

ORDINANCE NO. _____

An ordinance adding Division 97 to Article I, Chapter IX and amending Division 4 of Article 8, Chapter IX of the Los Angeles Municipal Code to establish the City of Los Angeles Existing Buildings Energy and Water Efficiency Program, requiring buildings, including existing buildings, to undergo energy and water efficiency audits, retro-commissioning and annual benchmarking of energy and water consumption.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Division 97 is added to Article 1, Chapter IX of the Los Angeles Municipal to read as follows:

ARTICLE 1, DIVISION 97

EXISTING BUILDINGS ENERGY AND WATER EFFICIENCY PROGRAM

SEC. 91.9701. TITLE.

This division shall be known as the City of Los Angeles Existing Buildings Energy and Water Efficiency (EBEWE) Program.

SEC. 91.9702. PURPOSE.

It is the purpose of this division to reduce energy and water consumption in buildings, including existing buildings, in the City of Los Angeles. These efficiency improvements will lower the use of energy, water, and greenhouse gas emissions citywide.

SEC. 91.9703. SCOPE.

This division shall apply to all buildings, including existing buildings, that are either:

1. Owned by the City of Los Angeles and are 7,500 square feet or more;

EXCEPTION: Buildings owned by the City that are less than 15,000 square feet are not subject to the requirements of Section 91.9706.

2. Privately owned and are 20,000 square feet or more; or
3. Owned by a local agency of the state that is required to comply with the City's building ordinances pursuant to Government Code Section 53090, *et seq.*, or successor legislation, and are 20,000 square feet or more.

EXCEPTION: This division shall not apply to one- and two-family dwellings and related accessory structures; residential hotels as defined by the California Health and Safety Code Section 50519; broadcast antennas; vehicle charging stations; utility pumping stations; treatment facilities; sound stages; structures primarily used for the production and post-production of motion pictures and television, and similar uses; and other buildings not meeting the purpose of this division, as determined by the Department of Building and Safety.

SEC. 91.9704. DEFINITIONS.

The following words and phrases, whenever used in this division, shall be construed as defined in this section unless context indicates otherwise. Words and phrases not defined here shall be construed as defined in LAMC Sections 91.201 and 91.202:

BASE BUILDING SYSTEMS. The systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating ventilating and air conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; and landscape irrigation systems and water features. Base building systems shall not include:

1. Systems or subsystems owned by a tenant or for which such tenant bears full maintenance responsibility pursuant to agreement with the owner and that are within the tenant's leased space and/or that exclusively serve such leased space.
2. Systems or subsystems within a tenant's leased space and/or which exclusively serve such leased space and for which the tenant pays all the energy and/or water bills according to usage and/or demand as measured by a meter or sub-meter.
3. Systems or subsystems owned by a condominium unit owner that are located within the condominium unit and/or that exclusively serve such condominium unit.
4. Systems or subsystems that operate industrial applications such as manufacturing.

BENCHMARKING REPORT. A report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.

DEPARTMENT. The City of Los Angeles Department of Building and Safety.

ENERGY. Electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a 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.

ENERGY AUDIT. A systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.

ENERGY STAR® PORTFOLIO MANAGER. The United States Environmental Protection Agency's (US EPA) online tool for measuring, tracking, and managing a building's energy, water and greenhouse gas emission data and to benchmark the performance of a building.

ENERGY STAR® PORTFOLIO MANAGER ENERGY STAR SCORE. A number ranging from 1 to 100 assigned by the US EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by US EPA's ENERGY STAR® Portfolio Manager.

RETRO-COMMISSIONING. A systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

RETRO-COMMISSIONING MEASURES. Work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.

RETROFIT MEASURES. Upgrades or alterations of building systems involving the installation of energy and/or water efficiency technologies that reduce energy and/or water consumption and improve the efficiency of such systems.

WATER AUDIT. A systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.

SEC. 91.9705. BENCHMARKING AND SELF-REPORTING OF ENERGY AND WATER CONSUMPTION INFORMATION.

91.9705.1. Annual Energy and Water Benchmarking and Reporting. For every building subject to this division, the building owner shall annually submit to the

Department an energy and water benchmarking report according to the schedule set forth in Section 91.9708. The energy and water benchmarking report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total energy and water consumed by the whole building for the entire calendar year being reported. The energy and water benchmarking report shall, at minimum, include the following:

1. **Descriptive Information.** Basic descriptive information to track and report a building's compliance with this division, including, but not limited to, the building address, facility gross square footage, property type, and the individual or entity responsible for the benchmarking report.

2. **Energy and Water Benchmarking Information.** Information necessary to benchmark energy and water usage, including, at a minimum, the following data:

(a) The ENERGY STAR® Portfolio Manager ENERGY STAR score for the building, where available;

(b) The weather-normalized site and source energy use intensity (EUI) per unit area per year (kBtu per square foot per year) for the building;

(c) The site and source energy use intensity (EUI) per unit area per year (kBtu per square foot per year) for the building;

(d) The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ENERGY STAR® Portfolio Manager;

(e) Indoor water use, indoor water intensity, outdoor water use (when available), and total water use; and

(f) Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable.

Nothing in this division shall be construed to permit a building owner to use tenant utility usage data for purposes other than compliance with benchmarking report requirements. Nor shall the reporting requirements of this division be construed to excuse building owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

91.9705.2. Quality Check of Benchmarking Report Submission. The building owner or the owner's authorized representative shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager, and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the benchmarking report to the Department.

91.9705.3. Exemptions from Benchmarking Report Submission. The owner of a building subject to this division shall not be required to file a benchmarking report for a reporting year if any of the following conditions apply:

1. The building was not occupied and did not have a Certificate of Occupancy or Temporary Certificate of Occupancy for all 12 months of the calendar year required to be benchmarked;
2. The entire building was not occupied, due to renovation, for all 12 months of the calendar year required to be benchmarked;
3. The demolition permit for the entire building has been issued and demolition work has commenced on or before the date the benchmarking report is due that calendar year;
4. The building did not receive energy or water services for the entire calendar year required to be benchmarked.

For each reporting cycle, the Department shall determine whether an exemption under this subsection applies to a building. Appeal of a determination that a building is not exempt shall be made according to the procedures set forth in Subsection 98.0403.2 of this Code.

91.9705.4. Publication of Limited Summary Data. The Department shall make the following information available to the public on the internet, as reported by building owners, and update the information at least annually:

1. Summary statistics on overall compliance with this division;
2. Summary statistics on overall energy and water consumption of buildings subject to this division derived from aggregation of annual benchmarking reports; and
3. For each building subject to this division:
 - (a) Building address and property use type;
 - (b) Annual summary statistics for the whole building derived from the submitted benchmarking report, including all information required under Subsection 91.9705.1, except for Subdivision 2(f); and
 - (c) The status of compliance with the requirements of this division.

SEC. 91.9706. ENERGY AND WATER AUDITS AND RETRO-COMMISSIONING.

91.9706.1. Energy Audits and Retro-Commissioning Requirements. Any building subject to this division shall undergo a comprehensive energy audit and retro-commissioning of the base building systems.

91.9706.1.1. Energy Audit and Retro-Commissioning Standards. Energy auditing and retro-commissioning standards shall comply with both of the following:

1. **Energy Auditing.** Energy audits required by this division shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) *Procedures for Commercial Building Energy Audits* (latest edition at the time the audit is initiated) and shall be performed under the direct supervision of a California licensed engineer or architect.

2. **Energy Retro-Commissioning.** Energy retro-commissioning shall be performed in accordance with industry standard practices, including ASHRAE Guideline 0.2 *Commissioning Process for Existing Systems and Assemblies*, and under the direct supervision of a California licensed engineer or architect. The retro-commissioning of the base building systems shall include, at minimum, the following:

- (a) Heating, ventilation, air conditioning (HVAC) systems and controls;
- (b) Indoor lighting systems and controls;
- (c) Water heating systems; and
- (d) Renewable energy systems.

91.9706.1.2. Energy Audit and Retro-Commissioning Report. A report of the energy audit and retro-commissioning, completed and signed by a California licensed engineer or architect, shall be maintained by the building owner as required in Section 91.9707. The report shall meet the requirements of Subsection 91.9706.1.1 and shall include, at minimum, the following:

- 1. The date(s) that the audit and retro-commissioning were performed;
- 2. Identifying information on the auditor and retro-commissioning provider;
- 3. Information on the base building systems and equipment;

4. A list of all retrofit measures that can reduce energy use, and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;

5. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;

6. Functional performance testing reports;

7. Operational training conducted; and

8. Acknowledgment that an ASHRAE level II audit was conducted.

91.9706.1.3. Exemptions. An energy audit and retro-commissioning are not required if one of the following conditions is met and proof is submitted to the Department:

1. The building has received ENERGY STAR® Certification from the EPA for the year of the building's compliance due date in Section 91.9708;

2. The building has received ENERGY STAR® Certification from the EPA for two of the three years preceding the building's compliance due date in Section 91.9708;

3. For buildings not eligible to receive an ENERGY STAR® score, a California licensed engineer or architect shall certify that the energy performance of the building is at least 25% better than the median energy performance of similar buildings by comparing against the national source energy data provided in the Commercial Buildings Energy Consumption Survey (CBECS) conducted by the U.S. Energy Information Administration or other relevant national data set as approved by the Department effective at the time of reporting;

4. A California licensed engineer or architect certifies that the building has reduced its weather normalized source energy use intensity as calculated by the benchmarking tool by 15%, when compared to five years preceding the building's compliance due date in Section 91.9708;

5. A building which does not have a central cooling system and where four of the following six measures listed in Paragraphs (a) to (f) below were completed within the five-year compliance cycle being reported in accordance with Section 91.9708. A report, certified by a California licensed engineer or architect, detailing the measures performed is required:

(a) **Common area and exterior lighting.** Common area (lighting outside of tenant spaces) and exterior lighting fixtures have been installed in accordance with the California Code of Regulations Title 24,

Part 6, which was in effect at any time during the five-year compliance cycle being reported.

(b) **Pipe insulation.** All exposed pipes that are used to convey heat or hot water have been insulated in accordance with the California Code of Regulations Title 24, Part 6, which was in effect at any time during the five-year compliance cycle being reported.

(c) **Cool roof.** A cool roof has been installed in accordance with the Los Angeles Green Building Code which was in effect at any time during the five-year compliance cycle being reported.

(d) **Demand response.** The building owner has committed to participate in a utility sponsored demand response program.

(e) **Solar thermal.** A solar water heating system has been installed.

(f) **Domestic hot water.** A new water heater has been installed in accordance with the California Code of Regulations Title 24, Part 6, which was in effect at any time during the five-year compliance cycle being reported.

6. The building is new and has been occupied for less than five years from its first due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy.

For each reporting cycle, the Department shall determine whether an exemption under this subsection applies to a building. Appeal of a determination that a building is not exempt shall be made according to the procedures set forth in Subsection 98.0403.2 of this Code.

91.9706.2. Water Audits and Retro-Commissioning Requirements. Any building subject to this division shall undergo a comprehensive water audit and retro-commissioning of the base building systems.

91.9706.2.1. Water Audit and Retro-Commissioning Standards. Water audits and retro-commissioning shall be performed in accordance with industry standard practices, including ASHRAE Guideline 0.2 *Commissioning Process for Existing Systems and Assemblies*, and under the direct supervision of a California licensed engineer or architect. The water audit and retro-commissioning of the base building systems shall include, at a minimum, the following:

1. Potable water distribution systems;
2. Landscape irrigation systems;

3. Water reuse systems; and
4. Water features.

91.9706.2.2. Water Audit and Retro-Commissioning Report. A report of the water audit and retro-commissioning, completed and signed by a California licensed engineer or architect, shall be maintained by the building owner as required in Section 91.9707. The report shall meet the requirements of Subsection 91.9706.2.1 and shall include, at minimum, the following:

1. The date(s) that the audit and retro-commissioning were performed;
2. Identifying information on the auditor and retro-commissioning provider;
3. Information on the base building systems and equipment;
4. A list of all retrofit measures that can reduce water use, and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
5. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;
6. Functional performance testing reports; and
7. Operational training conducted.

91.9706.2.3. Exemptions. A water audit and retro-commissioning are not required if one of the following conditions is met:

1. A California licensed engineer or architect certifies that the building has reduced its water use intensity by at least 20% when compared to the five years preceding the building's due date for compliance; or
2. The building does not have a central cooling system and two of the three following measures have been installed within five years of the due date in Section 91.9708. A report detailing the measures performed, certified by a California licensed engineer or architect, is required:
 - (a) **Low flow faucets and shower heads.** All faucets and showerheads within the building have been replaced and meet the California Plumbing Code in effect at any time during the five-year compliance cycle being reported.

(b) **Washing machines.** Front loading clothes washing machines have been installed in all common laundry facilities.

(c) **Water closets and urinals.** All water closets and urinals within the building have been replaced and meet the California Plumbing Code that was in effect at any time during the five-year compliance cycle being reported.

3. A California licensed engineer or architect certifies that the building's water use conforms to the requirements of the Los Angeles Municipal Code in effect at any time during the five-year compliance cycle being reported; or

4. The building is new and has been occupied for less than five years from its first due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy.

For each reporting cycle, the Department shall determine whether an exemption under this subsection applies to a building. Appeal of a determination that a building is not exempt shall be made according to the procedures set forth in Section 98.0403.2 of this Code.

91.9706.3. Required Submittal to the Department. The building owner shall submit to the Department a Confirmation of Audit and Retro-Commissioning for each building, or proof of meeting one of the exemptions, subject to this division, in accordance with the schedule set forth in LAMC Section 91.9708. The Confirmation of Audit and Retro-Commissioning shall, at minimum, include the information required under Subsections 91.9706.1.1, 91.9706.1.2, 91.9706.2.1 and 91.9706.2.2.

SEC. 91.9707. RECORD MAINTENANCE.

The building owner shall maintain records related to benchmarking, audits and retro-commissioning, including, but not limited to, the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of five years. When the building is sold, the records shall be given to the new building owner.

SEC. 91.9708. SCHEDULE FOR COMPLIANCE.

91.9708.1. Schedule for Benchmarking Report Compliance. An annual benchmarking report in compliance with Section 91.9705 shall be submitted to the Department according to the following schedule:

1. For buildings owned by the City with gross floor area of 7,500 square feet or more, the City must complete and submit the initial benchmarking report on or before July 1, 2017, and annually no later than April 1 thereafter.

2. For a privately owned building or a building owned by a local agency of the State with gross floor area of 100,000 square feet or more, the owner must complete and submit the initial benchmarking report on or before July 1, 2017, and annually no later than April 1 thereafter.

3. For a privately owned building or a building owned by a local agency of the State with gross floor area of 50,000 square feet or more, but less than 100,000 square feet, the building owner must complete and submit the initial benchmarking report on or before April 1, 2018, and annually no later than April 1 thereafter.

4. For a privately owned building or a building owned by a local agency of the State with gross floor area greater than 20,000 square feet, but less than 50,000 square feet, the building owner must complete and submit the initial benchmarking report on or before April 1, 2019, and annually no later than April 1 thereafter.

91.9708.2. Schedule for Audits and Retro-Commissioning Report Compliance. Compliance with Section 91.9706 shall be due once every five years, as provided in Table 9708.2 based on the last number of the Los Angeles County Assessor's Identification Number (AIN) for each building subject to this division under Section 91.9703.

TABLE 9708.2

Last digit of AIN	First compliance due date	Subsequent compliance due dates
0	January - June, 2019	Every five years thereafter
1	July - December, 2019	Every five years thereafter
2	January - June, 2020	Every five years thereafter
3	July - December, 2020	Every five years thereafter
4	January - June, 2021	Every five years thereafter
5	July - December, 2021	Every five years thereafter
6	January - June, 2022	Every five years thereafter
7	July - December, 2022	Every five years thereafter
8	January - June, 2023	Every five years thereafter
9	July - December, 2023	Every five years thereafter

91.9708.2.1. Timing of Audit and Retro-Commissioning. Except as otherwise provided in Subsection 91.9708.3, the audits and retro-commissioning shall be completed no earlier than five years prior to a building's compliance due date.

91.9708.3. Time Extensions. A building owner may apply in writing for a one-year extension of time to file any report required by this division. One or more extensions shall be granted for a reporting cycle if based on satisfactory proof that one of the following conditions applies:

1. The building is under temporary financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:

(a) The building is under the control of a court-appointed receiver as a result of financial distress;

(b) The building is owned by a financial institution as a result of borrower default;

(c) The building has been acquired by a financial institution via deed in lieu of foreclosure;

(d) The building is encumbered by a senior mortgage subject to a notice of default;

(e) The building is an asset subject to probate proceedings;

(f) The building was subject to property tax arrearages that resulted in the building's inclusion, within the prior two years, on the Los Angeles County annual tax lien sale list; or

(g) The building is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with reporting requirements will exceed or significantly deplete existing cash flow. Proof of a BOE-issued Organizational Clearance Certificate and, where the building owner is a limited partnership, a Supplemental Clearance Certificate must be shown.

2. The building is a residential building currently in the Rent Escrow Account Program (REAP) and compliance with this division will materially interfere with compliance with REAP.

3. The owner is unable to timely comply due to a substantial hardship, as determined by the Department.

91.9708.4. Notification. For buildings with compliance dates of January 1, 2018, or later, the Department shall notify the owner of each building subject to the scope of this division at least six months prior to the due dates specified in Subsections 91.9708.1 and 91.9708.2.

SEC. 91.9709. NONCOMPLIANCE FEE.

Failure to comply with this division shall subject the owner to noncompliance fees as specified in Section 98.0411 of the Los Angeles Municipal Code, except that the amount of the noncompliance fee shall be \$202.00.

SEC. 91.9710. SUBMITTAL FEES.

The owner shall pay to the Department the following fees for each building:

91.9710.1. Annual Disclosure Compliance Fee. The Department shall charge the owner a fee in the amount of \$61.00 for each Annual Benchmarking Report submitted to the Department.

91.9710.2. Audit and Retro-Commissioning Compliance Fee. The Department shall charge the owner a fee in the amount of \$183.00 for each Confirmation of Audit and Retro-Commissioning submitted to the Department during a five-year compliance cycle.

SEC. 91.9711. BUILDING AND SAFETY DEVELOPMENT SURCHARGE.

There shall be added to the total of all fees imposed under this division a surcharge in the amount equal to the greater of six percent of the fee or one dollar. All monies received from this surcharge shall be deposited to and expended as the "Building and Safety Systems Development Account" of the Department of Building and Safety Building Permit Enterprise Fund pursuant to Section 5.121.8 of the Los Angeles Administrative Code.

SEC. 91.9712. SEVERABILITY.

If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

Sec. 2. A new non-compliance fee in the amount of \$202.00 for failure of a building to comply with the Existing Building Energy and Water Efficiency Program shall be added to Table No. 4-D of Subsection (d) of Section 98.0411 of Division 4 of Article 8, Chapter IX of the Los Angeles Municipal to read as follows:

NON-COMPLIANCE FEE EXISTING BUILDING ENERGY AND WATER EFFICIENCY (EBEWE) PROGRAM

Item	Fee
Buildings Noncompliant with City EBEWE Program	\$202.00

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles at its meeting of _____.

HOLLY L. WOLCOTT, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
for MONICA CASTILLO
Deputy City Attorney

Date October 6, 2016

File No. CF 14-1478