

..Number  
240297  
..Version  
PROPOSED SUBSTITUTE A  
..Reference

..Sponsor  
ALD. BROSTOFF

..Title  
A substitute ordinance related to energy benchmarking for commercial, multi-family, and government buildings.

..Section  
200-09-3 cr  
200-19-5 cr  
200-62 cr

..Analysis  
This ordinance requires property owners of commercial and multi-family buildings that are 50,000 square feet or larger and owners of government buildings 10,000 square feet or larger to annually input their buildings' energy consumption usage into the ENERGY STAR Portfolio Manager tool and share it with the Environmental Collaboration Office staff.

..Body  
Whereas, On June 20, 2023, the City of Milwaukee Common Council adopted the City of Milwaukee Climate and Equity Plan with goals of reducing community-wide greenhouse gas (GHG) emissions 45% by 2030 and achieving net-zero GHG emissions by 2050, while creating green jobs that pay at least \$40,000 per year; and

Whereas, In 2018, energy use from commercial buildings accounted for 25.5 percent of total GHG emissions created in the city of Milwaukee; and

Whereas, A benchmarking ordinance is one of the "Big Ideas" in the City's Climate and Equity Plan, with benchmarking accounting for 6% of the total emissions reduction the City aims to achieve by 2030, in addition to being a critical baseline policy necessary for future policies to further reduce GHG emissions; and

Whereas, Energy benchmarking, which has been implemented by dozens of peer cities such as Madison, Minneapolis, Detroit and Chicago, is the practice of requiring building owners to track the annual energy use data of their buildings in the ENERGY STAR Portfolio Manager tool and report it to the city; and

Whereas, By bringing awareness to the amount of energy a building uses, the costs of that energy use, and how that energy use compares to similar buildings, benchmarking helps building owners and operators to reduce their electricity, natural gas, and steam usage and thereby reduces local GHG emissions while reducing energy costs for building owners and tenants; and

Whereas, An Environmental Protection Agency study found that commercial buildings that benchmark use an average of 2.4% less energy each year, or 7.2% less energy over 3 years, which is equal to cumulative cost savings of \$120,000 in a 500,000 square foot building; and

Whereas, Energy efficiency and decarbonization improvements made as a result of a benchmarking ordinance will create local green jobs that will benefit the city, and Milwaukee residents and businesses, while helping achieve the green jobs goal of the Climate and Equity Plan; and

Whereas, Energy efficiency and decarbonization improvements made to buildings, particularly to multifamily buildings, will help reduce tenants' monthly utility bills, while improving comfort and indoor air quality for tenants; and

Whereas, Benchmarking ordinances lead to energy efficiency improvements being made to commercial and multifamily buildings community-wide, with such improvements increasing the quality and sustainability of buildings, and raising property values and occupancy rates; and

Whereas, Energy benchmarking requires a building owner to annually submit his or her utility bill data into the free ENERGY STAR Portfolio Manager tool, which is a program run by the United States Environmental Protection Agency to promote energy efficiency in buildings; and

Whereas, The City's Environmental Collaboration Office plans to open a Help Desk and Commercial Buildings Resource Center to help building owners comply with the benchmarking ordinance, identify incentives and other resources to improve the energy efficiency of their buildings, and add clean energy components; and

Whereas, Implementing a benchmarking ordinance will build the foundation for the City to pursue other energy savings programs, such as building performance standards and decarbonization of existing buildings, as well as secure more federal funding to support energy efficiency and decarbonization of buildings in Milwaukee; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-09-3 of the code is created to read:

**200-09. Authority.**

**3. ENERGY BENCHMARKING.** The director of environmental sustainability, rather than the commissioner, shall have the authority to enforce all provisions of s. 200-62.

Part 2. Section 200-19-5 of the code is created to read:

**200-19. Penalties.**

5. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the director of environmental sustainability may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating any provision of s. 200-62.

Part 3. Section 200-62 of the code is created to read:

**200-62. Energy Benchmarking for Large Commercial and Multifamily Buildings and for Government Buildings. 1. DEFINITIONS.** For the purposes of this section, the following definitions apply:

a. “Administrator” means the director of environmental sustainability.

b. “Benchmark” means to input the total energy consumed for a building and other descriptive information including square footage, building type, and age, as required by the benchmarking tool.

c. “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 is not be limited to:

c-1. Descriptive building information, including the address of the building, the owner’s name, the primary building use, and the gross floor area.

c-2. Energy use information, including annual energy use by fuel type.

d. “Benchmarking report” means energy use information from the prior year that is uploaded into the energy star portfolio manager tool and shared with the city of Milwaukee through the energy star portfolio manager tool. Using the benchmarking information provided by the building owner, the energy star portfolio manager tool shall provide the following output metrics:

d-1. Site and source energy use intensity.

d-2. Weather-normalized site and source energy use intensity.

d-3. Annual energy use, by fuel type.

d-4. Total annual energy use.

d-5. Annual greenhouse gas emissions.

d-6. Information about how each building’s energy use intensity compares to that of similar buildings across the United States that also benchmark their energy use in the energy star portfolio manager.

- e. "Benchmarking tool" means the energy star portfolio manager tool, or an equivalent tool adopted by the administrator, that is developed and maintained by the United States environmental protection agency and is used to track and assess the relative energy performance of similar buildings nationwide.
- f. "Building owner" or "owner" means the owner of record of a building or an agent authorized to act on behalf of the building owner. In the case of a building held in cooperative or condominium form of ownership, the term building owner or owner shall refer to the board of managers, board of directors, condominium association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations to the building.
- g. "Certificate of occupancy" means the certificate issued by the department of neighborhood services under s. 200-42 allowing the building to be occupied.
- h. "Commercial building" means a public building or place of employment subject to the commercial building code and chs. SPS 361-366 and 375-379, Wis. Adm. Code, excluding any building used solely for manufacturing or industrial purposes.
- i. "Covered building" means a building required to comply with sub. 2.
- j. "Energy" means electricity, natural gas, steam, heating oil, or another product sold by a utility for use in a building or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, or water heating, or for powering or fueling other end-uses in the building and related facilities.
- k. "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 similar buildings nationwide.
- L. "Energy star score" means a 1 to 100 score generated by the energy star portfolio manager that demonstrates the energy efficiency of a building relative to similar buildings across the country.
- m. "Floor area" means the gross floor area of a building, as determined by the city assessor.
- n. "Government building" means any building, or group of buildings on the same tax lot that is owned by the city of Milwaukee or the Milwaukee public schools district. The term government building shall not include any building owned by the state or federal government or other political subdivision.
- o. "Master meter energy data" means aggregated energy data provided by the local utility for the whole building.
- p. "Mixed-use commercial and multi-family building" means a building that contains both commercial units and multiple, separate residential living units subject to the

commercial building code and chs. SPS 361-366 and 375-379, Wis. Adm. Code. Residential units in these buildings may be occupied by the following types of residents:

p-1. Tenants.

p-2. Cooperators.

p-3. Individual owners.

q. “Multi-family building” means an individual building, or campus of buildings, that contains multiple, separate residential living units and is subject to the commercial building code, and chs. SPS 361-366 and 375-379, Wis. Adm. Code. Units in these buildings may be occupied by the following types of residents:

q-1. Tenants.

q-2. Cooperators.

q-3. Individual owners.

r. “Tenant” means a person occupying or holding possession of a building or premises pursuant to a lease agreement.

s. “Utility” means an entity that distributes and sells natural gas, electric, or thermal energy services for buildings.

t. “Whole building aggregated energy use data” means the total energy use data for a building, aggregated such that individual tenant energy use data are not identified or shared.

**2. ENERGY BENCHMARKING.** a. Applicability. a-1. Class 1 Covered Buildings. The provisions of this subsection apply to any government building that is equal to or larger than 10,000 square feet of floor area.

a-2. Class 2 Covered Buildings. This subsection applies to any commercial building that is equal to or larger than 50,000 square feet of floor area. In addition:

a-2-a. For any building with both residential and non-residential uses, this subsection applies to non-residential portions of a building where the non-residential floor area is equal to or larger than 50,000 square feet.

a-2-b. Any commercial building located on a parcel of real property classified as manufacturing by the assessor's office in accordance with the most recent version of the Wisconsin property assessment manual is not subject to this subsection.

a-3. Class 3 Covered Buildings. This subsection applies to any multi-family or mixed-use commercial and multi-family building that is equal to or larger than 50,000 square feet of floor area.

b. Benchmarking Schedule. The owner of any covered building shall complete the annual energy benchmarking requirements by June 30 of each year, with initial compliance required by the following dates:

b-1. Any owner of class 1 and 2 covered buildings shall comply by June 30, 2025 and every June 30 thereafter.

b-2. Any owner of Class 3 covered buildings shall comply by June 30, 2026 and every June 30 thereafter.

c. Exemptions. The administrator may grant a building owner an exemption from one year of benchmarking compliance, as follows:

c-1. Application. A building owner seeking an exemption from one year of benchmarking compliance shall submit a benchmarking exemption request and accompanying documentation, on a form provided by the administrator, that demonstrates one of the following:

c-1-a. The building did not have a certificate of occupancy for the full year to be benchmarked.

c-1-b. The building was demolished or otherwise not receiving utility services for at least 120 days of the year to be benchmarked.

c-1-c. Fifty percent or more of floor area of the building was physically vacant and not leased during a consecutive 6-month period within the 12 months of the calendar year to be benchmarked.

c-1-d. Master meter energy data or whole building aggregated energy use data cannot be provided by the local utility to the owner of the building.

c-2. Deadline. A request for a benchmarking compliance exemption shall be submitted to the administrator no sooner than January 1 following the year to be benchmarked, and no later than March 30 of the year following the year to be benchmarked. The administrator shall notify the applicant within 60 days of receiving an exemption request on the determination of whether the exemption is granted. If the exemption is not granted, the administrator shall within such 60-day period provide a reasonably detailed explanation as to why the request was not granted.

d. Requirement for Energy Benchmarking and Reporting. d-1. Requirement. The following parties shall complete energy benchmarking and reporting:

d-1-a. Owner. The owner of a covered building subject to this subsection shall benchmark aggregate, whole-building energy use for the building via energy star portfolio manager. The energy benchmarking report shall be based on data from the 12 consecutive months of the previous calendar year.

d-1-b. Tenant. Where the owner of a covered building leases the entire covered building to a single tenant, and the tenant is responsible for managing all energy usage for the building, the owner may, with the agreement of the tenant, delegate all responsibilities under this subsection to the tenant. Such delegation shall be provided in writing to the administrator, on a form provided by the administrator. Upon such delegation, the tenant shall be considered an owner under this subsection and be required to comply with the terms hereof.

d-2. Report. The owner shall annually provide a report containing benchmarking information to the administrator, in such form as established by the administrator's rule, by the date provided by the schedule in par. b.

d-3. Extension. A building owner may apply for a 60-day compliance extension from the reporting deadline in subd. d-2 by showing good cause. Receiving an extension does not alter the future schedule for compliance. Conditions to receive a 60-day extension under this subdivision include, but are not limited to:

d-3-a. The building owner purchased the building within 180 days prior to the compliance deadline. Evidence of the transaction and new ownership information shall be submitted.

d-3-b. The building owner has encountered technical difficulties preventing the on-time submission of the benchmarking report.

d-3-c. The building owner can demonstrate proof of financial hardship preventing completion of benchmarking as evidenced by the building being the subject of a tax lien sale or public auction due to property tax arrearages, being controlled by a court-appointed receiver, or being acquired by a deed in lieu of foreclosure.

d-3-d. Good cause is shown by the building owner, as determined by the administrator.

d-4. Amendments and Updates to Benchmarking Report. An amendment or update to the benchmarking report shall be subject to the following provisions:

d-4-a. Where the owner of a covered building learns that any information reported as part of the annual benchmarking submission is inaccurate or incomplete, the owner shall amend the information reported within the portfolio manager and shall provide the administrator with an updated benchmarking report within 30 days of learning of the inaccuracy.

d-4-b. No amendment of data under this subdivision shall be required after June 30 of the second year following the year for which such data were originally reported.

e. Utility Cooperation. The local utility responsible for providing energy to covered buildings in this section is encouraged to:

e-1. Develop and maintain the capability to provide a building owner with energy data from their utility bills directly to the building owner's energy star portfolio manager account using the energy star portfolio manager's web services tool.

e-2. Develop and maintain the capability to determine whole-building aggregate energy consumption data for each covered building that it serves in an electronic format capable of being uploaded into the energy star portfolio manager tool for the most recent 24 months, at minimum.

f. Energy Awareness and Transparency. f-1. Description. The administrator shall make available to the public, and update at least annually, the following information about covered buildings based on submitted benchmarking reports:

f-1-a. Summary statistics on energy consumption derived from aggregation of benchmarking information for covered buildings.

f-1-b. Summary statistics on overall compliance with this section.

f-2. Schedule. The administrator shall make available to the public, and update at least annually, benchmarking data for the previous calendar year according to the following schedule:

f-2-a. Class 1 covered buildings by September 30, 2025 and by every September 30th thereafter.

f-2-b. Class 2 Covered Buildings by September 30, 2026 and by every September 30th thereafter.

f-2-c. Class 3 Covered Buildings by September 30th, 2027 and by every September 30th thereafter.

g. Administration. The administrator shall be responsible for the administration of this section, and in that capacity has the authority to create and implement program documents, guidelines, and regulations necessary for the implementation of this section. If it is determined that a building owner or any person subject to the provisions of this section fails to meet any requirement of this section, the administrator shall mail a warning notice to the building owner or person. The notice shall specify the reasons why the building owner or person fails to meet the requirements of this section. The notice shall indicate that the building owner or person has 60 days to comply with the applicable requirement.

h. Enforcement. If any building owner or person fails, omits, neglects, or refuses to comply with the provisions of this section after the period of compliance provided for in



the required warning notice referenced in the prior paragraph, the administrator is authorized to issue penalties.

i. Violations and Penalties. 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. The penalties for violating this section are as follows:

i-1. Any person who fails to comply with the benchmarking requirements of par. d shall, upon conviction thereof, be subject to a forfeiture of \$1,000 for each 90 days of non-compliance.

i-2. Any person who intentionally falsifies data required by par. g shall, upon conviction thereof, be subject to a forfeiture of \$2,000 for the first violation, and \$4,000 for each subsequent violation.

i-3. Any person who otherwise fails to comply with the requirements of this section, other than as provided for under subdivisions j-1 and j-2 shall, upon conviction thereof, be subject to a forfeiture of not less than \$20 nor more than \$100 for each violation thereof. Each day that a violation exists shall constitute a separate offense.

..LRB  
APPROVED AS TO FORM

*K. Broadnax*

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Legislative Reference Bureau  
Date: June 24, 2024

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..Attorney  
IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

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Office of the City Attorney  
Date: \_\_\_\_\_

..Requestor  
DOA – Environmental Collaboration Office  
..Drafter  
LRB179632-3  
Alex Highley/Jeff Osterman  
6/24/2024