

1 **BOARD BILL #205 INTRODUCED BY ALDERMAN JOHN J. COATAR**

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

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

7 **BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST.**
8 **LOUIS:**

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

12 **TITLE XXV.**

13 **BUILDING ENERGY AWARENESS**

14 **SECTION ONE. Purpose and Policy.**

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

17 **SECTION TWO. Definitions.**

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

December 9, 2016

Page 1 of 14

Board Bill No. 205

Sponsor: Alderman John J. Coater

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

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

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

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

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

15 (f) “Covered property” means any Group 1 covered property or Group 2 covered property as
16 defined herein. The term “covered property” shall not include any building owned by the State of
17 Missouri or the federal government.

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

5 (h) “ENERGY STAR Portfolio Manager” means the tool developed and maintained by the U.S.
6 Environmental Protection Agency to track and assess the relative energy performance of
7 buildings nationwide.

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

11 (j) “Financial hardship” (of a property) means a property that:

12 (a) Had arrears of property taxes or water or refuse charges that resulted in the
13 property's inclusion, within the prior two years, on the city’s annual tax lien sale list;

14 or

15 (b) Has a court appointed receiver in control of the asset due to financial distress; or

16 (c) Is owned by a financial institution through default by the borrower; or

17 (d) Has been acquired by a deed in lieu of foreclosure; or

18 (e) Has a senior mortgage subject to a notice of default.

19 (k) “Group 1 covered property” means a covered property:

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

3 (2) That is owned by the City; or

4 (3) For which the City regularly pays all or a majority of the annual energy bills.

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

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

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

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

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

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

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

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

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

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

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

10 (1) Descriptive information:

11 a. Building ID, as assigned by the commissioner;

12 b. Property Address & Contact Information;

13 c. Primary Property Type(s); and

14 d. Gross Floor Area(s);

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

- 1 a. Weather Normalized Site & Source Energy Use Intensity (Site
- 2 EUI& Source EUI);
- 3 b. Direct & Indirect Greenhouse Gas Emissions;
- 4 c. Indoor & Outdoor Water Use;
- 5 d. The ENERGY STAR score, if available; and
- 6 e. Data Accuracy.

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

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

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

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

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

4 (1) No later than December 31, 2017, and no later than every April 1 commencing in
5 2018 thereafeter, each Group 1 covered property shall be benchmarked for the
6 previous calendar year by the entity primarily responsible for the management of
7 such property.

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

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

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

18 (c) The Commissioner may grant an extension of the benchmarking submission date or an
19 exemption from the benchmarking requirements to the owner of a covered property that submits

1 a request, together with documentation, in a form prescribed by the Commissioner’s rule, at least
2 thirty (30) days prior to any benchmarking submission deadline, establishing any of the
3 following criteria:

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

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

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

11 (4) The Commissioner determines that, due to special circumstances unique to the
12 applicant's facility and not based on a condition caused by actions of the
13 applicant, strict compliance with provisions of this ordinance would cause
14 financial hardship or would not be in the public interest.

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

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

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

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

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

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

13 (2) No later than December 1, 2019, and annually thereafter, a summary report on the
14 benchmarking of Group 1 covered property and Group 2 covered property,
15 including an assessment of compliance rates, an assessment of accuracy and
16 issues affecting accuracy, summary water and energy consumption statistics, and
17 trends observed.

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

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

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

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

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

9 (g) All third parties receiving anonymized or non-anonymized data from benchmarking
10 submissions shall sign a non-disclosure agreement with the city stipulating terms for acceptable
11 use of the data, including assurances that such data shall not be disclosed to other entities,
12 before receiving such data.

13 **SECTION FIVE. Maintenance of Records.**

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

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

4 **SECTION SIX. Violations and Enforcement.**

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

8 (1) A written warning shall be issued by the Commissioner to any owner who fails to
9 submit any required benchmarking information. Such warning letter shall be
10 effective on the date of issuance and shall be mailed to the owner's last known
11 address as determined by county record.

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

18 (b) Suit additional to other remedies. If any person violates the provisions of this article, the city
19 attorney may commence an action for legal or equitable relief in any court with appropriate

1 jurisdiction. A petition for legal or equitable relief shall not be a bar against, or a prerequisite for,
2 taking any other action against any person.

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

6 **SECTION SEVEN. Rules.**

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

9 **SECTION EIGHT. Severability.**

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