

ORDINANCE NO. ORD-21-30

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CHAPTER 104 (ENERGY AND WATER BENCHMARKING)

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ANN ARBOR BY ADDING A NEW CHAPTER WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 104 (ENERGY AND WATER BENCHMARKING) OF TITLE VIII – BUILDING REGULATIONS OF SAID CODE.

The City of Ann Arbor ordains:

Section 1. That Chapter 104 (Energy and Water Benchmarking) of Title VIII of the Code of the City of Ann Arbor be added as follows:

8:451. - Legislative Purpose

The purpose of this chapter is to establish an energy and water benchmarking, reporting, and transparency requirement for certain buildings and properties within the City, in order to allow potential or current tenants to access consistent and relevant information regarding the relative costs of their rental inclusive of utilities. The energy and water use of a Covered Property shall be benchmarked and submitted to the City in accordance with this chapter. This ordinance is intended to promote the safety, health, welfare and comfort of the City's residents and businesses by accomplishing the following purposes:

- (1) Allow potential and current renters or lessees to compare the true cost of housing or commercial spaces that may or may not include utilities in the rental price;
- (2) Allow City residents, business owners and property owners to make more informed choices regarding the buildings and properties they occupy for residential or business purposes and motivating improvement in building energy and water performance;
- (3) Promote efficient use of energy and water and reduce the emission of pollutants and greenhouse gases through the provision of uniform comparable information regarding the energy and water performance of buildings and properties in the City;

- (4) Inform development of new programs and resources needed to support each market sector; including but not limited to allowing governments to analyze whether provision of certain affordable housing incentives or energy assistance dollars do not disadvantage property owners who invest in building energy and water performance;
- (5) Provide information to the real estate marketplace to enable decisions that foster better building energy and water performance; and
- (6) Motivate decisions that enhance the safety, health, welfare and comfort of City residents and the continuation of commercial activity in times of natural disaster in which electricity or heating supplies may be disrupted.

8:452. Definitions

- (1) *Aggregated Whole-Building Data* means energy or water data that has been summed for an entire property, which may include a single occupant or a group of separately metered tenants.
- (2) *Benchmark* means to input and submit the Aggregated Whole-Building Data of a property for the previous calendar year and other Property Information for such property as required by the Benchmarking Tool. Aggregated Whole-Building Data shall not include separately metered uses that are not integral to property operations, as determined by the Manager.
- (3) *Benchmarking Report* means a subset of:
 - (a) Aggregated Whole-Building Data and Property Information input into the Benchmarking Tool.
 - (b) Information generated by the Benchmarking Tool, as determined by the Manager.

The Benchmarking Report is generated within the Benchmarking Tool in such a format as determined by the Manager.

- (4) *Benchmarking Tool* means the U.S. Environment Protection Agency's ENERGY STAR® Portfolio Manager, or any additional or alternative tool adopted by the Manager, used to track and assess the energy and water use of certain properties relative to similar properties.
- (5) *Campus* means a collection of two or more buildings which are owned and operated by the same party, have a single shared primary function, and are:

- (a) Behind a common utility meter or served by a common mechanical/electrical systems (such as a chilled water loop) which could prevent the owner from being able to easily determine the energy use attributable to each of the individual buildings; or
 - (i) K-12 school;
 - (ii) Hospital;
 - (iii) Hotel;
 - (iv) Multifamily housing; or
 - (v) Senior care community.
- (6) *Condominium* means a property that combines separate ownership of individual units with common ownership of other elements such as common areas.
- (7) *Covered City Property* means a property that:
 - (a) Exceeds 10,000 gross square feet in total floor area; and
 - (b) Is owned, leased, or managed by the City such that the City regularly pays all or part of the annual energy and/or water bills.
- (8) *Covered Non-City Property* means a property, other than a Covered City Property, that exceeds 20,000 gross square feet in total floor area. The Manager may determine additional requirements pursuant to rules and regulations adopted pursuant to the authority granted in this chapter.
- (9) *Covered Property* means any Covered City Property or Covered Non-City Property.

EXCEPTIONS:

- (a) Single family and two-family residential homes and related accessory structures, or any other residential building with less than four units are not considered to be Covered Properties and are not subject to the requirements of this chapter.
 - (b) Properties or buildings owned by the State of Michigan and Federal Government are expected to make reasonable effort to comply with the requirements of this chapter.
 - (c) Other property types not meeting the purpose of this chapter, as determined by the Manager.
- (10) *Data Quality Checker* means the function in ENERGY STAR® Portfolio Manager that runs a set of basic data checks on properties to help identify

possible data entry errors and to see whether a Property differs from typical operational patterns.

- (11) *Data Transparency Information* means information generated by the Benchmarking Tool and descriptive information about the physical Property and its operational characteristics, which is shared with the public. The information, as defined by the ENERGY STAR® Portfolio Manager glossary, shall include, but is not limited to:
- (a) Descriptive information:
 - (i) Property address;
 - (ii) Primary use;
 - (iii) Gross floor area;
 - (iv) Number of floors;
 - (v) Number of years the property has been ENERGY STAR® Certified and the last approval date, if applicable; and
 - (vi) Individual or entity responsible for submitting the Benchmarking Report.
 - (b) Output information:
 - (i) Site and source energy use intensity;
 - (ii) Weather normalized site and source energy use intensity;
 - (iii) The ENERGY STAR score, where available;
 - (iv) Total annual greenhouse gas emissions;
 - (v) Monthly energy use, by fuel type;
 - (vi) Indoor water use and water use intensity (consumption per gross square foot);
 - (vii) Outdoor water use (where available);
 - (viii) Total water use;
 - (ix) The ENERGY STAR Water Score, where available; and
 - (x) General comments section, if needed, to explain the Property's ENERGY STAR scores.
 - (c) Compliance or noncompliance status.
- (12) *Data Verification* or *ENERGY STAR Certification* means validation by of the accuracy of the Benchmarking Report by a licensed professional using the ENERGY STAR Data Verification Checklist in the form of a stamped and signed application pursuant to the U.S. Environmental Protection Agency's "The U.S. Licensed Professional's Guide: Understanding the Roles and Requirements for Verifying Commercial Building Applications for ENERGY STAR Certification" and any additional requirements required

by rules and regulations adopted pursuant to the authority granted in this chapter.

- (13) *Department* means the Office of Sustainability and Innovations.
- (14) *Energy* means electricity, natural gas, steam, or other product sold by a utility to a customer of a property, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses as recorded in the Benchmarking Tool.
- (15) *ENERGY STAR® Score* means the 1-100 numeric rating generated by the ENERGY STAR® Portfolio Manager tool as a measurement of a Property's energy efficiency.
- (16) *ENERGY STAR® Portfolio Manager* means the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of properties.
- (17) *Energy Use Intensity or EUI* means a numeric value calculated by the Benchmarking Tool that represents the energy consumed by a Property relative to its size.
- (18) *Gross Floor Area* means the total building area, measured between the outside surface of the exterior walls of the building(s). This includes all areas inside the building(s) including but not limited to lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms.
- (19) *Manager* means the Manager of the Office of Sustainability and Innovations or his/her designee.
- (20) *Owner* means any of the following:
 - (a) An individual or individuals or entity possessing title to a property;
 - (b) The board of owners' association, in the case of a condominium;
 - (c) The master association, in the case of a condominium where the powers of an owners' association are exercised by or delegated to a master association;
 - (d) The board of directors, in the case of a cooperative apartment corporation; or

- (e) An agent authorized to act on behalf of any of the above.
- (21) *Property* means any of the following:
- (a) A single building; or
 - (b) One or more buildings held in the condominium form of ownership, and governed by a single board of managers; or
 - (c) A Campus. If two or more contiguous buildings do not meet the definition of a Campus, the buildings are each treated as an individual property for the purposes of this ordinance.
- (22) *Property Information* means descriptive information of the property required by the Benchmarking Tool to calculate metrics. Property Information includes, but is not limited to:
- (a) Property Name;
 - (b) Property Address;
 - (c) Total Gross Floor Area of the Property;
 - (d) Irrigated Area;
 - (e) Year Built;
 - (f) Occupancy;
 - (g) Number of Buildings; and
 - (h) Additional data required as determined by the property type, which may include information relating to a single occupant or a group of tenants.
- (23) *Tenant* means a person or entity occupying or holding possession of a property, part of a property, or premises pursuant to a rental or lease agreement.
- (24) *Utility* means an entity that distributes and/or sells natural gas, electric, water, or thermal energy services for properties.

8:453. Collecting and Entering Benchmarking Data

- (1) Each year the Owner of each Covered Property shall collect and enter all data needed to benchmark the entire property for the previous calendar

year into the Benchmarking Tool in a manner that conforms to the latest guidance provided by the U.S. Environmental Protection Agency for use of the Benchmarking Tool. Aggregated Whole-Building Data for the Property's energy and water use shall be compiled using one or more of the following methods:

- (a) Obtaining Aggregated Whole-Building Data from a utility; or
 - (b) Collecting data from all tenants; or
 - (c) Reading a master meter.
- (2) If the Owner of a Covered Property does not have access to Aggregated Whole-Building energy and water data, such Owner shall request Aggregated Whole-Building Data from each utility that provides energy or water service to the Property. When a Utility does not provide Aggregated Whole-Building energy or water data, the Owner of a Covered Property shall request Tenant energy and water data using a form provided by the City. Owners may also request authorization from Tenants for the Utility to share their data in an aggregated format with the Owner.
- (3) Each nonresidential Tenant located in a Covered Property shall, within 30 days of a request by the Owner, provide all information that cannot otherwise be acquired by the Owner and that is needed by the Owner to comply with the requirements of this ordinance.
- (4) Nothing in this chapter shall be construed to permit an Owner to disclose or use Tenant energy usage data for any purpose except compliance with the requirements of this chapter, nor shall the reporting requirements of this chapter be construed to excuse Owners from compliance with federal or state laws governing direct access to Tenant Utility data from the responsible Utility.
- (5) If the Tenant of a Covered Property fails to provide information to the owner as provided in this section, the owner shall be considered in compliance with the reporting requirements of this chapter with respect to the building if (1) the Owner proves that the owner has requested the tenant to provide such information as specified in this section in a format as required by the Manager; and (2) the Owner has used the Benchmarking Tool for the building using all information otherwise available to the owner. The Manager may provide alternate values as established by the Department.

8:454. Submitting a Benchmarking Report

- (1) For every Covered Property subject to this chapter, the Owner shall annually submit to the Manager an energy and water Benchmarking Report in an electronic format via the Benchmarking Tool, by the date specified in Section 8:455.
- (2) The information included in the Benchmarking Report shall include the data entered in the Benchmarking Tool.
- (3) The Owner of each Covered Property shall enter data into the Benchmarking Tool such that the energy and water Benchmarking Report shall be based on an assessment of the aggregated total energy and water consumed by the whole Property for the entire calendar year being reported.
- (4) Before submitting a Benchmarking Report the Owner shall run the Data Quality Checker functions available within the Benchmarking Tool and shall verify that all data has been accurately entered into the tool. In order for the Benchmarking Report to be considered in compliance with this ordinance, the Owner shall correct all missing or incorrect information as identified by the Data Quality Checker prior to submitting the Benchmarking Report to the Manager.
- (5) Where the current Owner learns that any information reported as part of the submission of the Benchmarking Report is inaccurate or incomplete, the Owner shall amend the information reported within the Benchmarking Tool, and shall provide the Manager with an updated Benchmarking Report within 30 days of learning of the inaccuracy.

8:455. Benchmarking Schedule

- (1) The Owner of a Covered Property shall ensure that for such a property a Benchmarking Report is generated, completed, and submitted to the Manager annually in accordance with schedules and deadlines in this chapter.
- (2) The initial Benchmarking Reports for each Covered Property shall be filed in accordance with the schedule in Table 1.1. Subsequent Benchmarking Reports for each Covered Property shall be due by June 1 of each year thereafter.
- (3) Beginning no later than December 1, 2022 and every year thereafter, the Manager shall make available on a publicly accessible website an annual report on the results of the Benchmarking Reports received. The report shall include a summary of energy and water consumption statistics, and an assessment of compliance rates, accuracy and issues affecting

accuracy, changes across the portfolio over time, trends observed, and other information as determined by the Manager.

- (4) The Manager shall make a Covered Property's Data Transparency Information available to the public beginning the year after the Covered Property is first required to submit a Benchmarking Report in accordance with the schedule in Table 1.1. Subsequent Data Transparency information will be made public each year thereafter.

Table 1.1

Property	Initial Reporting Date	Initial Transparency Year
Covered City Properties $\geq 10,000$ sq. ft.	December 31, 2021	2022
Covered Non-City Properties $\geq 100,000$ sq. ft.	June 1, 2022	2023
Covered Non-City Properties $\geq 50,000$ sq. ft.	June 1, 2023	2024
Covered Non-City Properties $\geq 20,000$ sq. ft.	June 1, 2024	2025

8:456. Benchmarking Exemptions

- (1) Submittal of a Benchmarking Report is not required for a Covered Property if the owner submits documentation to the Manager, in such a form and with such certifications as required by the Manager, establishing that the Property met one or more of the following conditions for the calendar year to be benchmarked:
- (a) The Property did not have a Certificate of Occupancy or temporary Certificate of Occupancy for that full year; or
 - (b) The Property had a physical occupancy rate of less than 50 percent over at least 10 months of that year; or
 - (c) The Property was in foreclosure; or

- (d) A demolition permit for the entire Property was issued during that year, provided that demolition work commenced, and legal occupancy was no longer possible prior to the end of that year; or
 - (e) The Property or building is solely occupied by the Owner of the Property and is not offered for lease, rental, or similar commercial arrangement to any person or entity, or the only entities or individuals permitted to lease or rent the property are owners of the Property or entities have the same owner(s) as the owner(s) of the Property.
 - (f) Properties or buildings in which the only persons or entities permitted to lease or rent the buildings have the same owner(s) as the owner(s) of the Property. In order for this exception to apply, the owner must certify to the City that this exception applies.
- (2) Public availability of the Covered Property's Data Transparency Information is not required for a Covered Property for the current reporting year if the owner submits documentation to the Manager, in such a form and with such certifications as required by the Manager, establishing that the property met one or more of the following conditions for the calendar year to be make Data Transparency Information available to the public:
 - (a) If submitting a Benchmarking Report or Data Transparency would disclose trade secrets as defined by MCL 445.1901 through 445.1910; or
 - (b) Due to special circumstances unique to the Property, strict compliance with provisions of this ordinance would not be in the public interest.
- (3) Any Owner requesting an exemption from submitting a Benchmarking Report and/or Transparency shall, by March 1 in the year for which the exemption is being requested, submit to the Manager any documentation reasonably necessary to substantiate the request or otherwise assist the Manager in the exemption determination. Any exemption granted will be limited to the submission of a Benchmarking Report for which the request was made and does not extend to past or future submittals.
- (4) A decision on an exemption may be appealed to the City Administrator by submitting a written appeal to the Manager along with any supporting documentation within 14 days from the date of the decision.

8:457. Maintenance of Records

- (1) Owners shall maintain records as the Manager determines is necessary for carrying out the purposes of this ordinance, including but not limited to the energy and water bills and reports or forms received from Tenants and/or Utilities. Such records shall be preserved for a period of three years. At the request of the Manager, such records shall be made available for inspection by the Manager.
- (2) When a Covered Property is sold, the records shall be given to the new property Owner and the online Benchmarking Tool records shall be transferred to the new owner.
- (3) The Department reserves the right to review records as it deems necessary to evaluate the efficacy of this ordinance. Records shall be provided to the Manager upon request.

8:458. Violations and Enforcement

- (1) A violation of any provision of this chapter is a civil infraction punishable by a fine of not more than \$500.00 for a first offense, and not more than \$1,000.00 for each additional or subsequent offense, plus the costs of prosecution including court costs. Each act or violation and every day upon which any such violation shall occur shall constitute a separate offense. Violations of this chapter shall be enforced by Planning and Development Services Unit employees. The court may issue and enforce any judgment, writ, or order necessary to enforce this chapter.
- (2) Knowingly submitting a false Benchmarking Report or submitting it with reckless disregard for the truth and accuracy of it and/or the data on which it is based is a civil infraction punishable by a fine of not more than \$500.00 plus the costs of prosecution including court costs.
- (3) Remedies not exclusive. In addition to any remedies provided in this chapter, any equitable or other remedies may be sought.

8:459. Rules and Regulations

The Manager is hereby authorized to adopt rules and regulations concerning the effective execution of this chapter.

8:460 – 8:479. Reserved.

Section 2. Severability. In the event any court of competent jurisdiction shall hold any provision of this ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 3. Savings Clause. The amendment of the City of Ann Arbor Code of Ordinances set forth in this ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the City of Ann Arbor Code of Ordinances set forth in this ordinance.

Section 4. Repealer. All other ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 5. Effective Date. This ordinance shall take effect and be in force on and after ten days from publication thereof as provided for in the Charter of the City of Ann Arbor.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of October 18, 2021.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor of the City of Ann Arbor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on October 21, 2021.

Jacqueline Beaudry, Ann Arbor City Clerk