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.)