

Order 17-16/17

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 7/16/2016

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**ORDER REFERRING
THE BUILDING ENERGY USE BENCHMARKING ORDINANCE
TO THE ENERGY AND SUSTAINABILITY COMMITTEE**

ORDERED, that the City Council hereby refers the Building Energy Use Benchmarking Ordinance as attached hereto to the Energy and Sustainability Committee; and

BE IT FURTHER ORDERED, that the Energy and Sustainability Committee review the Building Energy Use Benchmarking Ordinance and provide its final recommendation on this issue to the City Council.

City of Portland

A [DRAFT] ORDINANCE

Building Energy Use Disclosure Ordinance

DEFINITIONS (1) “Benchmarking information” shall mean information generated by the Benchmarking Tool, as herein defined including descriptive information about the physical property and its operational characteristics.

The information shall include, but need not be limited to: (a) Property address; (b) Primary use type; (c) Gross floor area (d) Site Energy Use Intensity (EUI) as defined in this section; (e) Weather normalized source EUI; (f) Annual greenhouse gas emissions; (g) The energy performance score that compares the energy use of the building to that of similar buildings, where available; and (h) Compliance or noncompliance with this Ordinance.

(2) “Benchmarking Tool” shall mean the Internet-based tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

(3) “Covered Property” shall mean a parcel, as described in public records or as determined by the Department, containing any of the following: (a) One or more non-residential building(s) where such building(s) singly or together contain more than 20,000, less than 50,00 square feet (“Non-Residential Covered Property”); and (b) One or more residential building(s) that singly or together contain 50 or more residential Dwelling Units whether they are rental Dwelling Units or Dwelling Units owned as condominiums, cooperatives or otherwise (“Residential Covered Property”).

(4) “Department” means the City of Portland Planning & Urban Development.

(5) “Dwelling Unit” shall mean a single residential unit consisting of one or more habitable rooms, occupied or arranged to be occupied as a residential unit separate from all other residential units within a building, and used primarily for residential purposes and not primarily for professional or commercial purposes.

(6) “Energy” shall mean electricity, natural gas, steam, hot or chilled water, heating oil, or other product for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

(7) “Energy Performance Score” shall mean the numeric rating generated by the ENERGY STAR Portfolio Manager tool or equivalent tool adopted by the department that compares the energy usage of the building to that of similar buildings.

(8) “ENERGY STAR” shall mean the U.S. Environmental Protection Agency program related to improving energy efficiency in buildings and products.

(9) “ENERGY STAR Portfolio Manager” shall mean the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

(10) "Energy Use Intensity (EUI)" shall mean the kBtUs (1,000 British Thermal Units) used per square foot of gross floor area.

(11) "Gross Square Feet" shall mean the gross floor area of the property.

(12) "Municipal Property" shall mean a property with one or more buildings that is 10,000 gross square feet or more that is owned by the City of Portland.

(13) "Owner" shall mean: (a) An individual or entity having title to a Covered Property; (b) An agent authorized to act on behalf of the owner of a Covered Property; (c) The net lessee in the case of a property subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options; (d) The board of managers or trustees in the case of a condominium; and/or (e) The board of directors or trustees in the case of a cooperative apartment corporation.

(14) "Qualified Benchmarker" is an entity that meets the Department's qualifications for inputting Benchmarking Information into the Benchmarking Tool.

(15) "Residential Property" shall mean a property containing one or more Dwelling Units.

(16) "Site Energy" shall mean the amount of heat and electricity consumed by a Covered Property or Municipal Property as reflected in utility bills or other documentation of actual energy use.

(17) "Source Energy" shall mean all the energy used in delivering energy to a Covered Property, including power generation and transmission and distribution losses, to perform a specific function, such as but not limited to space conditioning, lighting, or water heating.

(18) "Tenant" shall mean a person or entity leasing, occupying or holding possession of a Covered Property or Municipal Property.

(19) "Utility" shall mean an entity that distributes and sells Energy for Covered Properties or Municipal Properties.

Purpose To encourage efficient use of energy and to reduce the emission of greenhouse gases, this Ordinance requires owners of Covered Properties and Municipal Properties to annually measure and disclose energy usage to the Department. Furthermore, this Ordinance will authorize the Department to collect energy usage data to enable more effective energy and climate protection planning by the City and others and to provide information to the real estate marketplace to enable its members to make decisions that foster better energy performance.

APPLICABILITY (1) This Ordinance is applicable to the following: (a) All Municipal Properties as defined in Section _____ of this Ordinance; and (b) All Covered Properties as defined in Section _____ of this Ordinance.

BENCHMARKING REQUIRED FOR MUNICIPAL PROPERTIES No later than December 31, 2016, and no later than May 1 every year thereafter, the total Energy consumed by each Municipal Property, along with all other descriptive information required by the Benchmarking Tool, shall be entered into the Benchmarking Tool for the previous calendar year.

BENCHMARKING REQUIRED FOR COVERED PROPERTIES (1) Owners shall annually input the total Energy consumed by each Covered Property, along with all other descriptive information required by the

Benchmarking Tool, into the Benchmarking Tool for the previous calendar year. The Owner shall input this information according to the following schedule: (a) A Residential Covered Property by December 1, 2017 and by every May 1 thereafter; (b) A Non-residential Covered Property by May 1, 2018 and by every May 1 thereafter; and (c) A new Covered Property that has not accumulated 12 months of energy use data by the first applicable date following occupancy for inputting Energy use into the Benchmarking Tool shall comply with this Ordinance in the following year.

NOTIFICATION OF COVERED PROPERTIES Between September 1 and December 1 of each year, the City shall notify Owners of Covered Properties of their obligation to input Energy use into the Benchmarking Tool. By January 15 of each year, the City shall post the list of the addresses of Covered Properties on a public website.

QUALIFICATIONS OF BENCHMARKERS The Department may establish certification and/or licensing requirements for the users of Benchmarking Tools.

DISCLOSURE AND PUBLICATION OF BENCHMARKING INFORMATION (1) Owners shall annually provide Benchmarking information to the Department, in such form as established by the Department, by the date provided by the schedule in Section _____. (2) The Department shall make available to the public on the internet Benchmarking Information for the previous calendar year: a) no later than May 31, 2017 and by September 1 of each year thereafter for Municipal Properties; and b) no later than September 1, 2018 and by September 1 of each year thereafter for Covered Properties. Benchmarking Information received by the Department for the first year a Covered Property is required to input the total Energy consumed and other descriptive information as required by the Benchmarking Tool into the Benchmarking Tool pursuant to Section _____ will be not be published except to disclose whether or not the Covered Property is in compliance with this Ordinance. (3) The Department shall make available to the public and update at least annually, the following information: (a) Summary statistics on energy consumption for Municipal Properties and Covered Properties derived from aggregation of Benchmarking information for both; (b) Summary statistics on overall compliance with this Ordinance including an assessment of accuracy; (c) For each Municipal Property and Covered Property: (i) The status of compliance with the requirements of this Ordinance; (ii) Annual summary statistics for the Municipal Property or Covered Property, including EUI, annual greenhouse gas emissions, and an energy performance score where available; and (iii) A comparison of Benchmarking Information across calendar years for any years such Municipal Property or Covered Property has input the total Energy consumed and other descriptive information for such Properties as required by the Benchmarking Tool into the Benchmarking Tool.

PROVISION OF BENCHMARKING INFORMATION BY TENANTS TO THE OWNER (1) Each Tenant located in a Covered Property shall, within 30 days of a request by the Owner and in a form to be determined by the Department, provide all information that cannot otherwise be acquired by the Owner and that is needed to comply with the requirements of this Ordinance. Failure to provide information to an Owner may result in penalties as provided under Section _____. (2) Where the Owner is unable to input the total energy consumed by the Covered Property as well as all other descriptive information for such Covered Property as required by the Benchmarking Tool into the Benchmarking Tool due to the failure of any or all Tenants to report the information required by Section _____, the Owner shall input alternate values as established by the Department prior to the implementation of this Ordinance, into the Benchmarking Tool.

ASSESSING RESULTS By December 31, 2020, the Department shall review the effect of this Ordinance on improving energy performance for Covered Buildings. If energy performance for Covered Buildings has not improved significantly, the Department shall make recommendations to the City Manager as to whether amendments to this Ordinance or other measures are necessary to improve building energy performance for Covered Buildings.

MAINTENANCE OF RECORDS (1) Owners shall maintain records as the Department determines is necessary for carrying out the purposes of this Ordinance, including but not limited to energy bills and other documents received from Tenants and/or Utilities. Such records shall be preserved by Owners for a period of three (3) years. At the request of the Department, such records shall be made available for inspection and audit by the Department. (2) At the time any occupied Covered Building is transferred, the buyer and seller shall arrange for the seller to provide to the buyer all information necessary for the buyer to report Benchmarking information for the entire year in a timely manner. It shall be a violation of this Ordinance for any seller to fail to so provide any such information.

VIOLATIONS It shall be unlawful for any entity or person to fail to comply with the requirements of this Ordinance or misrepresent any material fact in a document required to be prepared or disclosed by this Ordinance.

ENFORCEMENT AND ADMINISTRATION (1) The City Manager or his or her designee shall be the Chief Enforcement Officer of this Ordinance. (2) City Staff may promulgate regulations relative to the administration of the requirements of this Ordinance as necessary. (3) If any person or entity violates any provision of this Ordinance, the following enforcement measures may be taken: (a) For the first violation, a written warning may be issued; and (b) For any subsequent violation, the Department may issue a fine of up to \$150.00 per day pursuant to the provisions of Chapter 1.24 herein.

SEVERABILITY If any provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

EFFECTIVE DATE The provisions of this Ordinance shall be effective immediately upon passage.