

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 150299, AS AMENDED

Amending Chapter 18 of the Code of Ordinances, entitled “Buildings and Building Regulations,” by enacting a new Article XVI consisting of Sections 18-500 through 18-508 entitled “Energy Empowerment” to establish an energy benchmarking and reporting requirement for certain buildings and requiring the City Manager to report on the status of utility data aggregation capabilities relative to the requirements of this ordinance.

WHEREAS, the City desires to raise awareness of energy performance through information and transparency, with a goal of unlocking energy and cost savings opportunities and health benefits for businesses and residents; NOW THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 18 of the Code of Ordinances, entitled “Buildings and Building Regulations,” is hereby amended by enacting a new Article XVI consisting of Sections 18-500 through 18-508 entitled “Energy Empowerment” to establish an energy benchmarking and reporting requirement for certain buildings, said sections to read as follows:

ARTICLE XVI.

ENERGY EMPOWERMENT

Sec. 18-500. Purpose and Policy.

The energy and water use of covered property shall be benchmarked and submitted to the City in accordance with this article.

Sec. 18-501. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

(a) “Benchmark” means to input and submit the total energy and water consumed for a property for the previous calendar year and other descriptive information for such property as required by the benchmarking tool. Total energy and water consumption shall not include separately metered uses that are not integral to covered property operations as determined by the director.

(b) “Benchmarking submission” means a submission to the director, on an annual basis as set forth herein, evidencing the covered property’s compliance with the benchmark mandate and includes the required reported benchmarking information for the applicable year.

(c) “Benchmarking tool” means the U.S. Environmental Protection Agency’s ENERGY STAR Portfolio Manager to track and assess the energy and water use of certain covered properties relative to similar covered properties.

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(d) “Condominium” means a site that combines separate ownership of individual units with common ownership of other elements such as common areas.

(e) “Covered property” means any Group 1 covered property, Group 2 covered property or Group 3 covered property as defined herein. The term “covered property” shall not include any building owned by the state of Missouri, the federal government or any residential buildings in zoning districts R-80 (Residential 80), R-10 (Residential 10), R-7.5 (Residential 7.5), R-6 (Residential 6), R-5 (Residential 5) or R-2.5 (Residential 2.5).

(f) “Director” means the City Manager, or his designee.

(g) “Energy” means electricity, natural gas, steam, or fuel oil sold by a utility to a customer of a covered property, or on-site generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses captured by the ENERGY STAR Portfolio Manager.

(h) “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 buildings nationwide.

(i) “ENERGY STAR score” means the numeric rating generated by the ENERGY STAR Portfolio Manager tool to track and assess the energy and water use of certain covered properties relative to similar covered properties.

(j) “Group 1 covered property” means a covered property:

- (1) That has a building that exceeds 10,000 gross square feet in total combined floor area;
- (2) That is owned by the City; and
- (3) For which the City regularly pays all or part of the annual energy bills.

(k) “Group 2 covered property” means a covered property, other than Group 1 covered property,

- (1) That has a building that exceeds 100,000 gross square feet in total combined floor area; or
- (2) That has a building that is held in the condominium form of ownership that is governed by the same board, and that exceeds 100,000 gross square feet in total combined floor area.

(l) “Group 3 covered property” means a covered property, other than Group 1 covered property,

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- (1) That has a building that exceeds 50,000 gross square feet in total combined floor area, but that does not exceed 100,000 gross square feet in total combined floor area; or
- (2) That has a building held in the condominium form of ownership that is governed by the same board, and that exceeds 50,000 gross square feet in total combined floor area, but that does not exceed 100,000 gross square feet in total combined floor area.

(m) “Owner” means any of the following:

- (1) An individual or entity possessing title to a covered property;
- (2) The net lessee in the case of a property subject to a triple net lease;
- (3) The board in the case of a condominium;
- (4) The board in the case of a cooperative apartment corporation; or
- (5) An agent authorized, in writing on file with director, to act on behalf of any of the above.

(n) “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state or local governmental entities.

(o) “Reported benchmarking information” means information both defined and generated by the ENERGY STAR Portfolio Manager and descriptive information about the covered property and its operational characteristics that are submitted to the director as follows:

- (1) Descriptive information:
 - a. Building ID, as assigned by the director;
 - b. Property Address & Contact Information;
 - c. Primary Property Type(s); and
 - d. Gross Floor Area(s);
- (2) Output information (generated by ENERGY STAR Portfolio Manager), limited to the following:
 - a. Weather Normalized Site & Source Energy Use Intensity (Site EUI & Source EUI);

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- b. Direct & Indirect Greenhouse Gas Emissions;
- c. Indoor & Outdoor Water Use;
- d. The ENERGY STAR score, if available; and
- e. Data Accuracy.

(p) “Tenant” means a person occupying or holding possession of a covered property, or part of a covered property, pursuant to a rental or lease agreement.

(q) “Triple Net Lease” A lease agreement on a property that designates the lessee or tenant as being solely responsible for all real estate taxes, building insurance, and maintenance on the property in addition to any customary fees that are expected under the lease agreement, including, but not limited to, rent and utility fees or payments.

(r) “Utility” means an entity that distributes and sells water, natural gas, electricity, thermal energy services or other energy for covered property.

Sec. 18-502. Benchmarking and Benchmarking Submission Required.

(a) Every owner shall annually provide a benchmarking submission for each covered property to the director, in an electronic form as established by the director’s rule, by the date specified below:

- (1) No later than May 1, 2016, and no later than every May 1 thereafter, each Group 1 covered property shall be benchmarked for the previous calendar year by the entity primarily responsible for the management of such property.
- (2) No later than May 1, 2017, and no later than every May 1 thereafter, the owner of a Group 2 covered property shall benchmark such property for the previous calendar year.
- (3) No later than May 1, 2018, and no later than every May 1 thereafter, the owner of a Group 3 covered property shall benchmark such property for the previous calendar year.

Prior to making any benchmarking submission, the owner of a covered property shall run all data through all data quality assurance tools within the ENERGY STAR Portfolio Manager, and correct all missing or incorrect information identified by the tool.

(b) Where the current owner learns that any information reported as part of a benchmarking submission is inaccurate or incomplete, the information so reported shall be amended in the benchmarking tool by the owner and the owner shall provide an updated benchmarking submission to the director within 30 days of learning of the inaccuracy.

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(c) The director may exempt from the benchmarking requirements the owner of a covered property that submits a request, together with documentation, in a form prescribed by the director's rule, at least thirty (30) days prior to any benchmarking submission deadline, establishing any of the following criteria:

- (1) The property does not have a certificate of occupancy or temporary certificate of occupancy for all 12 months of the calendar year being benchmarked.
- (2) A demolition permit has been issued during the prior calendar year, provided that demolition work has commenced, energy-related systems have been compromised and legal occupancy is no longer possible prior to May 1 for the applicable year.
- (3) The covered property had average physical occupancy of less than 50 percent throughout the calendar year for which benchmarking is required.
- (4) The director determines that, due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this ordinance would cause undue hardship or would not be in the public interest.
- (5) The property is primarily used for manufacturing or other industrial purposes for which benchmarking results would not meaningfully reflect covered property energy use characteristics due to the intensive use of process energy.
- (6) The owner is unable to benchmark due to the failure of either a utility or a tenant (or both) to report the information necessary for the owner to complete any benchmarking submittal requirement.

Any owner requesting such an exemption shall provide the director any and all documentation requested to substantiate the request or otherwise assist the director in the exemption determination. Any exemption granted shall be limited to the benchmarking submission for which the request was made and shall not extend to past or future submittals.

(d) Nothing in this article shall be construed as to prevent a person in control of a building, not otherwise a covered property, from submitting any benchmarking information to the director, otherwise in accordance with this article. The director may enter into agreements with any such persons governing any such participation.

Sec. 18-503. Reporting and Analysis of Benchmarking Information.

(a) The director shall make available to the public annually the reported benchmarking information for the previous calendar year according to the following schedule:

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- (1) For each Group 1 covered property, no later than Sept. 1, 2016, and each Sept. 1 thereafter; and
- (2) For each Group 2 covered property, no later than Sept. 1 2018, and each Sept. 1 thereafter.
- (3) For each Group 3 covered property, no later than Sept. 1 2019, and each Sept. 1 thereafter.

(b) The director shall publish a report in accordance with the following schedule:

- (1) No later than Dec. 31, 2016, a report on the benchmarking of Group 1 covered property, including an assessment of accuracy and issues affecting accuracy, summary energy and water consumption statistics and trends observed, including an assessment of changes across the portfolio over time.
- (2) No later than Dec. 31, 2017, a report on the benchmarking of Group 1 covered property and Group 2 covered property, including an assessment of compliance rates, an assessment of accuracy and issues affecting accuracy, summary water and energy consumption statistics, and trends observed.
- (3) No later than Dec. 31, 2018, and annually thereafter, a report on the benchmarking of all covered property, including an assessment of compliance rates, an assessment of accuracy and issues affecting accuracy, summary water and energy consumption statistics, and trends observed.

In no event shall any director's report, mandated by this subsection, include a covered property's ENERGY STAR score without the owner's consent.

(c) All reported benchmarking information and data on a covered property obtained from any benchmarking submittal, including any ENERGY STAR score, shall be available to the public, without restriction, unless the owner specifically requests confidentiality and is able to demonstrate to the satisfaction of the director that the release of such information would divulge confidential information that is otherwise protected from disclosure by law. Any such request shall state, with specificity, the source of law giving rise to the purported disclosure protection.

Sec. 18-504. Providing Benchmarking Information to the Property Owner.

Where a unit or other space in a covered property is occupied by a tenant, and a utility does not provide whole covered property aggregated energy and water data, or such unit or space is separately metered by a utility company, the owner of a covered property shall request from such tenant information relating to the tenant's energy and water use for the previous calendar year, all in accordance with the provisions below:

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(a) No later than 60 days prior to a given benchmarking submission deadline, the owner shall request of each tenant located in a covered property all information that is necessary to comply with the requirements of this article.

(b) When the owner of a covered property receives notice that a tenant intends to vacate a space within such property, such owner shall request information relating to such tenant's energy and water use for any period of occupancy relevant to the owner's obligation to benchmark.

(c) When a covered property changes ownership, the previous owner shall provide the new owner all information for the months of the calendar year being benchmarked during the time the previous owner was still in possession of the property.

Sec. 18-505. Maintenance of Records.

Owners of covered property shall maintain records that are necessary for demonstrating compliance with this article, including but not limited to, the energy and water bills and any reports or forms received from tenants and utilities. All such records shall be preserved for a period of three years from the applicable benchmarking submission date. At the request of the director, such records shall be made available for inspection and audit by the director.

Sec. 18-506. Violations and Enforcement.

(a) Ordinance violation. Any person who fails to comply with any benchmarking information submittal requirement mandated by this article or misrepresents any material fact in a document or report prepared as required by this article shall result in the following:

- (1) A written warning shall be issued by the director to any owner who fails to submit any required benchmarking information. Such warning letter shall be effective on the date of issuance and shall be mailed to the owner's last known address as determined by county record.
- (2) In the event required benchmarking information is not reported within sixty (60) days of the date the written warning is issued, said failure shall constitute an offense and shall be punishable, upon conviction, by a fine of not less than \$50.00 and not more than \$500.00. For any continuing violation of this article, each day of the violation shall be considered a separate offense. In no event shall the cumulative fine imposed hereunder exceed \$2,000.00 annually.

(b) Suit additional to other remedies. If any person violates the provisions of this article, the city attorney may commence an action for legal or equitable relief in any court with appropriate jurisdiction. A petition for legal or equitable relief shall not be a bar against, or a prerequisite for, taking any other action against any person.

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(c) Nonexclusively. The remedies provided for in this article are not exclusive. The director may take any, all, or combination of these actions, or any other action available at law, against any person.

Sec. 18-507. Rules.

The director may promulgate such rules as are necessary to carry out the provisions of this article.

Sec. 18-508. Severability.

If any section, subsection, sentence, clause, phrase or other portion of this article is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.

Sec. 18-509. Sec. 18-519. Reserved.

Section 2. That the City Manager shall provide a report to the City Council before December 31, 2016 regarding the status of utility data aggregation capabilities relative to the requirements of this ordinance.

Approved as to form and legality:

Matthew Gigliotti
Assistant City Attorney