

Order 67-16/17

Postponed to 11/7/2016: 7-0 (Ray, Thibodeau absent) on 10/17/2016

Amended with regard to standardized data: 9-0 on 11/7/2016

Amended to change the definition of covered property: 9-0 on 11/7/2016

Passage as amended: 6-3 (Mavodones, Brenerman, Suslovic) on 11/7/2016

ETHAN K. STRIMLING (MAYOR)

BELINDA S. RAY (1)

SPENCER R. THIBODEAU (2)

EDWARD J. SUSLOVIC (3)

JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)

JILL C. DUSON (A/L)

JON HINCK (A/L)

NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6 BUILDINGS AND BUILDING REGULATIONS
RE: BUILDING ENERGY USE DISCLOSURE ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

WHEREAS, the City seeks to embed sustainability best practices into City operations, the City Code and across the community; and

WHEREAS, the City has an interest in reducing energy consumption citywide by increasing the energy efficiency of existing buildings located within its city limits and wishes to lead area economic development and environmental protection; and

WHEREAS, the City finds it to be in the interest of the public to adopt a standard policy regarding the efficient use of energy and water in buildings that supports economic development, improves the economic standing of the community, produces better public health outcomes and reduces emissions of greenhouse gases; and

WHEREAS, the use of fossil fuels to heat and cool buildings is a significant cause of CO2 emissions that cause global climate change; and

WHEREAS, the City is vulnerable to sea level rise and other effects of global climate change that may threaten public safety and property; and,

WHEREAS, the City wishes take action via among other things the energy efficiency best practices contained in this ordinance to mitigate the negative impacts

of global climate change by reducing emissions of CO2;

NOW, THEREFORE, BE IT ORDERED, that, pursuant to 30-A M.R.S. §3001, the Code of Ordinances, City of Portland, Maine, is hereby amended by adding the following section, to be numbered City of Portland General Provisions Code of Ordinances Chapter 6 Article X, which said section shall read as follows:

ARTICLE X.

6-205. General.

The energy and water use of municipal and covered buildings shall be benchmarked in accordance with this article.

6-206. Purpose.

To encourage efficient use of energy and water 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 and water 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.

6-207. Applicability.

This Ordinance shall be applicable to all Municipal and Covered Properties as defined in this Ordinance.

6-208. Definitions.

Benchmarking information shall mean information generated by the Benchmarking Tool, as herein defined including descriptive information about 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) Water use;

(h) The energy performance score that compares the energy use of the building to that of similar buildings, where available; and

(i) Compliance or noncompliance with this Ordinance.

Benchmarking Tool shall mean the Internet-based tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance and water usage of buildings nationwide.

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 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"). Residential covered property shall not include separate free-standing single family or two-family dwelling units, or single free-standing structures or buildings which by themselves contain ten (10) units or fewer.

Department means the City of Portland Energy and Sustainability Coordinator and his or her department or office.

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.

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.

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.

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

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.

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

Gross Square Feet shall mean the gross floor area of the property.

Municipal Property shall mean a property with one or more buildings that is 5,000 gross square feet or more that is owned by the City of Portland.

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.

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

Residential Property shall mean a property containing one or more Dwelling Units.

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.

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.

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

Utility shall mean an entity that distributes and/or sells energy, including, but not limited to, natural gas, propane, electric or thermal energy for Covered Properties or Municipal Properties.

6-209. Benchmarking for Municipal and Covered Properties.

(a) No later than one (1) year after the effective date of this Ordinance, and no later than May 1 every year thereafter, the total Energy and Water 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.

(b) Owners of Covered Property shall annually input the total Energy and Water 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:

- (1) A Residential Covered Property no later than two (2) years after the effective date of this Ordinance and by every May 1 thereafter;
- (2) A Non-residential Covered Property by no later than two (2) years after the effective date of this Ordinance and by every May 1 thereafter; and
- (3) A new Covered Property that has not accumulated twelve (12) months of energy and water use data by the first applicable date following occupancy for inputting Energy and Water use into the Benchmarking Tool shall comply with this Ordinance in the following year.

6-210. 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 and Water 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.

6-211. Qualifications of Benchmarkers.

The City Manager or his or her designee, including but not limited to the Department, may establish certification and/or licensing requirements for the users of Benchmarking Tools.

6-212. Disclosure And Publication Of Benchmarking Information.

(a) 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 V.

(b) An exemption from this reporting requirement for any current reporting period may be granted if:

- (1). The Owner demonstrates to the Department that he or she has been unable to obtain tenant authorization to obtain tenant utility data, despite a good faith effort to obtain such consent; or
- (2). The Owner or Tenant demonstrates to the Department that such disclosure may result in the release of proprietary information which can be characterized as a trade secret.

(c) The Department shall make available to the public on the internet Benchmarking Information for the previous calendar year:

- (1) No later than a year and a half after the effective date of this Ordinance and by September 1 of each year thereafter for Municipal Properties; and
- (2) No later than two and a half years after the effective date of this Ordinance or no later than one year after the Department has certified that utility service providers have made utility use data readily available in a standardized and secure manner through "green button" or similar programs or standards that offer easy access to usage data as needed to use Energy Star Portfolio Manager, whichever date comes later, 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 and Water consumed and other descriptive information as required by the Benchmarking Tool into the Benchmarking Tool will be not be published except to disclose whether or not the Covered Property is in compliance with this Ordinance.

(d) The Department shall make available to the public and update at least annually, the following information:

(1) Summary statistics on energy and water consumption for Municipal Properties and Covered Properties derived from aggregation of Benchmarking information for both;

(2) Summary statistics on overall compliance with this Ordinance including an assessment of accuracy;

(3) 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.

6-213. Provision of Benchmarking Information by Tenants.

(a) Each Tenant located in a Covered Property shall, within thirty (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 in the City Code and this Ordinance.

(b) 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 this Ordinance, the Owner shall input alternate values as established by the Department prior to the implementation of this Ordinance, into the Benchmarking Tool.

6-214. Assessing Results and Annual Report to City Council.

(a) By December 31, 2020, the Department shall review the effect of this Ordinance on improving energy and water performance for Covered Buildings. If energy and water 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 and water performance for Covered Buildings.

(b) In December of each calendar year, the Department shall prepare and submit an annual report to the City Council, which evaluates the administration and enforcement of the Ordinance and contains a summary of the benchmarking data provided to the City as required by this Ordinance, as well as any other necessary data or recommendations on the Ordinance could be improved.

6-215. Maintenance of Records.

(a) Owners shall preserve and maintain records as the Department determines is necessary for carrying out the purposes of this Ordinance, including but not limited to energy and water bills and any and all 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.

(b) 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.

6-216. Violations.

It shall be unlawful for any entity or person including, but not limited to, Owners or Tenants 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.

6-217. Enforcement and Administration.

(a) The City Manager, the Department or their designee shall enforce the provisions of this Ordinance.

(b) The City Manager, the Department or their designee may promulgate regulations relative to the administration of the requirements of this Ordinance, as necessary.

(c) If any person or entity including, but not limited to, Owners or Tenants violate any provision of this Ordinance, the following enforcement measures may be taken:

(1) For the first violation, a written warning may be issued; and

(2) Any subsequent or ongoing violation will be subject to a fine of up to \$20.00 per day pursuant to the provisions of Chapter 1, Section 1-15 herein.

6-218. 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.