

**SUBSTITUTE BODY- LEGISTAR # 32255**

DRAFTER'S ANALYSIS: Benchmarking is a well-established practice that measures a building's energy efficiency, water efficiency, and carbon emissions, and compares the building's performance against similar buildings in the region, thereby helping the building's owners become aware of the building's performance. Once aware of the building's energy and water consumption in comparison to other similar buildings, building owners may find that it is advantageous to make energy efficiency improvements to the building to save energy costs, increase the value of the property, and make the building more marketable. In addition, these changes made by private property owners will help the City meet its climate change and energy independence goals. Cities that have enacted a benchmarking requirement include New York, Boston, Chicago, Minneapolis, San Francisco, Seattle, Austin, Washington D.C., and Philadelphia. In addition, many states, including Wisconsin, have benchmarking requirements for state-owned buildings.

This ordinance creates a benchmarking requirement for City-owned buildings over 15,000 square feet, commercial buildings greater than 25,000 square feet and residential rental properties containing 35 or more dwelling units. Property owners of covered buildings must enter their building's data into a designated free national benchmarking tool and submit this information to the City, where this information will be compiled so that it can be used to generate energy use statistics for covered properties in the City. Benchmarking requirements will be phased in over a four-year period beginning with City-owned properties in 2014 and covered buildings in 2016. The public disclosure of benchmarking information from covered buildings will begin the second year benchmarking is required for the building, or 2017 for Class 1 covered buildings. This delayed disclosure will give property owners time to review the initial benchmarking information and make energy efficiency improvements before the data is compiled and made available to the public (except for data requested pursuant to a valid open records request). Ten percent of all annual submissions shall be verified by the City. Tenants shall be required to provide property owners with relevant information to allow them to benchmark their property. Finally, the failure to comply with these provisions would be subject to the issuance of a citation, enforceable by the City Engineering Division.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 29.047 entitled "Building Benchmarking Requirement" of the Madison General Ordinances is created to read as follows:

**"29.047 BUILDING BENCHMARKING REQUIREMENT.**

(1) Intent and Purpose.

(a) The Common Council of the City of Madison hereby finds that:

1. The Madison Sustainability Plan, adopted on June 12, 2012 by RES-12-00434, calls for the City to reduce overall energy consumption fifty percent (50%) by 2030 in the public and private sectors, and to achieve an eighty percent (80%) overall carbon reduction by 2050.
2. The Sustainability Plan calls for the City to make energy efficiency upgrades to City-owned buildings to meet specific energy performance targets.
3. The Sustainability Plan also calls for gathering benchmarking information on private buildings and its impact on property sales, rental rates and occupancy rates to show property owners the value of making energy efficiency improvements.
4. Benchmarking has become an important tool used by municipalities and states throughout the United States, including the State of Wisconsin, to encourage property owners to assess the energy efficiency of their buildings. Requiring benchmarking and making benchmarking information and benchmarking comparisons readily available has been shown to lead to market driven energy efficiency improvements.
5. Benchmarking will lead to energy efficiency improvements in the City's building stock. This will lead to an increase in the quality and efficiency of the buildings in the City, raise property values and occupancy rates, and demonstrate City, City businesses and City residents' commitment toward self-reliance and sustainability.

6. Energy efficiency improvements made as a result of benchmarking will create local employment opportunities that will benefit the City, the City's businesses and the City's residents.
7. Benchmarking will lead to reduced energy use in Madison, and therefore a reduction in local greenhouse gas emissions. This will help the City meet its carbon reduction goals, and also improve air and water quality, which will, in turn, yield benefits for the public health and the environment in the City and the region.

(b) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Madison pursuant to the powers set forth in Wis. Stat. § 62.11(5).

(2) Definitions. For the purposes of this section, the following definitions shall apply:

Administrator means the Facilities and Sustainability Manager for the City of Madison Engineering Division, or designee.

Benchmark means to input the total energy consumed for a building and other descriptive information for such building as required by the benchmarking tool.

Benchmarking information means information related to a building's energy consumption as generated by the benchmarking tool, and descriptive information about the physical building and its operational characteristics. The information shall include, but need not be limited to:

1. Building address;
2. Water use; and,
3. The energy performance score that compares the energy use of the building to that of similar buildings, where available.

Benchmarking tool means the United States Environmental Protection Agency's Energy Star Portfolio Manager tool, or an equivalent tool adopted by the Administrator.

Building owner means an individual or entity possessing title to a building, or an agent authorized to act on behalf of the building owner.

City-owned building means any building, or group of buildings on the same tax parcel, owned by the City of Madison containing fifteen thousand (15,000) or more gross square feet of an occupancy use other than residential or industrial.

Covered building means:

1. Any building containing fifty thousand (50,000) or more gross square feet of an occupancy use other than residential or industrial shall be classified as a Class 1 covered building; and,
2. Any building containing at least twenty-five thousand (25,000) but less than fifty thousand (50,000) gross square feet of an occupancy use other than residential or industrial shall be classified as a Class 2 covered building;
3. Any building containing thirty-five (35) or more residential rental dwelling units shall be classified as a Class 3 covered building.

The term "covered building" shall not include any building owned by the county, state, or federal government or other recognized political subdivision.

Energy means electricity, natural gas, steam, heating oil, or other product sold by a utility for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

Energy performance score means the numeric rating generated by the Energy Star Portfolio Manager tool or equivalent tool adopted by the Administrator that compares the energy usage of the building to that of similar buildings.

Energy Star Portfolio Manager means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

Tenant means a person or entity occupying or holding possession of a building or premises pursuant to a rental agreement.

(3) Benchmarking Required for City-owned Buildings. No later than May 1, 2014, and no later than every May first thereafter, each City-owned building shall be benchmarked for the previous calendar year by the entity primarily responsible for the management of such building, in coordination with the Administrator.

- (4) Benchmarking Required for Covered Buildings. Building owners shall annually benchmark for the previous calendar year each covered building and obtain an energy performance score as available according to the following schedule:
  - (a) All Class 1 covered buildings by May 1, 2015 and by every May 1 thereafter;
  - (b) All Class 2 covered buildings by May 1, 2016 and by every May 1 thereafter; and,
  - (c) All Class 3 covered buildings by May 1, 2017 and by every May 1 thereafter.
- (5) Reporting and Gathering of Benchmarking Information.
  - (a) Benchmarking Reporting. The building owner shall annually provide benchmarking information to the Administrator, in such form as established by the Administrator, by the date provided by the schedule in subsections (3) and (4).
  - (b) To assist in the gathering of information necessary to benchmark a Covered Building, building owners shall annually request that their tenants provide them monthly electric and natural gas usage data.
- (6) Disclosure and Publication of Benchmarking Information.
  - (a) The Administrator shall make readily available to the public, and update at least annually, benchmarking information for the previous calendar year according to the following schedule:
    1. Each City-owned building by July 30, 2014 and by every July 30 thereafter;
    2. Each Class 1 covered building by July 30, 2017 and by every July 30 thereafter;
    3. Each Class 2 covered building by July 30, 2018 and by every July 30 thereafter; and,
    4. Each Class 3 covered building by July 30, 2019 and by every July 30 thereafter.
  - (b) The Administrator shall make available to the public, and update at least annually, the following information:
    1. Summary statistics on energy consumption in City-owned buildings and covered buildings derived from aggregation of benchmarking information for those buildings;
    2. Summary statistics on overall compliance with this section;
    3. For each City-owned building and covered building:
      - a. The status of compliance with the requirements of this chapter;
      - b. Annual summary statistics for the building, including water use per gross square foot and an energy performance score where available; and,
      - c. A comparison of benchmarking information across calendar years for any years such building was benchmarked.
- (7) Verification. Annually, ten percent (10%) of all Covered Buildings subject to the benchmarking requirements in subsection (4) shall be randomly selected for the purpose of verifying the benchmarking data submitted to the Administrator. Verification of data will be conducted by the City or its agent. No Covered Building will be reviewed more than once every three (3) years. The failure to comply with the City's efforts to verify the benchmarking information shall be a violation of this requirement.
- (8) Exemptions. The Administrator may exempt a building owner from the benchmarking requirements of subsection (4) if the building owner submits documentation establishing any of the following:
  - (a) The building is presently experiencing qualifying financial distress in that the building is the subject of a qualified tax lien sale or public auction due to property tax delinquencies, the building is controlled by a court-appointed receiver based on financial distress, the building is owned by a financial institution through default by the borrower, the building has been acquired by a deed in lieu of foreclosure, or the building has a senior mortgage which is subject to a notice of default; or,
  - (b) The building or areas of the building subject to the requirements of this section have been less than fifty (50) percent occupied during the calendar year for which benchmarking is required; or,
  - (c) The building is new construction and the certificate of occupancy was issued less than two (2) years prior to the applicable benchmarking deadline established pursuant to subsection (4).

- (9) Providing Benchmarking Information to the Building Owner. Each tenant located in a covered building shall, within thirty (30) days of a request by the building owner and in a form to be determined by the Administrator, provide all information that cannot otherwise be acquired by the building owner and that is needed by the building owner to comply with the requirements of this section. Where the building owner is unable to benchmark due to the failure of any or all tenants to report the information required by this subsection, the owner shall complete benchmarking using such alternate values as established by the Administrator. The Administrator shall periodically evaluate the quality of any alternate values established pursuant to this subsection and propose revisions that increase the quality of such values. It shall not be a violation of this subsection if a tenant fails to respond to a request by the building owner.
- (10) Violations. It shall be unlawful for any entity or person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this section.
- (11) Penalty. Any person who fails to comply with any of the provisions of this section, or causes or directs another to do so, shall, upon conviction thereof, be subject to a forfeiture of not less than fifty dollars (\$50) nor more than two hundred and fifty dollars (\$250) for each and every violation thereof. Each day that a violation exists shall constitute a separate offense. The cumulative penalties for a single building shall not exceed one-thousand dollars (\$1,000) in a calendar year, based upon date of violation.”

2. Subdivision (a) of Subsection (3) entitled “Schedule of Deposits” of Section 1.08 entitled “Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits” of the Madison General Ordinances is amended by creating therein the following:

| <u>“Offense</u>   | <u>Ord. No./Adopted Statute No.</u> | <u>Deposit</u> |
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| Failure to comply with building benchmarking requirements.” | 29.047(8)                           | \$100          |

3. Subsection (4) entitled "Issuance of Citations" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by amending therein the following:

| <u>“Enforcement Official</u>       | <u>Ordinance Chapter or Section and Title</u>   |
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| City Engineer or her/his designee. | Chapter 37; Section 19.16(6)(c), Failure to Modify Electrical Service; <u>Section 29.047(8), Failure to Comply with Building Benchmarking Requirements.</u> ” |

EDITOR’S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.