

1 **DRAFT Commercial and multifamily buildings - energy and water benchmarking and transparency**

2 **1 Legislative Purpose**

3 The purpose of this chapter is to establish an energy and water benchmarking, reporting, and
4 transparency requirement for certain buildings within the City. The energy and water use of a Covered
5 Property shall be benchmarked and submitted to the City in accordance with this chapter.

6 **2 Definitions**

7 (1) *Aggregated Whole-Building Data* means energy or water data that has been summed for an entire
8 property, which may include a single occupant or a group of separately metered tenants.

9 (2) *Benchmark* means to input and submit the total energy and water consumed by a property for the
10 previous calendar year and other descriptive information for such property as required by the
11 Benchmarking Tool. Total energy and water consumption shall not include separately metered uses
12 that are not integral to building operations, as determined by the Director.

13 (3) *Benchmarking Report* means a subset of:

- 14 a. Information input into the Benchmarking Tool; and
15 b. Benchmarking information generated by the Benchmarking Tool, as determined by the Director.

16 (4) *Benchmarking Tool* means the U.S. Environment Protection Agency's ENERGY STAR® Portfolio
17 Manager, or any additional or alternative tool adopted by the Director, used to track and assess the
18 energy and water use of certain properties relative to similar properties.

19 (5) *Condominium* means a property that combines separate ownership of individual units with common
20 ownership of other elements such as common areas.

21 (6) *Covered City Property* means a property that:

- 22 a. Exceeds 10,000 gross square feet in total floor area; and
23 b. Is owned, leased, or managed by the City such that the City regularly pays all or part of the
24 annual energy and/or water bills.

25 (7) *Covered Non-City Property* means a property, other than a Covered City Property, that exceed
26 20,000 gross square feet in total floor area. The Director may determine additional requirements
27 pursuant to the process described in [Section 9].

28 (8) *Covered Property* means any Covered City Property or Covered Non-City Property.

29 **EXCEPTIONS:**

- 30 a. Single family and two-family residential homes and related accessory structures, or any other
31 residential building with **less than four units** are not considered to be Covered Properties and
32 are not subject to the requirements of this chapter.
33 b. Properties owned by the State of Michigan and Federal Government are expected to make
34 reasonable effort to comply with the requirements of this chapter.

- 35 c. Other building types not meeting the purpose of this Chapter, as determined by the Director.
- 36 (9) *Data Quality Checker* means the function in ENERGY STAR® Portfolio Manager that runs a set of
37 basic data checks on properties to help identify possible data entry errors and to see whether a
38 building differs from typical operational patterns.
- 39 (10) *Data Transparency Information* means information generated by the Benchmarking Tool and
40 descriptive information about the physical Property and its operational characteristics, which is
41 shared with the public. The information, as defined by the ENERGY STAR® Portfolio Manager
42 glossary, shall include, but is not limited to:
- 43 a. Descriptive information:
- 44 i. Property address;
- 45 ii. Primary use;
- 46 iii. Gross floor area;
- 47 iv. Number of floors;
- 48 v. Number of years the property has been ENERGY STAR® Certified and the last approval date,
49 if applicable; and
- 50 vi. Individual or entity responsible for benchmarking submission.
- 51 b. Output information:
- 52 i. Site and source energy use intensity;
- 53 ii. Weather normalized site and source energy use intensity;
- 54 iii. The ENERGY STAR score, where available;
- 55 iv. Total annual greenhouse gas emissions;
- 56 v. Monthly energy use, by fuel type;
- 57 vi. Indoor water use and water use intensity (consumption per gross square foot);
- 58 vii. Outdoor water use (where available);
- 59 viii. Total water use;
- 60 ix. The ENERGY STAR Water Score, where available; and
- 61 x. General comments section, if needed, to explain the building’s ENERGY STAR scores.
- 62 c. Compliance or noncompliance status.
- 63 (11) *Data Verification* or *ENERGY STAR Certification* means validation by of the accuracy of the
64 Benchmarking Report by a licensed professional using the ENERGY STAR Data Verification Checklist
65 in the form of a stamped and signed application pursuant to the U.S. Environmental Protection
66 Agency’s [“The U.S. Licensed Professional’s Guide: Understanding the Roles and Requirements for
67 Verifying Commercial Building Applications for ENERGY STAR Certification”](#) and any additional
68 requirements as determined by the Director pursuant to the process described in [Section 8].
- 69 (12) *Department* means the Office of Sustainability and Innovations.
- 70 (13) *Director* means the Manager of the Office of Sustainability and Innovations or their designee.
- 71 (14) *Energy* means electricity, natural gas, steam, or other product sold by a utility to a customer of a
72 property, or renewable on-site electricity generation, for purposes of providing heating, cooling,

73 lighting, water heating, or for powering or fueling other end-uses as recorded in the Benchmarking
74 Tool.

75 (15) *ENERGY STAR® Score* means the 1-100 numeric rating generated by the ENERGY STAR® Portfolio
76 Manager tool as a measurement of a building's energy efficiency.

77 (16) *ENERGY STAR® Portfolio Manager* means the tool developed and maintained by the U.S.
78 Environmental Protection Agency to track and assess the relative energy performance of buildings.

79 (17) *Energy Use Intensity* or *EUI* means a numeric value calculated by the Benchmarking Tool that
80 represents the energy consumed by a Property relative to its size.

81 (18) *Gross Floor Area* means the total property area, measured between the outside surface of the
82 exterior walls of the building(s). This includes all areas inside the building(s) including but not limited
83 to lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level
84 only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage
85 rooms.

86 (19) *Owner* means any of the following:

- 87 a. An individual or entity possessing title to a property;
- 88 b. The board of owners' association, in the case of a condominium;
- 89 c. The master association, in the case of a condominium where the powers of an owners'
90 association are exercised by or delegated to a master association;
- 91 d. The board of directors, in the case of a cooperative apartment corporation; or
- 92 e. An agent authorized to act on behalf of any of the above.

93 (20) *Property* means any of the following:

- 94 a. A single building; or
- 95 b. One or more buildings held in the condominium form of ownership, and governed by a single
96 board of managers; or
- 97 c. A campus of two or more contiguous buildings which are owned and operated by the same
98 party, have a single shared primary function, and are:
 - 99 i. Behind a common utility meter or served by a common mechanical/electrical systems (such
100 as a chilled water loop) which could prevent the owner from being able to easily determine
101 the energy use attributable to each of the individual buildings; or
 - 102 ii. Used primarily for one of the following functions:
 - 103 1. K-12 school
 - 104 2. Hospital
 - 105 3. Hotel
 - 106 4. Multifamily housing
 - 107 5. Senior care community

108 (21) *Tenants* means a person or entity occupying or holding possession of a building, part of a building,
109 or premises pursuant to a rental or lease agreement.

110 (22) *Utility* means an entity that distributes and/or sells natural gas, electric, water, or thermal energy
111 services for buildings.

112 **3 Collecting and Entering Benchmarking Data**

113 (1) Each year the Owner of each Covered Property shall collect and enter all data needed to
114 benchmark the entire property for the previous calendar year into the Benchmarking Tool in a
115 manner that conforms to the latest guidance provided by the U.S Environmental Protection
116 Agency for use of the Benchmarking Tool. Aggregated Whole-Building Data for the Property's
117 energy and water use shall be compiled using one or more of the following methods:

- 118 a. Obtaining aggregated whole-building data from a utility; or
- 119 b. Collecting data from all tenants; or
- 120 c. Reading a master meter.

121 (2) If the Owner of a Covered Property does not have access to Aggregated Whole-Building energy
122 and water data, such Owner shall request Aggregated Whole-Building Data from each utility that
123 provides energy of water service to the Property. When a Utility does not provide Aggregated
124 Whole-Building energy or water data, the Owner of a Covered Property shall request energy and
125 water data from Tenants. Owners may also request authorization from Tenants for the Utility to
126 share their data with the Owner.

127 (3) Each nonresidential Tenant located in a Covered Property shall, within 30 days of a request by
128 the Owner, provide all information that cannot otherwise be acquired by the Owner and that is
129 needed by the Owner to comply with the requirements of this ordinance.

130 (4) Nothing in this chapter shall be construed to permit an Owner to use Tenant energy usage data
131 for purposes other than compliance with Benchmarking Report requirements, nor shall the
132 reporting requirements of this chapter be construed to excuse Owners from compliance with
133 federal or state laws governing direct access to Tenant Utility data from the responsible Utility.

134 **4 Benchmarking Reporting**

135 (1) For every Covered Property subject to this chapter, the Owner shall annually submit to the
136 Director an energy and water Benchmarking Report in an electronic format via the
137 Benchmarking Tool, by the data specified in [Section 5].

138 (2) The information included in the Benchmarking Report shall include the data entered in the
139 Benchmarking Tool as defined in [Section 2.2-4].

140 (3) The Owner of each Covered Property shall enter data into the Benchmarking Tool such that the
141 energy and water Benchmarking Report shall be based on an assessment of the aggregated total
142 energy and water consumed by the whole Property for the entire calendar year being reported.

143 (4) Before submitting a Benchmarking Report the Owner shall run the Data Quality Checker
144 functions available within the Benchmarking Tool and shall verify that all data has been

145 accurately entered into the tool. In order for the Benchmarking Report to be considered in
146 compliance with this ordinance, the Owner shall correct all missing or incorrect information as
147 identified by the Data Quality Checker prior to submitting the Benchmarking Report to the
148 Director.

149 (5) Where the current Owner learns that any information reported as part of the benchmarking
150 submission is inaccurate or incomplete, the Owner shall amend the information reported within
151 the Benchmarking Tool, and shall provide the Director with an updated Benchmarking Report
152 within 30 days of learning of the inaccuracy.

153 **5 Benchmarking Schedule**

154 (1) The Owner of a Covered Property shall ensure that for such a property a Benchmarking Report is
155 generated, completed, and submitted to the Director annually.

156 (2) The initial Benchmarking Reports for each Covered Property shall be filed in accordance with the
157 schedule in the following table. Subsequent Benchmarking Reports for each Covered Property
158 shall be due by **March 1** of each year thereafter.

159 (3) Beginning no later than December 1, 2022 and every year thereafter, the Director shall make
160 available on a publicly accessible website an annual report on the benchmarking of all Covered
161 Buildings. The report shall include a summary of energy and water consumption statistics, and
162 an assessment of compliance rates, accuracy and issues affecting accuracy, changes across the
163 portfolio over time, and trends observed.

164 (4) The Director shall make Covered Property's Data Transparency Information available to the
165 public for each Property that the Owner selects to participate in Data Transparency. The
166 Director shall make each Covered Property's Data Transparency information available to the
167 public after **March 1, 2026**. Subsequent Data Transparency information will be made public each
168 year thereafter.

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Property	Initial Reporting Date
Covered City Properties ≥10,000 sq. ft.	March 1, 2021
Covered Non-City Properties ≥100,000 sq. ft.	March 1, 2022
Covered Non-City Properties ≥50,000 sq. ft.	March 1, 2023
Covered Non-City Properties ≥20,000 sq. ft.	March 1, 2024

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172 **6 Benchmarking Exemptions**

173 (1) Benchmarking is not required for a Covered Property for the current reporting year if the owner
174 submits documentation to the Director, in such a form and with such certifications as required
175 by the Director, establishing that the property met one or more of the following conditions for
176 the calendar year to be benchmarked:

177 a. The Property did not have a Certificate of Occupancy or temporary Certificate of
178 Occupancy for that full year; or

179 b. The Property had a physical occupancy rate of less than 50 percent over at least 10
180 months of that year; or

181 c. A demolition permit for the entire building was issued during that year, provided that
182 demolition work commenced, and legal occupancy was no longer possible prior to the
183 end of that year.

184 (2) Public availability of the Covered Property’s Data Transparency Information is not required for a
185 Covered Property for the current reporting year if the owner submits documentation to the
186 Director, in such a form and with such certifications as required by the Director, establishing
187 that the property met one or more of the following conditions for the calendar year to be make
188 Data Transparency Information available to the public:

189 a. If Benchmarking or Data Transparency would disclose trade secrets as defined by [MCL](#)
190 [445.1901 through 445.1910](#); or

191 b. Due to special circumstances unique to the Property, strict compliance with provisions
192 of this ordinance would not be in the public interest.

193 (3) Any Owner requesting an exemption from Benchmarking and/or Transparency shall, by
194 **February 1** in the year for which the exemption is being requested, submit to the Director any
195 documentation reasonably necessary to substantiate the request or otherwise assist the Direct
196 in the exemption determination. Any exemption granted will be limited to the benchmarking
197 submission for which the request was made and does not extend to past or future submittals.

198 **7 Maintenance of Records**

199 (1) Owners shall maintain records as the Director determines is necessary for carrying out the
200 purposes of this ordinance, including but not limited to the energy and water bills and reports or
201 forms received from Tenants and/or Utilities. Such records shall be preserved for a period of

202 three years. At the request of the Director, such records shall be made available for inspection
203 by the Director.

204 (2) When a Covered Property is sold, the records shall be given to the new property Owner and the
205 online Portfolio Manager benchmarking records shall be transferred to the new owner.

206 (3) The Department reserves the right to review records as it deems necessary to evaluate the
207 efficacy of this ordinance. Records shall be provided to the Director upon request.

208 **8 Violations and Enforcement**

209 (1) It shall be unlawful for any entity, person, Tenant, or Owner to fail to comply with the
210 requirements of this ordinance or misrepresent any material fact in a document required to be
211 prepared or shared by this ordinance.

212 (2) If the Director determines that a property Owner has failed to submit a Benchmarking Report as
213 required under this ordinance, or the Owner has submitted incomplete Benchmarking Report or
214 false benchmarking information within the Benchmarking Report, the Director may seek the
215 following remedies:

216 a. If the initial Benchmarking information or updated Benchmarking information is not
217 reported within 30 days of the date specified in [Section 5] a written notice of violation
218 will be issued.

219 b. If initial Benchmarking information or updated Benchmarking information is not
220 reported within 60 days of the date the notice of violation is issued, the Owner shall be
221 subject to late fees or penalties. Council may by resolution establish a late fee for
222 delinquent Benchmarking Reports.

223 c. If the Director determines that an Owner has intentionally submitted false or
224 incomplete information, or has misrepresented the Benchmarking information, the
225 Director may issue a notice of violation and the Owner will be subject to late fees and or
226 penalties. Council may by resolution establish a late fee for delinquent Benchmarking
227 Reports.

228 **9 Rules and Regulations**

229 The Director is hereby authorized to adopt rules & regulations concerning the effective execution of this
230 ordinance.