

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~~ including 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.

(4) Score Mandates Prohibited. The City shall not require a minimum ENERGY STAR score for non-City-owned buildings pursuant to this program.

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.

Sec. 12-208. – Evaluation.

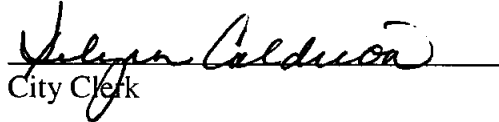
The City Manager shall present an annual report to the City Council each year evaluating the Building Energy and Water Scoring Program output and outcomes.

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.

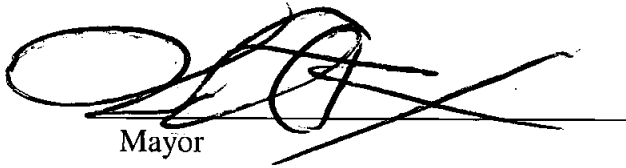


Mayor

ATTEST:


City Clerk

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



Mayor

ATTEST:


City Clerk