosure. The SEU shall not sell or otherwise disclose any customer or billing information to any third party without express written authorization from the customer.

(3) The electric company shall not be liable for any damages resulting from its provision of customer energy use data to the SEU absent gross negligence. The SEU shall be liable for damages to the customer for any unauthorized use of customer information or data, including the electric company customer's name, account number, service address, billing address, phone number, and energy use data.

(e) Within one year after the effective date of this act, all energy efficiency and renewable energy programs administered by the electric company and funded by the SETF shall be operated in coordination with the brand managed by the DDOE. To effectuate this mandate, the electric company shall:

(1) Prominently display the name and logo of the brand name on all advertisements of the programs;

(2) Include the website and phone number for the DDOE brand on all advertisements of the programs;

(3) Post a link to the brand website on all company webpages related to energy efficiency and renewable energy; and

(4) Provide timely, accurate, and comprehensive information regarding its programs to the DDOE to permit DDOE to include such information in material provided to the public.

Sec. 208. Natural gas company.

(a)Within 30 days after the execution of a contract with the SEU, the gas company shall disclose, or allow access to, the aggregate energy use data for every rate class for gas company customers in the District of Columbia. Customer-specific information, including the customer's name, account number, service address, phone number, and energy use data, shall not be provided without the customer's express written consent.

(b) The gas company shall ensure the privacy of any and all customer information, including the gas company customer's name, account number, service address, billing address, phone number, and energy use data, in making the disclosure. The SEU shall not sell or otherwise disclose any customer or billing information to any third party without express written authorization from the customer.

(c) The gas company shall not be liable for any damages resulting from its provision of customer energy use data to the SEU absent gross negligence. The SEU shall be liable for damages to the customer for any unauthorized use of customer information or data, including the gas company customer's name, account number, service address, billing address, phone number, and energy use data.

Sec. 209. Renewable energy incentive program.

(a) There is established a rebate program that shall provide funding to the owners of the following new renewable energy generation systems in the District of Columbia:

(1) Solar photovoltaic;

(2) Solar thermal;

(3) Geothermal;

(4) Wind;

(5) Biomass; and

(6) Methane or waste-gas capture.

(b) The program shall provide funding in the following amounts:

(1) The amount of $3 for each of the first 3,000 installed watts or watt-equivalents of capacity;

(2) The amount of $2 for each of the next 7,000 installed watts or watt-equivalents of capacity; and

(3) The amount of $1 for each of the next 10,000 installed watts or watt-equivalents of capacity.

(c) The program shall be administered by DDOE and shall operate until the end of fiscal year 2012.

(d) The program shall receive funding from the SETF as set forth in section 210.

(e) DDOE shall allocate ½ of the funds available annually every 6 months.

(f) DDOE shall only fund systems installed in the District of Columbia.

(g) Applications shall be considered and approved or rejected in the order in which they are received. Rebate payments shall be awarded immediately upon receipt by DDOE of the invoice for the purchase of the renewable energy generating equipment.

(h)(1) An owner shall have 6 months from the date of the approval of its rebate application to complete the installation.

(2) DDOE shall visit each project site to verify the completion of each project upon the earlier of 14 days of notification by the owner of the completion of the project or 6 months after DDOE approves the project for funding. If the project has not been completed, the DDOE may, in its discretion, allow the owner up to an additional 6 months to complete the installation. If the owner fails to complete the installation within the period allowed under paragraph (1) of this subsection, it shall return the amount of the rebate within 30 days after the expiration of such period. If the owner fails to return the rebate money within 30 days after the expiration of such period, this subsection shall constitute a lien on all of the property, real or personal, of the owner to secure repayment of the rebate.

(i) Within 90 days after the effective date of this act, the DDOE shall post, and update monthly, on the website required by section 206, information about the rebate program, including:

(1) The date that funds shall be made available;

(2) A printable copy of the rebate application determined by DDOE;

(3) The amount of rebate funds remaining to be awarded; and

(4) The amount of rebate funds awarded.

(j) The application form for the rebate shall be substantially the same as the application for the analogous program in use in Maryland as of the date of the program.

(k) Within 90 days after the effective date of this act, the DDOE shall define a method for converting the heating and cooling capacity of solar thermal and geothermal systems to kilowatt equivalents to permit such systems to qualify for rebates under this program.

(l) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to modify the incentive program as market conditions dictate.

(m) DDOE may pay for the installation of monitoring and communications systems, for collecting generation data from renewable energy systems funded by the rebate program and transmitting it to a designated web site; provided, that the system owner shall permit the DDOE to make the data publicly accessible on the DDOE website.

Sec. 210. Sustainable Energy Trust Fund.

(a)(1) There is established as a nonlapsing fund the Sustainable Energy Trust Fund, which shall be used solely for the purposes stated in subsection (c) of this section. The Sustainable Energy Trust Fund shall be funded by an assessment on the natural gas and electric companies under subsection (b) of this section and from the sale of credits associated with the Regional Greenhouse Gas Initiative or any successor program. All funds collected from these sources shall be deposited into the SETF and shall be disbursed by the Fiscal Agent.

(2) All funds deposited into the Sustainable Energy Trust Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b)(1) There is imposed upon the natural gas company an assessment calculated on sales on a per-therm basis as follows:

(A) The amount of $.011 in fiscal year 2009;

(B) The amount of $.012 in fiscal year 2010;

(C) The amount of $.014 in fiscal year 2011 and each year thereafter.

(2) There is imposed upon the electric company an assessment calculated on sales on a per-kilowatt hour basis as follows:

(A) The amount of $.0011 in fiscal year 2009;

(B) The amount of $.0013 in fiscal year 2010;

(C) The amount of $.0015 in fiscal year 2011 and each year thereafter.

(3) The assessments shall be paid to the Fiscal Agent before the 21st day of each month, beginning in November, 2008, or the 1st full month following the effective date of this act, whichever is later, for sales for the preceding billing period.

(4) The assessment shall be applied to the sale of every kilowatt hour and therm in the District, except to those sold to residents participating in the Residential Essential Service or Residential Aid Discount programs operated by DDOE.

(5) Nothing in this title shall be construed to prohibit the electric company or natural gas company from recovering the assessment imposed under paragraphs (1) and (2) of this section, respectively, in its rates as a surcharge on customers' bills.

(c) The funds in the Sustainable Energy Trust Fund shall be used solely to fund:

(1) The SEU contract in the following amounts:

(A) The amount of $7.5 million in the 1st year of the contract;

(B) The amount of $15 million in the 2nd year of the contract;

(C) The amount of $17.5 million in the 3rd year of the contract; and

(D) The amount of $20 million in the 4th and each subsequent year of the initial contract, and for each year of any subsequent contract;

(2) The administration of the SEU contract by DDOE, on an annual basis, equal to 10% of the payments under the contract in that fiscal year;

(3) An independent review of the performance of the SEU under section 205(l) in the amount of $100,000 annually;

(4) The activities of the SEU Advisory Board under section 203 in the amount of $26,000 annually;

(5) Existing electricity programs in the amount of $3.545 million annually for fiscal years 2009 through 2011;

(6) Temporary electricity programs in the amount of $916,000 for fiscal year 2009;

(7) Existing natural gas programs in the amount of $3 million annually for fiscal years 2009 through 2011;

(8) Renewable energy incentive program under section 209 in the amount of $2 million annually for fiscal years 2009 through 2012, of which up to $20,000 annually may be used to pay for the installation of monitoring and communications systems; and

(9) Energy efficiency programs administered by the electric company under section 207 in the amount of $6 million annually for fiscal years 2009 through 2011.

(d) If, at the beginning of a fiscal year, the fund balance of the SETF exceeds the projected annual cost of all programs pursuant to subsection (c) of this section in that fiscal year by at least $10 million, the Fiscal Agent shall suspend payment and the collection of the SETF assessment, until such excess is estimated by the Fiscal Agent to be $5 million.

(e) The DDOE shall submit to the Council a quarterly report detailing:

(1) Expenditures from the SETF; and

(2) The performance of SETF programs operated by the DDOE.

Sec. 211. Energy Assistance Trust Fund.

(a)(1) There is established as a nonlapsing fund the Energy Assistance Trust Fund, which shall be used solely for the purposes stated in subsection (c) of this section. The Energy Assistance Trust Fund shall be funded by an assessment on the natural gas and electric companies under subsection (b) of this section. All funds collected from these sources shall be deposited into the EATF and be disbursed by the Fiscal Agent.

(2) All funds deposited into the Energy Assistance Trust Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b)(1) There is imposed upon sales of the gas company an assessment of $.006 per therm.

(2) There is imposed upon the sales of the electric company an assessment of $.0004 per-kilowatt hour.

(3) The assessments shall be paid to the Fiscal Agent before the 21st day of each month, beginning in November, 2008, or the first full month following the effective date of this act, whichever is later, for sales for the preceding billing period.

(4) The assessment shall be applied to the sale of every kilowatt hour and therm in the District, except sales to residents participating in the Residential Essential Service or Residential Aid Discount programs operated by DDOE.

(5) Nothing in this title shall be construed to prohibit the electric company or natural gas company from recovering the assessment imposed under paragraphs (1) and (2) of this section, respectively, in its rates as a surcharge on customers' bills.

(c) The Energy Assistance Trust Fund shall be used solely to fund:

(1) The existing low-income programs in the amount of $3.3 million annually; and

(2) The Residential Aid Discount subsidy in the amount of $3 million annually.

(d) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to modify the assessments under subsection (b) of this section and the programs funded by the EATF.

(e) The DDOE shall submit to the Council a quarterly report detailing:

(1) Expenditures from the EATF; and

(2) The performance of EATF programs operated by the DDOE.

Sec. 212. Conforming amendments.

(a)(1) Section 114 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1514), is repealed.

Repeal § 34-1514

(2) One-half of the funds remaining in the Reliable Energy Trust Fund shall be transferred to the Sustainable Energy Trust Fund and ½ of the funds shall be transferred to the Energy Assistance Fund.

Repeal § 34-1651

(b)(1) Section 101 of the Omnibus Utility Amendment Act of 2004, effective April 12, 2005 (D.C. Law 15-142; D.C. Official Code § 34-1651), is repealed.

(2) One-half of the funds remaining in the Natural Gas Trust Fund shall be transferred to the Energy Assistance Trust Fund and ½ of the funds shall be transferred to the Sustainable Energy Trust Fund.

Sec. 213. Solar and Renewable Home Improvement Financing Proposal.

(a) Within 90 days after the effective date of this act, the Commission shall open an investigation into mechanisms to make long-term affordable financing available to energy consumers to purchase:

(1) Renewable energy generating systems, including solar thermal and solar photovoltaic panels and geothermal heating and cooling systems; and

(2) Home and business improvements that increase the energy efficiency of buildings, including weatherizing, adequate insulation, efficient doors and windows, and central air conditioning.

(b) The Commission's investigation shall include the means by which the electric and gas companies' billing systems can be used to collect payments from individuals to purchase renewable energy generating systems and make energy efficiency improvements to homes and businesses.

(c) Within 60 days after the close of the record of the investigation, the Commission shall issue a report, including findings, on the feasibility of the implementation of the proposal set forth in subsections (a) and (b) of this section.

TITLE III. RENEWABLE PORTFOLIO STANDARDS.

Sec. 301. The Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code § 34-1431 *et seq.*), is amended as follows:

Amend § 34-1431

(a) Section 3(14)(D.C. Official Code § 34-1431(14)) is amended to read as follows:

"(14) "Solar energy" means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy, that is collected, generated, or stored for use at a later time.".

Amend § 34-1432

(b) Section 4 (D.C. Official Code § 34-1432) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

"(a-1)(1) For nonresidential solar heating, cooling, or process heat property systems producing or displacing greater than 10,000 kilowatt hours per year, the solar systems shall be rated and certified by the SRCC and the energy output shall be determined by an onsite energy meter that meets performance standards established by OIML.

"(2) For nonresidential solar heating, cooling, or process heat property systems producing or displacing 10,000 or less than 10,000 kilowatt hours per year, the solar systems shall be rated and certified by the SRCC and the energy output shall be determined by the SRCC OG-300 annual system performance rating protocol applicable to the property, by the SRCC OG-100 solar collector rating protocol, or by an onsite energy meter that meets performance standards established by OIML; and

"(3) For residential solar thermal systems, the system shall be certified by the SRCC and the energy output shall be determined by the SRCC OG-300 annual rating protocol or by an onsite energy meter that meets performance standards established by OIML.".

(2) Subsection (c) is amended to read as follows:

"(c) The renewable energy portfolio standard shall be as follows:

"(1) In 2008, 2% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.011% from solar energy;

"(2) In 2009, 2.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.019 % from solar energy;

"(3) In 2010, 3% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.028% from solar energy;

"(4) In 2011, 4% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.04% from solar energy;

"(5) In 2012, 5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.07% from solar energy;

"(6) In 2013, 6.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.10% from solar energy;

"(7) In 2014, 8% from tier one renewable sources; 2.5% from tier two renewable sources, and not less than 0.13% from solar energy;

"(8) In 2015, 9.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.17% from solar energy;

"(9) In 2016, 11.5% from tier one renewable sources, 2% from tier two renewable sources, and not less than 0.21% from solar energy;

"(10) In 2017, 13.5% from tier one renewable sources, 1.5% from tier two renewable sources, and not less than 0.25% from solar energy;

"(11) In 2018, 15.5% from tier one renewable sources, 1% from tier two renewable sources, and not less than 0.30% from solar energy;

"(12) In 2019, 17.5% from tier one renewable sources, 0.5% from tier two renewable sources, and not less than 0.35% from solar energy; and

"(13) In 2020, 20% from tier one renewable sources, 0% from tier two renewable sources, and not less than 0.4% from solar energy.".

(3) A new subsection (e) to read as follows:

"(e) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from

solar energy systems interconnected to the distribution grid serving the District of Columbia. Only after an electricity supplier exhausts all opportunity to meet this requirement that the solar energy systems be connected to the grid within the District of Columbia, can that supplier obtain renewable energy credits from jurisdictions outside the District of Columbia.".

(c) Section 6(c) (D.C. Official Code § 34-1434(c)) is amended as follows: **Amend § 34-1434**

(1) Paragraph (1) is amended to read as follows:

"(1) Five cents for each kilowatt-hour of shortfall from required tier one renewable sources;".

(2) Paragraph (3) is amended to read as follows:

"(3) Fifty cents in 2009 until 2018 for each kilowatt-hour of shortfall from required solar energy sources.".

(3) New paragraphs (4) and (5) are added to read as follows:

"(4) Beginning on March 1, 2010, and annually thereafter, energy companies that sell electricity in the District of Columbia shall file an energy portfolio report for the preceding calendar year with DDOE, which shall include a breakdown of the average cost per kilowatt hour of electricity that the company sold in the District of Columbia by source of generation, to include coal, gas, oil, nuclear, solar, land-based wind, off-shore wind, and other renewable sources. The breakdown of cost should also include the average capital cost per kilowatt, as well as the average fixed and variable costs associated with operations and maintenance per megawatt.

"(5) Beginning in 2018, and every year thereafter, the DDOE shall review the data found in the energy portfolio reports, and recommend to the Council a revised annual compliance fee. The proposed alternative compliance fee shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, and legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed alternative compliance fee by resolution within this 45-day review period, the proposed rules shall be deemed approved.".

(d) Section 8 (D.C. Official Code § 34-1436) is amended by adding a new subsection (f) to read as follows: **Amend § 34-1436**

"(f) The DDOE shall provide to the Council a quarterly report detailing:

"(1) Expenditures from the Renewable Energy Development Fund; and

"(2) The performance of programs or projects funded by the Renewable Energy Development Fund.".

Sec. 302. Section 2(a)(15)(A) of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501(a)(15)(A)) is amended by striking the phrase "100 kilowatts" and inserting the phrase "1000 kilowatts" in its place. **Amend § 34-1501**

TITLE IV. PUBLIC SERVICE COMMISSION AND THE OFFICE OF THE PEOPLE'S COUNSEL.

Sec. 401. Section 8 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; codified in scattered sections of the Title 34 of the District of Columbia Official Code), is amended by adding a new paragraph (96A) to read as follows:

"Par. (96A) In supervising and regulating utility or energy companies, the Commission shall consider the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality.".

Sec. 402. Section 1 of AN ACT To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes, approved January 2, 1975 (88 Stat. 1975; D.C. Official Code § 34-804), is amended by adding a new subsection (e) to read as follows: **Amend § 34-804**

"(e) In defining its positions while advocating on matters pertaining to the operation of public utility or energy companies, the Office shall consider the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality.".

TITLE V. ENERGY BENCHMARKING REQUIREMENTS FOR PRIVATE AND GOVERNMENT BUILDINGS.

Sec. 501. The Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234, D.C. Official Code § 6-1451.01 *et seq*.), is amended as follows:

(a) Section 3 (D.C. Official Code § 6-1451.02) is amended by adding a new subsection (a-1) to read as follows: **Amend § 6-1451.02**

"(a-1)(1) Beginning 90 days after the effective date of the Clean and Affordable Energy Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-492), 10 buildings owned or operated by the District of Columbia shall be benchmarked using the Energy Star® Portfolio Manager benchmarking tool, and the results made available to the public on the Internet through the DDOE website.

"(2) Beginning one year after the effective date of the Clean and Affordable Energy Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-492), all buildings owned or operated by the District or any of its instrumentalities shall be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool; provided, that the building has at least 10,000 square feet of gross floor area and is of a building type for which Energy Star® benchmarking tools are available. Benchmark and Energy Star® statements of energy performance for each building shall, within 60 days of being generated, be

made available to DDOE, which shall then make them accessible to the public via an online database.".

Amend § 6-1451.03

(b) Section 4 (D.C. Official Code § 6-1451.03) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

"(a-1)(1) All privately-owned buildings shall be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool as designated by the schedule in paragraph (2) of this subsection; provided, that the buildings are of a building type for which Energy Star® tools are available. Benchmark and Energy Star® statements of energy performance for each building shall, by January 1 of the following year, be made available to DDOE. DDOE shall, upon the receipt of the 2nd annual benchmarking data for each building, make the data accessible to the public via an online database.

"(2) The schedule shall be as follows:

"(A) All buildings over 200,000 square feet of gross floor area beginning in 2010 and thereafter;

"(B) All buildings over 150,000 square feet of gross floor area beginning in 2011 and thereafter;

"(C) All buildings over 100,000 square feet of gross floor area beginning in 2012 and thereafter; and

"(D) All buildings over 50,000 square feet of gross floor area beginning in 2013 and thereafter."

(2) A new subsection (b-1) is added to read as follows:

"(b-1) A project that has submitted the 1st construction building construction permit after January 1, 2012, for new construction or substantial improvement shall, prior to construction, estimate its energy performance using the Energy Star® Target Finder Tool and be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool; provided, that the building has 50,000 square feet of gross floor area or more and is of a building type for which Energy Star® tools are available. Benchmark and Target Finder scores and Energy Star® statements of energy performance for each building shall, within 60 days of being generated, be made available to DDOE, which shall make the data accessible to the public via an online database.".

TITLE VI. RENEWABLE ENERGY STUDY.

Sec. 601. Renewable energy study.

Within one year after the effective date of this act, the Mayor shall commission a study to determine the economic, legal, and technical viability of the District government pursuing a new large-scale wind energy project through public financing or private financing.

Sec. 602. Applicability.

This title shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

TITLE VII. SUBMETERING PROVISIONS.

Sec. 701. Definitions.

For the purposes of this title, the term:

(1) "Building" means all of the individual units served through the same utility-owned meter within a property defined as Class 2 Property under D.C. Official Code § 47-813(c-6).

(2) "Building owner, operator, or manager" means any person or entity responsible for the operation and management of a building.

(3) "Commission" means the Public Service Commission.

(4) "Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any nonresidential rental unit within a building.

(5) "Electricity supplier" shall have the same meaning as in section 101(17) of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501(17).)

(6) "Natural gas supplier" shall have the same meaning as in section 3(12) of the Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code § 34-1671.02(12).

(7) "Nonresidential rental unit" means real property leased for commercial purposes.

(8) "Owner-paid areas" means the portion of the real property for which the owner bears financial responsibility for energy costs, which portions include areas outside individual units or in owner-occupied or shared areas.

(9) "Public utility," "utility," or "utility company" shall have the same meaning as in the third unnumbered paragraph, beginning "the term "public utility" section 8(1) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 34-214).

(10) "Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any nonresidential rental unit when the equipment is not owned or controlled by the electric or natural gas utility serving the building in which the nonresidential rental unit is located.

Sec. 702. Commission to promulgate rules, including standards.

(a) The Commission shall promulgate rules, including standards, under which any owner, operator, or manager of a building which is not individually metered for electricity or gas for each nonresidential rental unit may install submetering equipment or energy allocation equipment for the purpose of fairly allocating:

(1) The cost of electrical or gas consumption for each nonresidential rental unit; and

(2) Electrical or gas demand and customer charges made by the utility and electricity and natural gas supplier.

(b) In addition to other appropriate safeguards for the tenant, the rules shall require that a building owner, operator, or manager:

(1) Shall not impose on the tenant any charges over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company, the electricity supplier, and natural gas supplier to the building owner, operator, or manager, including any sales, local utility, or other taxes, if any; provided, that additional service charges permitted by section 703 may be collected to pay administrative costs and billing; and

(2) Shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours.

(c)(1) For the purposes of Commission enforcement of the rules adopted under this section, building owners, operators, or managers shall be treated as public utilities for the purposes of making a complaint under section 8(47) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 984; D.C. Official Code § 34-917), and any rules governing the making of complaints adopted under section 8(32) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 982; D.C. Official Code § 34-902).

(2) All submetering equipment shall be subject to the same rules, including standards, established by the Commission for accuracy, testing, and recordkeeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of section 8(57) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 987; D.C. Official Code § 34-303).

(3) All energy allocation equipment shall be subject to rules, including standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each nonresidential rental unit.

(4) Violations of Commission rules and orders issued under this section shall be subject to the penalty provisions set forth in section 8(87) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 992; D.C. Official Code § 34-708), and section 1 of AN ACT To provide alternative methods of enforcement of orders, rules, and regulations of the Joint Board and of the Public Utilities Commission of the District of Columbia, approved April 5, 1939 (53 Stat. 569; D.C. Official Code § 34-731).

(d) In implementing this section, no building owner, operator, or manager shall be considered a public utility engaged in the business of distributing or reselling electricity or gas except as provided in subsection (c) of this section. The building owner, operator, or manager may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the building.

Sec. 703. Energy submetering and energy allocation equipment.

(a) Energy submetering equipment or energy allocation equipment may be used in a building if it is authorized in the rental agreement or lease for the nonresidential rental unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the Commission pursuant to subsection (b) of this section.

(b)(1) If energy submetering equipment or energy allocation equipment is used in any building, the building owner, operator, or manager shall bill the tenant for electricity or natural gas for the same billing period as the utility, the electricity supplier, or the natural gas supplier serving the building, unless the rental agreement or lease expressly provides otherwise.

(2) A late payment charge shall not be imposed on all amounts, including deferred payment installments, paid by the due date or on amounts in dispute before the Commission. Amounts paid after the due date shall bear a late payment charge of 1%, and an additional late payment charge at the rate of 1 1/2 % on the remaining unpaid balance per billing month thereafter.

(c) Energy allocation equipment shall be tested periodically under Commission rules by the building owner, operator, or manager. Upon the request by a tenant, the building owner, operator, or manager shall test the energy allocation equipment without charge. The test shall be conducted without charge to the tenant and shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 business days after the completion of the test.

(d) A building owner, operator, or manager shall maintain adequate records regarding energy submetering equipment or energy allocation equipment. A tenant may inspect and copy the records for the nonresidential unit during reasonable business hours at a convenient location within the building. The building owner, operator, or manager may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

(e) Notwithstanding any enforcement action undertaken by the Commission pursuant to its authority under section 702, tenants and owners, operators, or managers shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or section 703.

TITLE VIII. APPLICABILITY; EFFECTIVE DATE; AND FISCAL IMPACT STATEMENT.

Sec. 801. Applicability.

This act shall apply on the later of October 1, 2008, or the effective date of this act.

Sec. 802. Fiscal impact statement.

The Council adopts the July 1, 2008 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 803. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia