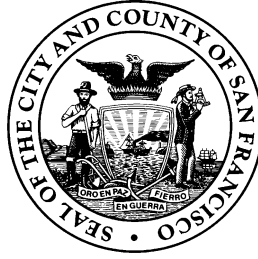


BOARD of SUPERVISORS



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FOR YOUR INFORMATION SEE THE ATTACHED LEGISLATION

DATE SENT: September 1, 2010

FILE #: 101105

DESCRIPTION: Existing Commercial Buildings Energy Performance Ordinance

FROM:

- Budget & Finance
- City Operations & Neighborhood Services
- City & School District Select
- Government Audit & Oversight
- Land Use & Economic Development
- Rules
- Public Safety

This item is scheduled to be heard in Committee on: N/A

URGENT (response needed within one week) **OR:** No date set yet

Hearing or Legislation referred to:

- Building Inspection Commission *Charter Section D3.750-5*
- Ethics Commission *Campaign & Governmental Conduct Code Section 1.103*
- Historic Preservation Commission *Charter Section 4.135*
- Planning – Administrative Code Amendment *BOS Rule 5.41 (30 days to respond)*
- Planning - Environmental review – 30 days to respond
- Planning - Environmental review (fees) *CEQA CA Public Resources Code § 21000 et seq – 10 days to respond*
- Planning - Interim Controls *Planning Code Section 306.7(c)*
- Retirement Board *Campaign & Governmental Code or Elections Code*
- Small Business Commission *M01-33*
- Youth Commission *Charter Section 3.720-2; Charter Section 4.124 (12 day to respond)*
- FYI – Department of the Environment
- FYI – Department of Building Inspection
- FYI – United States Environmental Protection Agency
- FYI – American Society of Heating, Refrigerating, and Air conditioning Engineers Inc.

1 [Existing Commercial Buildings Energy Performance Ordinance]

2

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

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

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

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

17

18 Section 2. **Findings.**

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

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

24

25

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

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

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

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

16 7. The Existing Commercial Buildings Task Force established in 2009 has
17 recommended systemically identifying all cost-effective opportunities to improve the energy
18 efficiency of commercial buildings citywide.

19 8. Recognizing the value of measurement and transparency as tools to enable
20 effective management of resources, the Existing Commercial Buildings Task Force
21 recommended that energy audits and public disclosure of building performance data be made
22 available to all building stakeholders.

23 9. By ensuring that every non-residential building owner, operator, manager, tenant,
24 and their agents is informed about the full set of opportunities to cost effectively improve
25 energy efficiency, the numerous subsidies and incentives available, and how each building is

1 performing relative to its peers, non-residential building decision makers will have every
2 incentive to make decisions in their own interest, to reduce utility costs and improve the
3 competitiveness of San Francisco properties.

4 10. The Department of Environment operates energy efficiency programs that provide
5 free energy audits for small businesses and multifamily buildings. These programs upgrade
6 lighting, heating, cooling, and refrigeration systems at a discount averaging in excess of 50
7 percent of total cost of the upgrade.

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

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

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

19
20 Section 2. The San Francisco Environment Code is hereby amended, by adding
21 Chapter 20, Sections 2000 through 2008, to read as follows:

22 **SEC. 2000. TITLE AND PURPOSE.**

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

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

5
6 **SEC. 2001. DEFINITIONS.**

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

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

12 2. "Building Owner" means a person, as defined by California Public Resources Code Section
13 25116 or any successor legislation, possessing title to the building.

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

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

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

22 6. "Energy efficiency audit" means a systematic evaluation to identify modifications and
23 improvements to building equipment and systems which utilize energy, meeting or exceeding the
24 Procedures for Commercial Building Energy Audits published by the American Society of Heating,
25

1 Refrigerating, and Air-conditioning Engineers Inc. (ASHRAE), as modified by the Department of the
2 Environment.

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

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

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

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

14 11. "Level I Audit" means a brief on-site survey of a building which identifies and provides cost
15 analysis for low-cost and no-cost energy saving measures, and lists potential capital improvements,
16 meeting the Level I standard of Procedures for Commercial Building Energy Audits published by the
17 American Society of Heating, Refrigerating, and Air-conditioning Engineers Inc. (ASHRAE)

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

22 13. "Net Present Value" means the worth of an investment made this year, including all
23 benefits and costs, and compensating for the effects of interest.

24 14. "Nonresidential building" and "building" mean a facility of composed of occupancy type(s)
25 other than residential – including type A, B, E, I-1, I-2, I-3, M, R1 and S, as defined by California

1 Building Code Title 24 Section 302 (2007) as amended – which measures 5,000 square feet or more in
2 area and is heated or cooled in its interior.

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

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

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

13 18. "System" means a building assembly made up of various components that serve a specific
14 function, including but not limited to exterior walls, windows, doors, roofs, ceilings, floors, lighting,
15 pipng, ductwork, insulation, HVAC system equipment or components, electrical appliances and
16 plumbing appliances.

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

19
20 **SEC. 2002. ENERGY PERFORMANCE EVALUATION AND REPORTING REQUIRED.**

21 (a) **Energy Efficiency Audits and Energy Efficiency Audit Reports.** The owner of any
22 nonresidential building with a gross area of 5,000 square feet or greater shall conduct a
23 comprehensive energy efficiency audit for each such building not less than once every 5 years. Energy
24 efficiency audits shall comprehensively examine whole buildings, and must be completed on the
25 schedule set forth in Section 2004, subds. (a) through (c), of this Chapter.

1 **(b) Energy Efficiency Audit Standards.** Energy efficiency audits required by this Chapter
2 shall meet or exceed the American Society of Heating, Refrigerating, and Air-conditioning Engineers
3 (ASHRAE) Procedures for Commercial Building Energy Audits (2004). Energy efficiency audits must
4 be performed by, or under the supervision of, an energy professional in accordance with rules
5 promulgated by the Director. The level of detail required in an energy efficiency audit shall be
6 proportionate to the scale of the nonresidential building, such that:

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

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

13 **(c) Energy Efficiency Auditor Qualifications.** An energy professional performing or
14 supervising energy efficiency audits must hold one of the following qualifications:

15 (1) Licensed Professional Engineer and one of the following:

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

18 (B) ASHRAE Commissioning Process Management Professional Certification;
19 or

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

21 (2) Association of Energy Engineers Certified Energy Manager (CEM);

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

24 (A) BOC International Building Operator Certification; or

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

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

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

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

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

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

14 (4) One of the following:

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

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

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

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

1
2 **SEC. 2003. DISCLOSURE OF ENERGY PERFORMANCE INFORMATION.**

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

10 **(1) Descriptive Information.**

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

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

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

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

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

22 **(D) The energy use intensity per unit area per year (kBtu per square foot per**
23 *year) for the building;*

1 (E) The annual carbon dioxide equivalent emissions due to energy use for the
2 building as estimated by ENERGY STAR® Portfolio Manager or other tools approved by the
3 Department of the Environment; and

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

6 (b) **Energy Efficiency Audit Reporting.** The owner of every non-residential building shall file
7 a Confirmation of Energy Efficiency Audit for each covered building with the Department of the
8 Environment according to the schedule set forth in Section 2004 of this Chapter. The Confirmation of
9 Energy Efficiency Audit shall be limited to:

10 (1) Acknowledgement of the type of energy efficiency audit required for the
11 nonresidential building,

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

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

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

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

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

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

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

5 (3) For each covered building:

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

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

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

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

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

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

23 (f) Quality Assurance. To assist with the reliability and utility of Annual Energy Benchmark
24 Summary and Confirmation of Energy Efficient Audit report data, as well as to verify good faith
25 compliance with this Chapter, the Director shall have the authority to review relevant documents,

1 including an ENERGY STAR[®] Statement of Energy Performance signed by an energy professional, or
2 Energy Efficiency Audit Report. However, any energy-related information beyond items not explicitly
3 required to be made public in Section 2003(c), above, shall remain confidential to the extent permitted
4 by law, unless designated in writing by the building owner to be public or otherwise demonstrated to be
5 common knowledge.

6
7 **SEC. 2004. SCHEDULE FOR COMPLIANCE.**

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

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

12 (2) For a non-residential building with gross area greater than 10,000 square feet but
13 less than or equal to 49,999 square feet, the owner must complete and submit the initial AEBS on or
14 before April 1, 2012, and annually no later than April 1 thereafter.

15 (3) For a non-residential building with gross area greater than 5,000 square feet but
16 less than 9,999 square feet, the owner must complete and submit the initial AEBS on or before April 1,
17 2013, and annually no later than April 1 thereafter.

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

19 (1) No later than 120 days after enactment of this Chapter, the Department of
20 Environment shall establish a schedule for energy efficiency audit reports, such that:

21 (A) To ensure sufficient energy auditing capacity, due dates for initial energy
22 efficiency audits for all covered buildings shall be staggered over a five year rolling deadline, with
23 subsequent energy efficiency audits and energy efficiency audit reports due every five years thereafter.

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

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

4 (2) The owners of covered buildings in existence on the effective date of this Chapter
5 may comply with the first assigned due date for an energy efficiency audit by submitting records of
6 audits, retro-commissioning, and retrofits performed not more than 3 years prior to the effective date of
7 this ordinance, provided that the entire building was evaluated and that the energy efficiency audit
8 reports performed prior to the completion of rule-making are signed and dated by a Professional
9 Engineer, Certified Energy Manager, Certified Energy Auditor, or person with similar professional
10 credentials as determined by the Department of the Environment. Such submittals shall include
11 certification that all work associated with the audit, including but not limited to surveys, inspections,
12 and analyses, was completed on or after June 1, 2007, and meets at least one of the following criteria:

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

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

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

20 (D) Other comprehensive energy efficiency audit of the entire building, subject
21 to approval by the Department of Environment.

22
23 **SEC. 2005. CONFIDENTIALITY.**

24 (a) Consistent with the provisions of this Section and to the extent permitted by law, the
25 Department of the Environment shall maintain the confidentiality of any information submitted by

1 building owners under this Chapter, where the owner has informed the Department in writing at the
2 time the information was submitted that the information is confidential business information of the
3 owner or of a building tenant. Lists of cost-effective energy efficiency measures as well as associated
4 estimated costs and benefits for individual buildings shall be presumed confidential.

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

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

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

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

17 (c) If a building owner believes that any information required to be reported or disclosed by
18 this Chapter includes confidential business information, the owner shall provide the information to the
19 Director and shall notify the Director in writing of that belief, detailing the basis of the belief as to
20 each specific item of information the person claims is confidential business information. For purposes
21 of this Chapter, "confidential business information" shall have the same meaning as "trade secret"
22 under California Civil Code Section 3426.1, as amended. The owner designating information as
23 confidential business information shall also provide the Director with a name and street address for
24 notification purposes and shall be responsible for updating such information. The Director shall not
25

1 disclose any properly substantiated confidential business information which is so designated by an
2 owner except as required by this Chapter or as otherwise required by law.

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

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

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

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

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

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SEC. 2006. 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. 2007. 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

1 Existing Buildings Operation and Maintenance published by the United States Green Building Council
2 or other LEED rating system for whole existing buildings as determined by the Department of the
3 Environment, within five years prior to the date the building's energy performance summary would
4 otherwise be due.

5 (4) **Financial Distress.** Owners of financially distressed buildings may apply for
6 extensions of not more than one year in each instance for completion of an Energy Efficiency Audit and
7 submittal of Confirmation of Energy Efficiency Audit, and for not more than one year in each instance
8 for submittal of an Energy Benchmark Summary. Buildings in financial distress at the time an Energy
9 Efficiency Audit or Energy Benchmark Summary are due include:

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

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

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

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

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

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

1 (b) Confirmation of Energy Efficiency Audit. Where an energy efficiency audit is not
2 required due to one of the exceptions in Section 2007(a), the Confirmation of Energy Efficiency Audit
3 shall be filed, shall include reference to the exception which applies, and shall include a copy of
4 relevant documentation for verification by the Department of Environment:

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

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

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

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

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

17 (c) Annual Energy Benchmark Summary. Exceptions to energy efficiency audit requirements
18 do not affect the date when an AEBS report is due.

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

1 **SEC. 2008. ENFORCEMENT.**

2 (a) **Written Warning of Violation.** The Director shall issue a written warning to any building
3 owner he or she determines is violating any provision of this Chapter. In the event a building owner
4 fails to file an AEBS report for 30 days or more after the relevant deadline, the Director shall indicate
5 that building's compliance status via the publicly accessible electronic reporting interface. If 45 days
6 after issuing a written warning of violation from the Director, the Director finds that building owner
7 continues to violate any provisions of this Chapter, the Director may impose administrative fines as
8 provided in this Section.

9 (b) **Administrative Fines.** Violations of the provisions of this Chapter, or of any regulations
10 issued by the Director pursuant to Section 2006 (a), may be punished by administrative fines in the
11 amount of:

12 (1) Up to \$100.00 for the first violation;

13 (2) Up to \$250.00 for the second violation within a twelve-month period; and,

14 (3) Up to \$500 for the third and subsequent violations within a twelve-month period.

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

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

22
23 **Section 3. Additional Provisions.**

24 (a) **General Welfare.** In adopting and implementing this Chapter, the City and County
25 of San Francisco is assuming an undertaking only to promote the general welfare. It is not

1 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
2 is liable in money damages to any building owner who claims that such breach proximately
3 caused injury.

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

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

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

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19 By: _____
20 THOMAS J. OWEN
21 Deputy City Attorney
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