

**Article 12: Energy Efficient Building Benchmarking**  
("Energy Efficient Building Benchmarking" added 2-4-2019  
by O-21041 N.S.; effective 3-6-2019.)

**Division 1: Building Energy Benchmarking**  
("Building Energy Benchmarking" added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

**§1412.0101 Purpose and Intent**

The City's Climate Action Plan calls for creating more energy-efficient buildings.

The purpose of this Division is to create and implement a benchmarking program that will increase building energy use transparency to the community and the City, with the goal of motivating improvement in building energy performance.

It is the intent of this Division that the provisions align with statewide requirements under Assembly Bill (AB) 802 passed in 2015, codified in California Public Resources Code section 25402.10, and the implementing regulations.

("Purpose and Intent" added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

**§1412.0102 Citation**

This Division shall be cited as the City of San Diego Building Energy Benchmarking Ordinance.

("Citation" added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

**§1412.0103 Definitions**

For the purposes of this Division, defined words appear in italics. The following definitions apply to this Division:

*AB 802 regulations* means title 20, division, 2, chapter 4, article 9 of the California Code of Regulations, as may be amended from time to time.

*Benchmark* means to input and submit the monthly total *energy* consumed for a *disclosable building* for the previous calendar year.

*Benchmarking submission* includes both the information required to be input into *ENERGY STAR Portfolio Manager* and the information generated by *ENERGY STAR Portfolio Manager* which is submitted to the City.

*Disclosable building* has the same meaning as in title 20, division 2, chapter 4, article 9, section 1681 of the California Code of Regulations, as may be amended from time to time.

*Energy* means electricity, natural gas, steam, or other product distributed by a *utility* to a customer of a building, or on-site electricity generation.

*ENERGY STAR Portfolio Manager* means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the *energy* performance of buildings nationwide.

*ENERGY STAR Score* means the 1 to 100 numeric rating generated by *ENERGY STAR Portfolio Manager*.

*Gross floor area* has the same meaning as in title 20, division 2, chapter 4, article 9, section 1681 of the California Code of Regulations, as may be amended from time to time.

*Master tenant* means a *tenant* who is in a *triple net lease* arrangement for a building.

*Owner* means an individual or entity possessing title to a building, the board of directors, or managing partners in the case of a cooperative apartment corporation, association, or partnership, or a *master tenant* in a *triple net lease* arrangement.

*Property ID* means a unique identifier assigned by *ENERGY STAR Portfolio Manager* to each property entered in *ENERGY STAR Portfolio Manager*.

*Shared benchmarking information* means information entered into and generated by *ENERGY STAR Portfolio Manager*, as well as additional building descriptive information.

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

*Triple net lease* means a lease arrangement where a *master tenant* pays for the ongoing expenses associated with the building, including real property taxes and insurance, in addition to paying the rent and utilities.

*Utility* means any entity that sells electric, natural gas, or thermal *energy* services for buildings.

(“*Definitions*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

## **§1412.0104    Applicability**

This Division applies to all *disclosable buildings* within the City of San Diego, except *disclosable buildings* owned by any of the following:

- (a) the County of San Diego;
- (b) the State of California;
- (c) the United States of America;
- (d) the Metropolitan Transit Service; or
- (e) the San Diego Unified School District.

(“*Applicability*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

## **§1412.0105    Authority of the City Manager**

The City Manager:

- (a) May adopt additional or alternative *benchmarking* systems to *ENERGY STAR Portfolio Manager* to track and assess the *energy* use of certain *disclosable buildings* relative to similar *disclosable buildings*;
- (b) May adjust the due dates to complete a *benchmarking submission* if circumstances arise which interfere with staff’s ability to implement this Division on schedule in accordance with section 1412.0106;
- (c) Shall publish *shared benchmarking information* required to be disclosed publicly by *AB 802 regulations*. Any additional *shared benchmarking information* collected, but not required to be disclosed by *AB 802 regulations*, shall be subject to the Public Records Act and other public disclosure laws of the State of California; and
- (d) May adopt uniform procedures allowing *owners* to exclude from *benchmarking submission* non-building *energy* data not covered in *ENERGY STAR Portfolio Manager*. The procedures shall provide for the exclusion of *energy* use in areas where there is and is not sub-metering of non-building *energy* consumption.

(“*Authority of the City Manager*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

## **§1412.0106 Benchmarking Schedule**

- (a) No later than June 1, 2019, and no later than every June 1 thereafter, the *owner* of a *disclosable building* with no residential *utility* accounts shall *benchmark* that *disclosable building* and complete a *benchmarking submission* to the City for the prior calendar year. The first submission on June 1, 2019 shall include both calendar year 2017 data previously reported to the California Energy Commission and calendar year 2018 data.
- (b) No later than June 1, 2020, and no later than every June 1 thereafter, the *owner* of a *disclosable building* with one or more residential *utility* accounts shall *benchmark* that *disclosable building* and complete a *benchmarking submission* to the City for the prior calendar year. The first submission on June 1, 2020 shall include both calendar year 2018 data previously reported to the California Energy Commission and calendar year 2019 data.

(“*Benchmarking Schedule*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

## **§1412.0107 Benchmarking in ENERGY STAR Portfolio Manager**

- (a) The *owner* of each *disclosable building* shall *benchmark* the whole *disclosable building* in *ENERGY STAR Portfolio Manager*. Whole-building *energy* data for the *disclosable building*’s *energy* use shall be compiled using one or more of the following methods, as applicable:
  - (1) Obtaining aggregated whole-building *energy* use data from a *utility*;
  - (2) Obtaining *energy* data from all *tenants*;
  - (3) Obtaining *energy* data from *utility* bills; or
  - (4) Reading the meters serving the *disclosable building*.
- (b) If the *owner* of a *disclosable building* does not have access to whole-building *energy* data, the *owner* shall request aggregated whole-building *energy* data from each *utility* that provides *energy* service to the *disclosable building*, using the process described in the *AB 802 regulations* section 1682 by March 1 of the year in which reporting is required. If an *owner* of a *disclosable building* does not have authority under the *AB 802 regulations* to obtain whole-building *energy* use data from the *utility*, the *owner* shall request *energy* data from *tenants*.

- (c) If an *owner* of a *disclosable building* cannot collect sufficient information to complete a *benchmarking submission* at the time required in this Division, the *owner* may annually request an exemption from *benchmarking submission* in accordance with section 1412.0110.
- (d) The *owner* shall transfer the property and *energy* data in the *ENERGY STAR Portfolio Manager* to the new *owner* when a *disclosable building* changes ownership or *master tenant* in the case of a *triple net lease*.

*(“Benchmarking in ENERGY STAR Portfolio Manager” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)*

## **§1412.0108 Benchmarking Reporting**

- (a) The City Manager shall provide *shared benchmarking information* to the California Energy Commission in accordance with the *AB 802 regulations*.
- (b) The City Manager shall make *shared benchmarking information* available to the public.
- (c) *Shared benchmarking information* and any calculated metrics based on the raw data for *disclosable buildings* may include, without limitation:
  - (1) Descriptive information
    - (A) property address,
    - (B) county,
    - (C) year built,
    - (D) property type,
    - (E) *gross floor area*,
    - (F) latitude and longitude,
    - (G) property or building name, if any,
    - (H) property floor area (building and parking),
    - (I) open “comments” field for the *disclosable building owner* to provide additional information about the building,
    - (J) *property ID*,

- (K) percentage of space occupied (occupancy),
  - (L) number of occupants, and
  - (M) number of buildings if served by one common *energy* meter without sub-metering.
- (2) Energy Use and Emissions information
- (A) *ENERGY STAR Score*,
  - (B) monthly and annual site *energy* use by *energy* type,
  - (C) monthly and annual site *energy* use intensity,
  - (D) monthly and annual source *energy* use intensity,
  - (E) monthly and annual weather-normalized site *energy* use intensity,
  - (F) monthly and annual weather-normalized source *energy* use intensity,
  - (G) monthly and annual peak electricity demand, and
  - (H) total annual greenhouse gas emissions.
- (3) Compliance or non-compliance with this Division.
- (d) Prior to providing a *benchmarking submission* to the City, the *owner* shall run the automated data checking tools in *ENERGY STAR Portfolio Manager*, correct any errors, and provide a data quality checker report along with the other required data.
- (e) The *owner* shall annually provide a *benchmarking submission* for each *disclosable building* to the City Manager, in an electronic format as established by the City Manager, by the date specified in sections 1412.0106(a) and (b).
- (f) If the *owner* learns that any information reported as part of the *benchmarking submission* is inaccurate or incomplete, the *owner* shall amend the information reported in *ENERGY STAR Portfolio Manager* and provide the City Manager with an updated *benchmarking submission* within 30 business days of discovery of the inaccurate or incomplete information.

(“*Benchmarking Reporting*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

## **§1412.0109 Maintenance of Records**

The *owner* shall maintain records including, without limitation, the *energy bills* and reports or forms received from *tenants* or *utilities*, or both, for at least three years. At the request of the City Manager, the *owner* shall make the records available for inspection and audit by the City Manager.

(“*Maintenance of Records*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

## **§1412.0110 Exemptions**

- (a) An *owner* may apply in writing to the City Manager for an exemption from some or all of the requirements of this Division. The City Manager may grant the exemption if the *disclosable building* meets any of the following:
  - (1) The *owner* did not have a Certificate of Occupancy or temporary Certificate of Occupancy for the *disclosable building*, in accordance with San Diego Municipal Code sections 129.0113 through 129.0118, for more than six months of the calendar year being benchmarked;
  - (2) The *owner* has begun demolition work on the *disclosable building* and it is no longer possible to obtain a Certificate of Occupancy or temporary Certificate of Occupancy prior to June 1;
  - (3) The City Manager determines in his or her sole discretion that disclosure of the *owner’s energy* use data would result in the release of proprietary information that can be characterized as a trade secret; or
  - (4) The *owner* of a *disclosable building* cannot collect sufficient information to complete a *benchmarking submission*. The *owner* shall provide written or electronic proof of a submission request for data from the *utility* and *tenants* and proof that the request was either denied by the *utility* or the *tenants*, or no response was received from the *tenants*.
- (b) Any *owner* requesting an exemption from the requirements of this Division shall provide the City Manager with all documentation requested by the City Manager to substantiate the request by March 31 of the year after the year for which the exemption is requested.

(“*Exemptions*” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)

**§1412.0111 Enforcement Authority**

Any City department is authorized to administer and enforce the provisions of this Division. The Department Director or anyone designated by the Department Director to be an Enforcement Official may exercise any enforcement powers as provided in Chapter 1, Article 2, Division 1 of this Code.

*(“Enforcement Authority” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)*

**§1412.0112 Enforcement Remedies**

Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in San Diego Municipal Code section 12.0201. The Department Director may also seek injunctive relief and civil penalties in the Superior Court pursuant to San Diego Municipal Code section 12.0202 or pursue an administrative remedy provided in Chapter 1 of this Code.

*(“Enforcement Remedies” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)*

**§1412.0113 Rules**

The City Manager may promulgate rules as he or she deems necessary to carry out the provisions of this Division.

*(“Rules” added 2-4-2019 by O-21041 N.S.; effective 3-6-2019.)*