

Proposed City of San José Energy and Water Benchmarking and Transparency Ordinance Structure

| Category | Suggested Structure | Reasoning |
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| Lead Implementer | Environmental Services Department (ESD) | <ul style="list-style-type: none"> ESD has staffing bandwidth, in-house technical expertise, and potential funding to implement program; Would facilitate with other relevant departments. |
| Sector(s) Affected | Commercial, multifamily (MF) | <ul style="list-style-type: none"> Commercial sector (standard practice); Multifamily, excluding townhomes/condominiums (aligned with CA AB 802); Benchmarking and transparency (B&T) ordinances are pro-MF tenant, by providing consumer protections against energy cost variability and lowering energy cost burden for low-income tenants. |
| Size Threshold | 20,000 sq. ft.- covers approx. 2,600 buildings (bldgs.) | <ul style="list-style-type: none"> CA AB 802 requires 50,000 sq. ft. threshold already 20,000 sq. ft. threshold maximizes the covered square footage for number of bldgs. affected; Falls on the lower end of threshold ranges for nationwide B&T ordinances (5,000-100,000 sq. ft.); Staffing bandwidth will likely not be able to absorb a nearly 50% increase (1,200) in additional covered bldgs. at a lower threshold of 10,000 sq. ft.; Owners of smaller bldgs. have less resources to comply and achieve improvements. |
| B&T Exemptions | <p>There will be no blanket <i>reporting</i> exemptions. Bldgs. must submit a request for a reporting exemption, which may include:</p> <ol style="list-style-type: none"> New bldgs. in which the certificate of occupancy is less than 2 years old; Unoccupied bldgs., in which there is less than 1 full-time equivalent occupant over the last calendar year; Bldgs. in financial hardship¹. <p>There will be no blanket <i>transparency</i> exemptions. Bldgs. must submit a request for a data transparency exemption if bldg. demonstrates that the publishing of data will result in the release of proprietary information, characterized as a “trade secret.”</p> | <ul style="list-style-type: none"> Bldgs. must apply for and be granted exemption to ensure the maximum ordinance impact; Exemptions are based on best practices (BPs) of other B&T ordinances. |
| B&T Reporting Fee | No submission fee. | No fee ensures that ordinance is not seen as “punitive” and does not add additional barriers to participation. |
| Transparency Approach | <p>Means of transparency will include at least a spreadsheet prepared by the City of San José (CSJ), to be made public annually, and 1 formal summary report after the first 5 years of implementation. Data made public will include, at minimum, the following:</p> <ol style="list-style-type: none"> Building identification; ENERGY STAR Portfolio Manager energy and water scores (where available); Site and source energy use intensity; Indoor water use and water intensity, outdoor water use (if available), and total water use; Ordinance compliance status; Additional contextual information related to energy and water use as voluntarily submitted by bldg. | <ul style="list-style-type: none"> ESD will determine level of transparency based on staffing and funding over time; Future options could include interactive maps or dashboards; 5 year lead time to summary report will ensure 1 complete enforcement cycle, and the collection of sufficient data to inform program evaluation and identify ordinance next steps. |
| Prescriptive Pathway Requirements (for bldgs. that do not meet performance requirements) | <p>On 5 year cycle, bldgs. must perform 1 of the following, determined by APN:</p> <ol style="list-style-type: none"> ASHRAE II audit (including water) or Retrocommissioning (RCx) (including water) or Complete any 4 of the following prescriptive actions: <ol style="list-style-type: none"> Demonstrate that common area and exterior lighting fixtures have been installed in accordance with current CA Title 24 requirements Demonstrate that domestic hot water heater has been installed in accordance with current CA Title 24 requirements | <ul style="list-style-type: none"> 5 year cycle is generally considered the most effective timeline to ensure bldg. systems remain properly tuned; ASHRAE I audits cost significantly less than ASHRAE II or RCx audits, so bldgs. would be incentivized to do the lowest cost strategy, leaving other energy savings approaches on the table; Prescriptive actions list sourced from Climate Smart San José measures list; A process will be developed for bldgs. who proactively wish to pursue any of the actions listed before their APN-assigned year for filling; Prescriptive actions list may be expanded over time. |

¹ Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within the prior 2 years, on the City's annual tax lien sale list; as a court appointed receiver in control of the asset due to financial distress; or is owned by a financial institution through default by the borrower; or has been acquired by a deed in lieu of foreclosure; or has a senior mortgage subject to a notice of default.

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| | <ul style="list-style-type: none"> c. Demonstrate that plumbing has been installed in accordance with current CA Title 24 requirements d. Demonstrate that outdoor landscaping and irrigation has been installed in accordance with the current Model Water Efficient Landscape Ordinance e. Greywater installation f. Energy efficient refrigerator upgrade g. Gas to electric stove or water heater conversion h. Smart thermostat installation i. Hot water pipe insulation installation, for all accessible locations j. Solar thermal installation k. Enrollment in demand response program l. Bldg. has participated in an approved utility retrofit program | |
| Prescriptive Pathway Exemptions | <p>There will be no blanket exemptions for required additional actions. Bldgs. must submit a request for exemptions, which may include:</p> <ol style="list-style-type: none"> 1. Bldg. demonstrated high energy and water efficiency over past 5 years: <ul style="list-style-type: none"> a. Bldg. has received an ENERGY STAR label from the EPA for at least 2 of the 3 years preceding the due date of prescriptive activity; or if there is no EPA Energy Star rating for the bldg. type, EUI is 25 or more points better than performance of an average bldg. of its type; b. If available, bldg. has received an ENERGY STAR water score of 75 or above for at least 2 of the 3 years preceding the due date of prescriptive activity; c. Bldg. has received LEED EBOM certification. 2. Bldg. demonstrated <i>improvement</i> in energy and water efficiency over past 5 years: <ul style="list-style-type: none"> a. Bldg. has improved its ENERGY STAR score by 15 points, or EUI has been reduced by 15% within the 5 years preceding the filing of prescriptive activity; b. Bldg. has improved its ENERGY STAR water score by 15 points or WUI has been reduced by 15% within the 5 years preceding the filing of prescriptive activity. | <ul style="list-style-type: none"> • Potential exemptions must be available, but bldg. must apply for and be granted those exemptions to ensure the maximum ordinance impact; • Exemptions listed are based on BPs of other ordinances. |
| Prescriptive Pathway Fee | Submission fee will be in place, amount TBD. | Fee may be necessary depending on funding needs (in part determined by credentials of reviewing staff); some ordinances have submission fees (Ex: Los Angeles \$183, New York City \$375). |
| Verifications | <p>No verifications required for benchmarking data, but will require Energy Star Portfolio Manager data checks, and subsequent corrections by reporting entity; ESD will implement additional internal data quality control processes for enforcement.</p> <p>Audits, and RCx documentation will need to be stamped by a licensed professional engineer (PE); for prescriptive actions, no PE stamp required, but ESD will develop documentation and verification requirements; ESD will implement additional internal data quality control processes for enforcement.</p> | <ul style="list-style-type: none"> • Verifications for benchmarking (e.g. stamped by PE) is undue financial burden, and could be a barrier to uptake of benchmarking practice; • Verifications for audits and RCx are vital to ensure that information provided to covered buildings is accurate and will yield energy savings; • Overall verification approach based on BPs from other ordinances. |
| Enforcement Fines | Fines will be in place, up to maximum amount TBD. | <ul style="list-style-type: none"> • No fines will be administered for AB802 enforcement, so local program should include fines to ensure compliance and program success; • Fine amounts should incentivize compliance (fines should be as or more expensive than cost of compliance); • Comparable ordinances have fines incurred daily, often tiered by bldg. sq. ft., up to a certain monetary amount. |

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| Schedule | <p><u>Year 1:</u> Bldgs. >50,000 sq. ft. will report benchmarking data to CSJ, no transparency of benchmarking data, or enforcement of prescriptive pathway requirements</p> <p><u>Year 2:</u> Bldgs. >50,000 sq. ft. will report benchmarking data to CSJ, benchmarking data will be made transparent, and prescriptive pathway requirement enforcement will begin; Bldgs. >20,000 sq. ft. will report benchmarking data to CSJ, no transparency of benchmarking data or prescriptive pathway requirements</p> <p><u>Year 3:</u> Bldgs. >20,000 sq. ft. will report benchmarking data to CSJ, benchmarking data will be made transparent, and prescriptive pathway requirements will be implemented</p> | <ul style="list-style-type: none"> • Year 1 reporting will help transition bldgs. from reporting to California Energy Commission as part of AB802; no transparency yet, allowing buildings to continue making improvements over the next year; no enforcement of prescriptive pathway requirements, to ensure all covered buildings have a full year of utility data; • Threshold will then be lowered to min. sq. ft. shown in years 2; this will reduce the amt. of market confusion over compliance, whereas a more tiered approach could result in confusion and compliance issues; • A 2-phased approach will allow staffing bandwidth to be built up in a reasonable amt. of time. |
| Staffing | 1 FTE staff plus fellow/intern support. | <ul style="list-style-type: none"> • Est. based on rates from other ordinances and typical implementation responsibilities (Ex: contract management, noticing, enforcement, data management, outreach, trainings, technical support, and reporting); • Anticipating a portion of 2019 funding from the Silicon Valley Energy Watch, pending contract negotiations. |

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