

1 **BOARD BILL NO. 205CSAA** **INTRODUCED BY ALDERMAN**
2 **JOHN J. COATAR,**
3 **PRESIDENT LEWIS E. REED, ALDERMEN TERRY KENNEDY**
4 **AND CHRIS CARTER, AND ALDWERWOMEN CHRISTINE INGRASSIA**
5 **AND MEGAN-ELLYIA GREEN**

6 An ordinance entitled “Building Energy Awareness”; the purpose of this
7 ordinance is to establish an energy benchmarking and reporting requirement for certain
8 buildings.

9 **WHEREAS**, the City desires to raise awareness of energy performance through
10 information and transparency, with a goal of unlocking energy and cost savings
11 opportunities and health benefits for businesses and residents.

12 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

13 That by and through this ordinance entitled “Building Energy Awareness”, this
14 Board seeks to establish an energy benchmarking and reporting requirement for certain
15 buildings within its jurisdiction, as follows:

16 **SECTION ONE. Purpose and Policy.**

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

19 **SECTION TWO. Definitions.**

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

January 27, 2017

Page 1 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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ORDINANCE NUMBER 70474

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

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

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

16 (d) “Commissioner” means the City of St. Louis Building Division
17 Building Commissioner, or the Commissioner’s designee.

18 (e) “Communications infrastructure” means the facilities used for the sale
19 of communications services, including, voice, broadband, data and
20 video services.

21 (f) “Condominium” means a site that combines separate ownership of

January 27, 2017

Page 2 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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ORDINANCE NUMBER 70474

1 individual units with common ownership of other elements such as
2 common areas.

3 (g) “Covered property” means any Group 1 covered property or Group 2
4 covered property as defined herein. The term “covered property”
5 shall not include any building owned by the State of Missouri or the
6 federal government.

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

12 (i) “ENERGY STAR Portfolio Manager” means the tool developed and
13 maintained by the U.S. Environmental Protection Agency to track
14 and assess the relative energy performance of buildings nationwide.

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

19 (k) “Financial hardship” (of a property) means a property that:
20 (1) Had arrears of property taxes or water or refuse
21 charges that resulted in the property's inclusion, within

January 27, 2017

Page 3 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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ORDINANCE NUMBER 70474

- 1 the prior two years, on the city's annual tax lien sale
2 list; or
3 (2) Has a court appointed receiver in control of the asset
4 due to financial distress; or
5 (3) Is owned by a financial institution through default by
6 the borrower; or
7 (4) Has been acquired by a deed in lieu of foreclosure; or
8 (5) Has a senior mortgage subject to a notice of default.

9 (l) "Group 1 covered property" means a covered property:

- 10
11 (1) That is a building that is greater than or equal to
12 50,000 gross square feet in total combined floor area;
13 and
14 (2) That is owned by the City; or
15 (3) For which the City regularly pays all or a majority of
16 the annual energy bills.

17 (m) "Group 2 covered property" means a covered property, other than

18 Group 1 covered property,

- 19 (1) That is a building that is greater than or equal to
20 50,000 gross square feet in total combined floor
21 area; or

January 27, 2017

Page 4 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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ORDINANCE NUMBER 70474

1 (2) That has a building that is held in the condominium
2 form of ownership that is governed by the same board,
3 and that is greater than or equal to 50,000 gross square
4 feet in total combined floor area.

5 (n) "Owner" means any of the following:

6 (1) An individual or entity possessing title to a covered
7 property;

8 (2) The net lessee in the case of a property subject to a
9 triple net lease;

10 (3) The board in the case of a condominium;

11 (4) The board in the case of a cooperative apartment
12 corporation; or

13 (5) An agent authorized, in writing on file with
14 commissioner, to act on behalf of any of the above.

15 (o) "Person" means any individual, partnership, co-partnership, firm,
16 company, corporation, association, joint stock company, trust, estate,
17 governmental entity or any other legal entity, or their legal
18 representatives, agents or assigns. This definition includes all federal,
19 state or local governmental entities.

20 (p) "Reported benchmarking information" means information both defined
21 and generated by the ENERGY STAR Portfolio Manager and

January 27, 2017

Page 5 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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ORDINANCE NUMBER 70474

1 descriptive information about the covered property and its operational
2 characteristics that are submitted to the [Commissioner] as follows:

3 (1) Descriptive information:

- 4 a. Building ID, as assigned by the commissioner;
- 5 b. Property Address & Contact Information;
- 6 c. Primary Property Type(s); and
- 7 d. Gross Floor Area(s);

8 (2) Output information (generated by ENERGY STAR
9 Portfolio Manager), limited to the following:

- 10 a. Weather Normalized Site & Source Energy
11 Use Intensity (Site EUI& Source EUI);
- 12 b. Direct & Indirect Greenhouse Gas Emissions;
- 13 c. Indoor & Outdoor Water Use;
- 14 d. The ENERGY STAR score, if available; and
- 15 e. Data Accuracy.

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

19 (r) “Triple Net Lease” A lease agreement on a property that designates the
20 lessee or tenant as being solely responsible for all real estate taxes,
21 building insurance, and maintenance on the property in addition to

January 27, 2017

Page 6 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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1 any customary fees that are expected under the lease agreement,
2 including, but not limited to, rent and utility fees or payments.

3 (s) "Utility" means an entity that distributes and sells water, steam, natural
4 gas, electricity, thermal energy services or other energy for covered
5 property.

6 **SECTION THREE. Benchmarking and Benchmarking Submission Required.**

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

10 (1) No later than December 31, 2017, and no later than every April 1
11 commencing in 2018 thereafeter, each Group 1 covered property
12 shall be benchmarked for the previous calendar year by the entity
13 primarily responsible for the management of such property.

14 (2) No later than April 1, 2018, and no later than every April 1
15 thereafter, the owner of a Group 2 covered property shall
16 benchmark such property for the previous calendar year.

17 Prior to making any benchmarking submission, the owner of a covered property shall run
18 all data through all data quality assurance tools within the ENERGY STAR Portfolio
19 Manager, and correct all missing or incorrect information identified by the tool. The
20 owner, at owner's sole discretion, can also choose to have a third party assessment to
21 ensure reporting accuracy, keeping the accuracy report private unless the owner chooses

January 27, 2017

Page 7 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
President Lewis E. Reed, and Aldermen and Alderwomen Terry Kennedy,
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ORDINANCE NUMBER 70474

1 to release it.

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

7 (c) The Commissioner may grant an extension of the benchmarking
8 submission date or an exemption from the benchmarking requirements to the owner of a
9 covered property that submits a request, together with documentation, in a form
10 prescribed by the Commissioner's rule, at least thirty (30) days prior to any
11 benchmarking submission deadline, establishing any of the following criteria:

12 (1) The property does not have a certificate of occupancy or temporary
13 certificate of occupancy for all 12 months of the calendar year
14 being benchmarked.

15 (2) A demolition permit was issued during the prior calendar year,
16 provided that demolition work has commenced and energy-related
17 systems have been significantly compromised.

18 (3) The covered property had average physical occupancy of less than
19 50 percent throughout the calendar year for which benchmarking is
20 required.

21 (4) The Commissioner determines that, due to special circumstances

January 27, 2017

Page 8 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
President Lewis E. Reed, and Aldermen and Alderwomen Terry Kennedy,
Chris Carter, Christine Ingrassia, and Megan-Ellyia Green**

ORDINANCE NUMBER 70474

1 unique to the applicant's facility and not based on a condition
2 caused by actions of the applicant, strict compliance with
3 provisions of this ordinance would cause financial hardship or
4 would not be in the public interest.

5 (5) The property is primarily used for manufacturing or other industrial
6 purposes for which benchmarking results would not meaningfully
7 reflect covered property energy use characteristics due to the
8 intensive use of process energy.

9 (6) The owner is unable to benchmark due to the failure of either a
10 utility or a tenant (or both) to report the information necessary for
11 the owner to complete any benchmarking submittal requirement.

12 (7) The property is primarily multifamily residential, it is not master
13 metered, and the serving electric utility does not provide data
14 aggregation services or access to whole-building utility data. Once
15 such services are available from the utility, as determined by the
16 director, such buildings will no longer be exempt from
17 benchmarking requirements, and shall file initial benchmarking
18 reports in the first required reporting year following such data
19 availability.

20 Any owner requesting such an extension or exemption shall provide the Commissioner
21 any and all documentation requested to substantiate the request or otherwise assist the

January 27, 2017

Page 9 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
President Lewis E. Reed, and Aldermen and Alderwomen Terry Kennedy,
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1 Commissioner in the extension or exemption determination. Any extension or exemption
2 granted shall be limited to the benchmarking submission for which the request was made
3 and shall not extend to past or future submittals.

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

9 (e) A benchmarking submission is not required for any Group 2 covered
10 property if all or substantially all of the property is used for communications
11 infrastructure.

12 **SECTION FOUR. Reporting and Analysis of Benchmarking Information.**

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

16 (1) For each Group 1 covered property, no later than March 31, 2018
17 and no later than every August 1 thereafter; and

18 (2) For each Group 2 covered property, no later than August 1, 2018
19 and every August 1 thereafter.

20 (b) The commissioner shall publish a summary report in accordance with the
21 following schedule:

January 27, 2017

Page 10 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
President Lewis E. Reed, and Aldermen and Alderwomen Terry Kennedy,
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ORDINANCE NUMBER 70474

1 (1) No later than December 1, 2018, and annually thereafter, a
2 summary report on the benchmarking of Group 1 covered property,
3 including an assessment of accuracy and issues affecting accuracy,
4 summary energy and water consumption statistics and trends
5 observed, including an assessment of changes across the portfolio
6 over time.

7 (2) No later than December 1, 2019, and annually thereafter, a
8 summary report on the benchmarking of Group 1 covered property
9 and Group 2 covered property, including an assessment of
10 compliance rates, an assessment of accuracy and issues affecting
11 accuracy, summary water and energy consumption statistics, and
12 trends observed.

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

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

January 27, 2017

Page 11 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
President Lewis E. Reed, and Aldermen and Alderwomen Terry Kennedy,
Chris Carter, Christine Ingrassia, and Megan-Ellyia Green**

ORDINANCE NUMBER 70474

1 (d) The City may provide non-anonymized data from benchmarking
2 submissions to any utility serving a covered building or to any federal, state, or city-
3 managed energy efficiency program, provided that the data will be used only for purposes
4 of targeting incentives provided through energy efficiency programs, and provided that
5 the City has first obtained the covered building owner's written or electronic permission
6 to share the data with the utility or energy efficiency program. Where the building
7 owner's permission can be granted electronically through acceptance of a default option,
8 the City shall provide a clearly delineated option for owners of covered buildings to
9 choose to opt out of granting this permission.

10 (e) The City may disclose data from benchmarking submissions to a third
11 party for academic or other non-commercial research purposes provided that such data is
12 anonymized.

13 (f) The City may provide non-anonymized benchmarking data to any utility
14 serving a covered building or to any federal, state, or City-managed energy efficiency
15 program, provided that the data will be used only for purposes of targeting incentives
16 provided through energy efficiency programs, and provided that the City has first
17 obtained the covered building owner's written or electronic permission to share the data
18 with the utility or energy efficiency program. Where the building owner's permission
19 can be granted electronically through acceptance of a default option, the City shall
20 provide a clearly delineated option for owners of covered buildings to choose to opt out
21 of granting this permission.

January 27, 2017

Page 12 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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1 (g) All third parties receiving anonymized or non-anonymized data from
2 benchmarking submissions shall sign a non-disclosure agreement with the city stipulating
3 terms for acceptable use of the data, including assurances that such data shall not be
4 disclosed to other entities, before receiving such data.

5 **SECTION FIVE. Maintenance of Records.**

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

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

15 **SECTION SIX. Violations and Enforcement.**

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

20 (1) A written warning shall be issued by the Commissioner to any
21 owner who fails to submit any required benchmarking information.

January 27, 2017

Page 13 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
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ORDINANCE NUMBER 70474

1 Such warning letter shall be effective on the date of issuance and
2 shall be mailed to the owner's last known address as determined by
3 county record.

4 (2) In the event required benchmarking information is not reported
5 within sixty (60) days of the date the written warning is issued,
6 said failure shall constitute an offense and shall be punishable,
7 upon conviction, by a fine of not less than \$50.00 and not more
8 than \$200.00. For any continuing violation of this article, each day
9 of the violation shall be considered a separate offense. In no event
10 shall the cumulative fine imposed hereunder exceed \$1,000.00
11 annually.

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

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

19 **SECTION SEVEN. Rules.**

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

January 27, 2017

Page 14 of 15

Board Bill No 205 Committee Substitute As Amended

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1 **SECTION EIGHT. Severability.**

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

January 27, 2017

Page 15 of 15

Board Bill No 205 Committee Substitute As Amended

**Sponsored by: Alderman John J. Coatar,
President Lewis E. Reed, and Aldermen and Alderwomen Terry Kennedy,
Chris Carter, Christine Ingrassia, and Megan-Ellyia Green**