

§ 9-3402. Benchmarking Energy and Water Use. 1180

(1) *Definitions.* As used in this Section, the following terms shall have the following meanings: 1181

Benchmarking Application. The internet-based database system known as "Portfolio Manager", or any successor system thereto, developed by the United States Environmental Protection Agency, to track and assess the energy and water use of a building.

Covered Building. Any building with indoor floor space of 50,000 square feet or more, and any building participating in the Commercial Property Assessed Clean Energy (C-PACE) program; except such buildings as the Office of Sustainability shall exempt by regulation, based on extenuating circumstances. 1182

Energy. Electricity, natural gas, steam, and heating oil.

Statement of Energy Performance. A statement of energy performance generated by Portfolio Manager.

(2) *Benchmarking required.* The owner of a covered building shall, no later than June 30 of each year, enter the following information, for the previous calendar year, in the Benchmarking Application, as specified by the Benchmarking Application:

(a) Building Energy usage.

(b) Building water usage.

(c) Building characteristics and use attributes as required by the Benchmarking Application. This information includes, but is not limited to, building street address, year built, type of use or uses, gross floor area, operating hours, and, as applicable, use-specific information such as percent of building area heated and air conditioned, number of computers, uninterruptible power supply usage and characteristics, and number of refrigeration/freezer units. Building characteristic and use attributes shall be annually updated in the Benchmarking Tool by the deadline imposed by this subsection (2).

(3) *Tenant Information.* Where a unit or other space in a covered building is occupied by a tenant, and to the extent such unit or space is separately metered by a utility company, the owner shall request from the tenant any information necessary for the owner to comply with the benchmarking requirement imposed under subsection (2).

(a) An owner shall request information under this subsection (3) for the previous calendar year no earlier than February first and no later than the last day of February of each year, and tenants shall provide such information no later than the following March fifteenth. Whenever an owner receives notice that a tenant intends to vacate any space or unit, the owner shall request information relating to the tenant's Energy and water use for any period of occupancy for which the owner is required to provide benchmarking information under subsection (2), and the tenant shall report such information to the owner as soon as practicable.

(b) The failure of any tenant to report the information required under this subsection (3) to the owner shall not relieve the owner of the obligation to benchmark pursuant to this Section, provided that an owner shall not be required to report information a tenant has failed or refused to report and that is not otherwise lawfully available to the owner.

(4) *Electronic Usage Reporting.*

(a) Owners may arrange for usage information required under subsection (2)(a) and (b) to be electronically transmitted to the Benchmarking Application by the utility or other Energy supplier by the deadline imposed under subsection (2), provided that electronic usage reporting shall not affect the owner's obligation to report building characteristic and use attribute information required under subsection (2)(c).

(b) Information supplied by a utility or other Energy supplier pursuant to this subsection (4) that reflects the aggregate water or Energy usage of an entire Covered Building shall be deemed to satisfy the owner's reporting obligation under subsection (2)(a) and (b) with respect to such building for the water usage or the type of Energy usage so reported.

(c) Utilities and other Energy suppliers may require building owners requesting electronic transmittal to the Benchmarking Application to create and maintain lists of buildings and utility account numbers for which electronic transmittal is requested, and to provide such information to the utility or Energy supplier in the manner specified thereby.

(d) With respect to utilities or other Energy suppliers, nothing in this subsection shall be construed (i) to require that electronic usage reporting services be offered; or (ii) to prohibit the imposition of terms and conditions, consistent with applicable law, on any agreement to transmit usage information electronically.

(5) *Disclosure of Benchmarking Data.*

(a) The seller or lessor of any Covered Building shall, upon request, provide prospective purchasers or prospective lessees with a copy of the building's most recent Statement of Energy Performance.

(b) The Council calls on the Administration to implement a Citywide program to provide for the reporting of Citywide benchmarking data online and in a manner that permits owners and tenants of Covered Buildings, prospective purchasers and lessees, and the public to view and compare Energy and water usage among comparable buildings and uses.

(c) Any person requesting electronic transmittal of usage data to the Benchmarking Tool by a utility or other Energy supplier must waive in writing all legal action against the utility related to disclosure of usage information into the Benchmarking Tool in advance of any electronic transmittal of data.

(6) *Enforcement and Penalties.* Violations of this Section, or of any regulation issued pursuant to this Section, shall be subject to the penalties set forth under subsection 1-109(1), except that violations of subsection (2) shall be subject to a fine of three hundred dollars (\$300) for failure to comply during the first 30 days following the compliance date set forth in subsection (2); each day that the failure to comply with subsection (2) persists following the initial 30 days shall constitute a separate violation, subject to a fine of one hundred dollars (\$100) per day.

(7) *Administration.*

(a) *Regulations.* The Office of Sustainability may promulgate such regulations as are necessary to carry out the provisions of this Section, including, but not limited to, regulations altering any deadline set forth in this Section, and regulations setting forth extraordinary circumstances under which any requirement of this Section may be waived.

(b) *Suspension.* The Office of Sustainability may suspend all or part of the requirement to benchmark pursuant to this Section upon making a written finding that a technological deficiency in the Benchmarking Application, or the discontinuation of the Benchmarking Application, precludes compliance with this Section. The Office of Sustainability shall notify the Mayor and the President of City Council upon issuing or lifting a suspension.

(c) *Privacy.* Council calls on the Office of Sustainability to convene, within 60 days of passage of this Ordinance, a collaborative stakeholder working group of building owners, lessees, lessors, utilities, and other interested parties to determine if regulations are necessary to ensure customer privacy under applicable law, regarding the release of customer usage data to third parties; and the Office of Sustainability is hereby authorized to promulgate such regulations as may be necessary to ensure customer privacy under applicable law.

(8) *Reporting.* The Office of Sustainability shall, annually, submit to Council a report reviewing and evaluating the administration and enforcement of this Section and analyzing data obtained from the Benchmarking Application. The report shall address (a) the energy and water efficiency of buildings in the City, (b) the accuracy of benchmarked data and whether there is a need to train individuals required to benchmark, (c) compliance with the requirements of this Section, (d) any administrative and legislative recommendations for strengthening the administration and enforcement of this Section, (e) the effectiveness of the Benchmarking Application in accounting for City conditions, including, but not limited to, high density occupancies, large building size, and high-energy uses such as data centers and television studios, and (f) such other information and analysis as the Office of Sustainability deems appropriate.

Notes

- 1180 Added, Bill No. [120428-A](#) (approved August 27, 2012). Section 2 of Bill No. [120428-A](#) provides: "This Ordinance shall take effect immediately, except that Section 9-3402(2) shall take effect June 1, 2013."
- 1181 Amended, Bill No. [190716](#) (approved December 30, 2019).
- 1182 Amended, Bill No. [150011](#) (approved March 17, 2015), effective July 1, 2015; amended, Bill No. [190716](#) (approved December 30, 2019).