

AGENDA ITEM SUMMARY

December 4, 2018

City Council

STAFF

Kirk Longstein, Project Manager
Cyril Vidergar, Legal

SUBJECT

Second Reading of Ordinance No. 144, 2018 Amending Chapter 12 of the Code of the City of Fort Collins to Establish the Requirements for a Building Energy and Water Scoring Program.

EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on November 20, 2018 by a vote of 6-1 (Nays: Summers), establishes requirements for building owners to provide information related to energy and water use in commercial and multifamily buildings larger than 5,000 square feet.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, November 20, 2018 (w/o attachments) (PDF)
2. Ordinance No. 144, 2018 (PDF)

AGENDA ITEM SUMMARY

November 20, 2018

City Council

STAFF

Kirk Longstein, Project Manager
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SUBJECT

First Reading of Ordinance No. 144, 2018 Amending Chapter 12 of the Code of the City of Fort Collins to Establish the Requirements for a Building Energy and Water Scoring Program.

EXECUTIVE SUMMARY

The purpose of this item is to establish requirements for building owners to provide information related to energy and water use in commercial and multifamily buildings larger than 5,000 square feet.

The ordinance requires:

- Building owners to benchmark and report energy and water performance data to the City;
- Energy and water performance data be made available to the public;
- A phased implementation over three years based on building size and sector;
- Building owners to apply for exemptions to the requirement if necessary;
- A compliance mechanism for enforcement if necessary.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The proposed Building Energy and Water Scoring (BES) Ordinance reflects the findings of the City's community engagement efforts and community Working Group recommendations as presented in the City Council Agenda at the August 28, 2018 Work Session (**Attachment 1**). In the long-term, a critical mass of commercial building energy and water Scores will give the community the ability to select the lowest operating cost option before renting or buying a building. An essential element of the recommendations is an emphasis on the availability of consistent and credible information to facilitate informed choice in the marketplace. BES is a foundational element which will encourage the voluntary improvement of efficiency through improved operations in the short-term and investment over time. Comparing the energy and water performance of one building against another allows commercial real estate stakeholders, such as building owners, investors, brokers and tenants, to evaluate the highest-performing, lowest-operating cost option, and monitor their performance in the market place. Building energy and water scoring provides a simple, yet valuable, way for building owners, property managers and tenants to understand their facilities' energy and water use and to begin to identify opportunities to reduce water and energy-related costs.

Requirements, Exemptions and Compliance

Requirements

Covered Buildings.

As defined in the Ordinance, "Covered Building" means any building or group of adjacent buildings in the City of Fort Collins with a Gross Floor Area that is five thousand (5,000) square feet or larger. Commercial covered buildings are defined by ENERGY STAR® Portfolio Manager® and defined by Commercial Building Energy Consumption Survey (CBECS). Covered buildings include apartments and condominiums three stories or more in height above grade and representing multifamily structures defined by a typical R-2 occupancy by the International Building Code.

Figure 1. illustrates how buildings are determined to fall into the Covered Building category. The Ordinance refers to Portfolio Manager® to define specific commercial and multifamily property use types.

One Building

Scenario

- ✓ 1 building
- ✓ 1 or more tenants
- ✓ Building is **5,000 ft² or larger**



Group of Adjacent Buildings

Scenario

- ✓ More than 1 building
- ✓ 1 or more tenants
- ✓ Buildings add up to **5,000 ft² or larger**



Figure 1. Covered Buildings Determinations

Phased Implementation.

The ordinance highlights an initial phased-implementation for buildings required to submit an annual report. The phased implementation will assist City staff in communicating with and educating all impacted stakeholders and allow building owners to communicate and operationalize the new requirements. The chart below shows the timeline for initial compliance. Reports are due to the City by March 1 of each year starting with the largest building square footages (SF) as highlighted in the chart below.

Sector / Year	2020	2021	2022	2023
Commercial	>20,000 SF	>10,000 SF	>5,000 SF	>5,000 SF
Multifamily		>20,000 SF	>10,000 SF	>5,000 SF

Once fully implemented in 2023, Covered Buildings greater than 5,000 square feet (including multifamily and commercial) will be required to report data which information will represent 30 percent of the total square footage of buildings across the City's built environment and 53 percent of the total electricity delivered by Fort Collins Utilities. Covered Buildings account for approximately 32 percent of the total water delivered by Fort Collins Utilities. The chart below highlights the number of property owners who will be required to submit a report to the City, each year under the currently proposed phased-implementation.

Sector / Year	2020	2021	2022	2023
Commercial	430	771	1,223	1,223
Multifamily	0	148	223	377
Total	430	919	1,446	1,600

The Ordinance requires benchmarking, reporting and transparency for tracking energy and water use. The steps within each required component are outlined here. Additionally, coordination between Fort Collins Utilities and the City Manager’s Office are outlined in **Attachment 2**. The City Manager’s Office may further delegate authority for enforcement to the appropriate City department(s).

Benchmarking.

- Create a free Portfolio Manager® account
- Determine property use type (ex. Office, Retail, Mixed Use)
- Collect building data including square footage, occupancy, basic equipment inventory (ex. computers, electronics)
- Collect 12-months of electricity, natural gas and water use data by using Portfolio Manager® standard upload templates (see Attachment C)
 - Electricity: Contact Fort Collins Utilities Customer Connections for data request
 - Natural Gas: Use Xcel’s Portfolio Manager® online web services tool
 - Water: Contact Fort Collins Utilities Customer Connections or the property’s local water provider for data request.
- Upload building data from templates into the Portfolio Manager® to start tracking annual energy performance

Reporting.

- Click proposed Reporting link on Fort Collins BES website which will lead to Portfolio Manager® reporting tool
- Validate report data using Data Quality Checker tool within Portfolio Manager® and correct any errors
- Submit annual report through Portfolio Manager® system and Fort Collins will have access to covered buildings’ reports in Portfolio Manager® (**Attachment 4**)

Transparency.

- City staff will compile and reconcile reports inventory with covered buildings list and review data for accuracy and completeness and contact those buildings owners that need to revise their reports
- City staff will publish BES scores on City map of covered buildings (**Attachment 5**)

Exemptions

The Ordinance includes exemptions to the requirements based on capabilities of Portfolio Manager® and unique building characteristics. Covered building owners who do not submit a report are required to apply for one of the following exemptions:

- Unoccupied building for twelve (12) months
- Building with average physical occupancy of less than sixty (60) percent
- Building with demolition permit
- Building with financial distress
- Building used for industrial or agricultural processes
- Building with confidential business practice
- Building with unique circumstances, if approved by the City Manager’s Office

Compliance

- Building owners will receive notifications via regular mail and email, if available, to alert them of the requirement and approaching deadline.

- After the deadline has passed, non-compliant building owners will receive reminder notifications with offers for customer service and resources to help owners submit report.
- After education and assistance efforts, City staff will cite non-compliant building owners for a civil infraction that will be heard in Municipal Court.
- Civil penalty will include fines not to exceed \$1,000. The Ordinance does not provide for criminal penalties at any time.

Technical Documentation

Pending Council adoption of the proposed Ordinance, staff will make available a technical manual, adopted by the City Manager's Office, which will detail all of the requirements, definitions and procedures for implementation of this ordinance.

Progress Since August 28, 2018 Council Work Session

Staff addressed Council's concerns as summarized in the Summary Memo delivered September 11, 2018 by submitting a follow-up Memo delivered September 25, 2018 (**Attachment 6 and 7**). The memo offered that:

- BES contributes to Energy Policy goals for energy efficiency and greenhouse gas (GHG) emission reduction goals of the Climate Action Plan;
- BES contributes to Fort Collins Climate Economy objectives for clean energy investment, green job creation and expansion of local business opportunities;
- BES aligns with existing programs and planned initiatives delivered by Utilities and Platte River Power Authority; and
- Based on local and national pilots, BES will provide these outcomes only through a reporting requirement approach.

Between the August 28, 2018 Work Session and end of November 2018, staff continued its community engagement and implementation preparation efforts:

- Staff met with more boards and commissions (Energy Board, Water Board, Building Review Board, Economic Advisory Commission, Youth Advisory Board), the Fort Collins Chamber of Commerce Local Legislative Affairs Committee, brokers groups (CBRE, Chrisland Real Estate, Brinkman, Waypoint, FC Board of Realtors) and presented at the Utilities Multifamily Luncheon. (see attachment H for a list of business and groups providing feedback)
- Based on these additional discussions, staff recommends adding water benchmarking to the requirements because water benchmarking enhances a customer's understanding of their facility by allowing customers to identify improvements, detect leaks, and eliminate waste and unnecessary cost. Additionally, water and electricity are heavily connected (e.g. heating water, cooling processes) and should be examined together to maximize customer benefits.
- Staff submitted a grant application through Innovate Fort Collins Challenge and was awarded funds, with a partial match from the City Energy Project, to initiate a Buildings Challenge Competition (Lose to Win Energy Use), increase tenant engagement in large multi-family buildings, and provide benchmarking informational sessions and jams for hands-on learning in the free, online ENERGY STAR® Portfolio Manager® tool.

Community Feedback

In discussions with business and community members, staff received the following feedback:

Transparency in the Market. Most business owners and brokers in the community support the idea of adding information to increase the efficiency of markets in the long-term and to make decisions and transactions easier for the consumer.

Regulation. Some business owners expressed concerns that Fort Collins will follow City of Boulder's example and, instead of requiring only reporting and transparency, will in future years require mandatory

upgrades for buildings with low ENERGY STAR® scores. The proposed Ordinance does not require mandatory audits, upgrades or retro-commissioning as some other cities around the nation have adopted in their ordinances. Fort Collins' approach focusses on consumer advocacy by providing more transparency of information in the marketplace.

Tenant Data Access. Some owners have expressed concern that obtaining tenant energy use data will be difficult to obtain. Staff recognizes some of the barriers for both Fort Collins Utilities and Xcel Energy. Processes are in place at Fort Collins Utilities to facilitate the transfer of aggregated electricity information. Xcel Energy has established a building energy scoring portal to facilitate the transfer of natural gas data. In addition, staff has available for distribution sample language that building owners can incorporate into their commercial and multifamily leases that addresses data access and consent.

Market Differentiator. Some business owners and brokers are attracted to the potential of a higher ENERGY STAR® score setting their properties apart from others in the market. Some have noted that an "energy efficient broker" designation, in alignment with BES scores, would help individual real estate professionals.

Time Commitment. The initial benchmarking account set-up is more labor intensive than the subsequent and ongoing reporting requirement. The initial one-time set-up on average takes 4-6 hours of time for a business owner or representative. Once the initial set-up is completed, automatic uploads of utility data follow, with little effort throughout the year. The reporting process is expected to take 1-2 hours per year and will involve an automated "push" to the City from Portfolio Manager®.

Prioritizing Future Investments. Some business owners and investors thought that the score, as an indicator of potentially higher or lower operating costs, would help them better select future investments and implement best management practices in their current operations.

Fort Collins Utilities Customer Testimonials

The following excerpts are taken from 2018 BizWest Thought Leaders columns. Additionally, **Attachment 9** includes letters of support received to date.

Ram's Village: We volunteered to be a test case using the ENERGY STAR® Portfolio Manager tool...Our goal is to take part in Building Energy Scoring and continue using ENERGY STAR Portfolio Manager to maintain a positive reputation for efficiency in the rental market and be a good steward in the community.

Brinkman Partners: Building Energy Scoring has allowed us to give feedback on the front end to our development and construction teams. For existing buildings, we can benchmark how they are performing...This is not just savings for property owners but also for the tenants within the buildings.

Neighbor to Neighbor: N2N was initially drawn to Building Energy Scoring because it provides tools for reducing utility costs and energy usage...and we have been able to increase efficiency and reduce monthly energy bills. The changes made have improved overall livability of the community. We share this information with tenants, and we are helping them make the best housing choices to provide stability in the future.

WW Reynolds: I have confidence in recommendations to owners on where to spend their money on energy and water efficiency upgrades, including lighting changes going to LED or integrating new HVAC equipment because of Building Energy Scoring...we can leverage efficiency upgrades, financial incentives and technical assistance too. BES offers increased potential to remain competitive as well as to be a good steward of our energy.

City of Fort Collins: Qualifying (City) buildings use benchmarking and energy scores to track improvements and cost-savings over time...the advantages go beyond energy performance to indoor air quality, lighting, building comfort and reduced utility costs. The baseline shows how our compare nationwide and offers a variety of efficiency opportunities, including no- and low-cost options that can maximize a building's overall performance.

Customer Service and Utilities Supporting Programs

In providing exceptional customer service, City staff is working to ease the burden to the customer of Building Energy Scoring. Supporting programs intend to reduce the estimated time estimated to benchmark a building using the EPA Portfolio Manager tool. Each of the supporting programs do not require additional funding and are designed with scalability in mind as more buildings are required to benchmark. City staff recognize the additional time commitment needed in the first year of implementation with less support needed in subsequent years. The following are underway or in development to help customers with the BES program requirements:

Data Access. City staff is working with Xcel Energy and other Water Districts to develop web services, automated data upload capabilities and data transfer systems to ease the burden on building owners to access data for their BES reports. Currently, Fort Collins Utilities has established internal process to formatting electric and water data into Portfolio Manager upload templates.

HelpDesk. Using current staff members, Utilities plans to create a BES HelpDesk service for building owners/representative to contact for help while they are benchmarking and/or reporting. The “helpdesk” includes a dedicated help line, and additional training resources to owners of covered buildings.

Trainings. City and partnering organizations will continue to provide benchmarking and reporting related trainings throughout the year to help covered building owners one-on-one with technical questions related to entering data into the ENERGY STAR Portfolio Manager tool, ex. Benchmarking Jams.

Preferred Brokers Network. The City and the Utilities will develop criteria for local brokers to join a network supporting high performing building information focused real estate transactions, including, a Real Estate Ally directory, Broker Trainings, and marketing collateral and templates for including into real estate marketing materials.

ATTACHMENTS

1. Agenda Item Summary August 28, 2018 (PDF)
2. Initial Compliance Checklist (PDF)
3. Sample Portfolio Manager Data Collection Worksheet (PDF)
4. Sample Annual Reporting Portal (PDF)
5. Sample Transparency Map (PDF)
6. Memo to Council September 11, 2018 (PDF)
7. Memo to Council September 25, 2018 (PDF)
8. Community Engagement (PDF)
9. Letters of Support to Date (PDF)
10. PowerPoint Presentation (PDF)

ORDINANCE NO. 144, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF
FORT COLLINS TO ESTABLISH THE REQUIREMENTS
FOR A BUILDING ENERGY AND WATER SCORING PROGRAM

WHEREAS, the City of Fort Collins' strategic vision seeks to build a culture of innovation and a future climate economy; and

WHEREAS, on March 3, 2015, City Council adopted Resolution 2015-030, recognizing the 2015 Climate Action Plan Framework ("2015 CAP Framework"), which contains a high level analysis of the strategies necessary to reduce Fort Collins's community-wide greenhouse gas emissions and established goals to reduce emissions to 20% below 2005 levels by 2020; and additionally, established the goals of reducing emissions to 80% below 2005 levels by 2030 and to be carbon neutral by 2050; and

WHEREAS, on December 15, 2015, City Council adopted Resolution 2015-115, approving the 2015 Energy Policy, which establishes goals for reducing energy in existing buildings; and

WHEREAS, on March 1, 2016, City Council adopted Resolution 2016-023, approving the 2015 Water Efficiency Plan and establishing a goal to reduce water use to 130 gallons per capita per day by 2030 of which goal community building water scoring serves an integral component in identifying strategies; and

WHEREAS, on April 19, 2016, City Council adopted Ordinance No. 046, 2016, recognized the electric utility benefits of community building energy scoring by authorizing funding from the Electric Utility Fund to establish a Building Energy Disclosure and Scoring effort to manage or reduce peak demand and overall electric service loads; and

WHEREAS, on October 2, 2018, City Council adopted Resolution 2018-094, establishing a communitywide 100% renewable electricity goal by 2030, in furtherance of the City's 2015 CAP Framework, 2015 Energy Policy goals; and

WHEREAS, on-going community building energy and water scoring serves as an integral component in identifying strategies to meet the City's 2015 CAP Framework, 2015 Energy Policy, 2015 Water Efficiency Plan, and renewable electricity goals, and the absence of this tracking metric reduces the efficiency of measures intended to meet those community goals; and

WHEREAS, Building Energy and Water Scoring (BES) increases transparency and access to building information, and enhances coordination and efficiencies among efficiency programs and partner organizations across public, nonprofit, and private sectors; and

WHEREAS, publicly available BES data provides transparent energy and water performance information to prospective tenants and investors and will thereby improve the City's ability to attract tenants and investors seeking to live and work in a world-class City; and

WHEREAS, as of 2018, more than twenty leading peer U.S. cities, including Denver, Boulder, Kansas City, St. Louis, Seattle, and Austin, have adopted BES reporting and transparency requirements, demonstrating the acceptability and feasibility of such requirements among local governments; and

WHEREAS, Utilities, Sustainability Services, and Environmental Services staff have identified proposed BES program requirements with input from a community working group composed of independent commercial building owners, operators, and real estate professionals; and public engagement at a series of community events and a project website; and

WHEREAS, Utilities staff further identified specific benefits of a BES program that will facilitate energy and resource conservation by improving building owner awareness of whole building utility consumption and incentivizing efficiency upgrades, which will reduce demand and replace inefficient or damaged building systems to the benefit large commercial building utility ratepayers; and

WHEREAS, the BES program recommended by staff relies on support from Utility Services and Sustainability and Environmental Services divisions, over a phased implementation with delayed compliance enforcement expected to begin in 2021-2022, and

WHEREAS, consistent with Article XII, Section 6 of the Fort Collins City Charter, approving funding a portion of the total cost of a BES program with Electric Utility Funds reflects the proportionate benefit expected to accrue to Electric Utility ratepayers across service levels through focus and management on minimizing overall operating capital needs of the Electric Utility and avoiding rate impacts that otherwise may be required to support increasing peak demand and electric service loads; and

WHEREAS, consistent with findings in Ordinance No. 046, 2016 and Resolution 2016-023, the proposed BES program can be supported by available staff and resources funded pro rata with Electric and Water utility funds, and General Fund revenues from the Sustainability and Environmental Services divisions, based on projected energy, water and environmental benefits, and

WHEREAS, staff recommends City Council adopt the proposed BES program requirements, in furtherance of Council's support of community climate, energy and water efficiency efforts, with such program to be administered by Sustainability Services staff in collaboration with Utilities Customer Connections and Environmental Services resources; and

WHEREAS, the City Council finds and determines that the adoption of this Ordinance is necessary for the public's health, safety and welfare and, therefore, wishes to authorize the creation and administration of the Building Energy and Water Scoring program requirements described in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 12 of the Code of the City of Fort Collins is hereby amended by the adoption of a new Article XI to be entitled “Building Energy and Water Scoring” with the applicable requirements and conditions of such program to read as follows:

Sec. 12-201. - Purpose and applicability

(a) The purpose of this Article is to establish a Building Energy and Water Scoring Program that requires owners of existing buildings (“Covered Buildings”) to benchmark building energy and water performance, and makes such building performance information publicly available, in the interest of increasing transparency and access to community building information, and enhanced coordination and efficiencies among City energy efficiency programs and partner organizations across public, nonprofit, and private sectors.

(b) The provisions of this Article shall:

(1) Apply to any person who owns a Covered Building or is a registered agent of an entity owning a Covered Building within the City limits; and

(2) Apply to aggregated utility usage data reported in a statistical format; including ENERGY STAR® score.

(c) This Article shall not apply to Fort Collins Utilities customer financial data or other data protected from disclosure under §26-26 of this Code, unless requested in writing by the utility customer.

Sec. 12-202. - Definitions

The following words, terms and phrases, when used in this Article, shall have the meaning ascribed to them in this section. Words, terms and phrases defined in the rules, regulations, policies and procedures adopted by the City Manager shall have the meaning set forth therein:

Benchmarking shall mean measuring a Covered Building's energy performance using the ENERGY STAR® Portfolio Manager® tool.

Covered Building shall mean any building or group of adjacent buildings in the City of Fort Collins with a Gross Floor Area that is five thousand (5,000) square feet or larger. Commercial covered buildings are defined by ENERGY STAR® Portfolio Manager® and defined by Commercial Building Energy Consumption Survey (CBECS). Covered buildings include apartments and condominium three stories or more in height above grade and representing multifamily structures defined by a typical R-2 occupancy by the International Building Code.

Energy Efficiency Program shall mean the administrative program funded by the City of Fort Collins Utilities providing rebate and incentive money for energy efficiency upgrades for new construction and existing commercial buildings.

ENERGY STAR® Portfolio Manager® shall mean the online tool created by the US Environmental Protection Agency used to measure and track a building's energy use, water consumption, waste diversion and greenhouse gas emissions.

Energy Use Intensity or *EUI* shall mean a building's energy use expressed as energy per square foot per year as a function of its size and other characteristics. A whole building's EUI is typically measured in thousands of BTU per square foot per year (kBTU/ft²/yr).

Gross Floor Area or *GFA* shall mean the total property square footage, measured between the principal exterior surfaces of the enclosing fixed walls of a building, as defined in the ENERGY STAR® Portfolio Manager® definitions.

Occupancy shall mean the percentage of a property's Gross Floor Area that is occupied and operational.

Owner shall mean the person or entity including common interest ownership groups having a legal or equitable interest in real property and the associated asset features of a Covered Building.

Reporting or *Report* shall mean the data submitted each year via the ENERGY STAR® Portfolio Manager® tool using a template and submission link to be distributed and publicized by the City of Fort Collins. All information expressly denoted as mandatory by either ENERGY STAR® Portfolio Manager® or the City shall be included in the submission.

Water Use Intensity or *WUI* shall mean a building's water use expressed as all water sources divided by the building sq. ft. (not including parking or irrigated area). A whole building's WUI is typically expressed in gallons per square foot per year (gal/ft²/yr).

Sec. 12-203. - Building energy and water score reporting.

(a) Initial Compliance. Owners shall begin benchmarking building energy and water usage through *ENERGY STAR® Portfolio Manager®* upon the dates listed below and will follow an annual reporting cycle thereafter:

(1) Owners of Commercial Covered Buildings, other than City-owned Covered Buildings, with a Gross Floor Area equal to or greater than twenty thousand (20,000) square feet shall begin reporting by March 1, 2020.

(2) Owners of Commercial Covered Buildings, including City-owned Covered Buildings, with a Gross Floor Area between ten thousand (10,000) and twenty thousand

(20,000) square feet shall begin reporting by March 1, 2021.

(3) Owners of Multifamily Covered Buildings with a Gross Floor Area equal to or greater than twenty thousand (20,000) square feet shall begin reporting by March 1, 2021.

(4) Owners of Commercial Covered Buildings, including City-owned Covered Buildings, with a Gross Floor Area between five thousand (5,000) and ten thousand (10,000) square feet shall begin reporting by March 1, 2022.

(5) Owners of Multifamily Covered Buildings with a Gross Floor Area equal to or greater than ten thousand (10,000) and up to twenty thousand (20,000) square feet shall begin reporting by March 1, 2022.

(6) Owners of Multifamily Covered Buildings, with a Gross Floor Area between five thousand (5,000) and ten thousand (10,000) square feet shall begin reporting by March 1, 2023.

(b) Ongoing compliance. After the Initial Compliance Date for each Owners group, as set forth in section (a), each Owner group will report on an annual basis, as follows:

(1) Benchmarking. The Owner shall provide the information necessary to benchmark energy and water usage as defined in §12-202 in accordance with this Article and any rules, regulations, policies and procedures adopted by the City Manager.

(2) Reporting. For every building subject to this Article, the Owner shall annually submit to the City an energy and water benchmarking report according to the schedule set forth herein. The energy and water benchmarking report shall be based on data entered into ENERGY STAR® Portfolio Manager® reflecting the energy and water performance information for the whole building during the full calendar year being reported. The energy and water benchmarking “report” shall, at minimum, include the building address, facility gross square footage, property type, and the individual or entity responsible for the benchmarking report.

(3) Transparency. Reported benchmarking information and data obtained from reports submitted pursuant to this Article, including only ENERGY STAR score, Energy Use Intensity, and Water Use Intensity, shall be available to the public, consistent with City open data policies, as adopted in Resolution 2017-014 and on file with the City Clerk as shall be amended from time to time.

Sec. 12-204. - Data verification; records retention.

(a) Owners are required to submit accurate and complete data as defined in this Article and ENERGY STAR® Portfolio Manager® How to Get Utility Data into Portfolio Manager® and by using the data quality checker tool within ENERGY STAR® Portfolio Manager® for each Covered Building in their portfolio.

(b) Owners shall maintain the following records for a period of at least three years, and shall make such records available for inspection during business hours upon reasonable notice from the City:

- (1) ENERGY STAR® Portfolio Manager® account data;
 - (2) Proof of tenant data requests for energy or space use attribute data from any separately metered tenants; and
 - (3) Any back-up information substantiating the energy data and space use attribute information entered into the ENERGY STAR® Portfolio Manager®.
- (c) Any person who fails, neglects or refuses to submit accurate and complete data as required by this Article is subject to enforcement under §12-206 of this Code.

Sec. 12-205. – Exemptions; variance.

(a) Owners may apply annually to the City Manager for exemption from the benchmarking and reporting requirements of this Article and in the manner described in any rules and regulations promulgated by the City Manager. The City Manager, or his or her delegate will review and render a decision on any application for exemption or variance from the requirements of this Article. An exemption or variance may be granted for any building that meets at least one of the following criteria:

- (1) The building was not occupied for all twelve (12) months of the calendar year for which benchmarking is required;
- (2) A demolition permit for the entire building has been issued and for which demolition work has commenced on or before the date the benchmarking report is due;
- (3) The building is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages; (2) the building is controlled by a court appointed receiver; or (3) the building has been acquired by a deed in lieu of foreclosure;
- (4) The building had an average physical occupancy of less than sixty (60) percent, throughout the calendar year for which benchmarking is required, based on criteria set forth in rules, regulations, policies and procedures adopted by the City Manager;
- (5) The building is used 50% or more for industrial or agricultural processes, as such activities are defined by ENERGY STAR® Portfolio Manager®;
- (6) The Owner can demonstrate the subject building's performance information is or involves a confidential business practice, including trade secret, privileged, or confidential commercial information. In order to qualify for this exemption, the Owner shall specifically identify the information it believes to be confidential and provide a written

statement describing the manner in which public disclosure would cause substantial harm to the Owner's competitive position in efficient energy usage alone will not be considered confidential commercial information; and

(7) The City Manager determines that, due to special circumstances unique to the applicant's building and not based on a condition caused by actions of the applicant, strict compliance with the benchmarking and reporting requirements would cause undue hardship or would not be in the public interest.

(b) The City Manager's determination regarding applicability of an exception or variance under this section shall be final; no further administrative review or appeal to the City shall be available to an Owner aggrieved by such determination.

Sec. 12-206. – Implementation.

The City Manager may adopt such other rules and regulations concerning the benchmarking and reporting of building performance information as may be necessary to implement the provisions of this Article not in conflict with such provisions.

Sec. 12-207. - Violations and penalties.

Any person who violates §§12-203 or 12-204 of this Article without an applicable exception or variance commits a civil infraction and is subject to the penalty provisions of subsection 1-15(f) of the Code, except:

(a) the civil penalty for such infraction shall not exceed one thousand dollars (\$1,000.) per violation; and

(b) failure to comply with §§12-203 or 12-204 in any calendar year shall constitute a single violation in that calendar year.

Introduced, considered favorably on first reading, and ordered published this 20th day of November, A.D. 2018, and to be presented for final passage on the 4th day of December, A.D. 2018.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 4th day of December, A.D. 2018.

Mayor

ATTEST:

City Clerk