

1 **BOARD BILL NO. 205CS INTRODUCED BY ALDERMAN JOHN J. COATAR,**
2 **AND ALDERMEN TERRY KENNEDY AND CHRIS CARTER**

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

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

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

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

13 **SECTION ONE. Purpose and Policy.**

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

16 **SECTION TWO. Definitions.**

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

19 (a) “Benchmark” means to input and submit the total energy and water
20 consumed for a property for the previous calendar year and other
21 descriptive information for such property as required by the
22 benchmarking tool. Total energy and water consumption shall not

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1 include separately metered uses that are not integral to covered
2 property operations as determined by the *Commissioner*.

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

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

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

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

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

20 (g) “Covered property” means any Group 1 covered property or Group 2
21 covered property as defined herein. The term “covered property”
22 shall not include any building owned by the State of Missouri or the

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1 federal government.

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

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

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

14 (k) “Financial hardship” (of a property) means a property that:

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

19 (2) Has a court appointed receiver in control of the asset
20 due to financial distress; or

21 (3) Is owned by a financial institution through default by
22 the borrower; or

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- 1 (4) Has been acquired by a deed in lieu of foreclosure; or
- 2 (5) Has a senior mortgage subject to a notice of default.

3 (l) “Group 1 covered property” means a covered property:

- 4
- 5 (1) That is a building that is greater than or equal to
- 6 50,000 gross square feet in total combined floor area;
- 7 and
- 8 (2) That is owned by the City; or
- 9 (3) For which the City regularly pays all or a majority of
- 10 the annual energy bills.

11 (m) “Group 2 covered property” means a covered property, other than

12 Group 1 covered property,

- 13 (1) That is a building that is greater than or equal to
- 14 50,000 gross square feet in total combined floor
- 15 area; or
- 16 (2) That has a building that is held in the condominium
- 17 form of ownership that is governed by the same board,
- 18 and that is greater than or equal to 50,000 gross square
- 19 feet in total combined floor area.

20 (n) “Owner” means any of the following:

- 21 (1) An individual or entity possessing title to a covered
- 22 property;

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

8 (o) "Person" means any individual, partnership, co-partnership, firm,
9 company, corporation, association, joint stock company, trust, estate,
10 governmental entity or any other legal entity, or their legal
11 representatives, agents or assigns. This definition includes all federal,
12 state or local governmental entities.

13 (p) "Reported benchmarking information" means information both defined
14 and generated by the ENERGY STAR Portfolio Manager and
15 descriptive information about the covered property and its operational
16 characteristics that are submitted to the [Commissioner] as follows:

- 17 (1) Descriptive information:
- 18 a. Building ID, as assigned by the commissioner;
 - 19 b. Property Address & Contact Information;
 - 20 c. Primary Property Type(s); and
 - 21 d. Gross Floor Area(s);

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

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

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

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

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

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

21 (a) Every owner shall annually provide a benchmarking submission for each
22 covered property to the Commissioner, in an electronic form as established by the

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1 Commissioner's rule, by the date specified below:

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

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

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

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

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

22 (1) The property does not have a certificate of occupancy or temporary

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1 certificate of occupancy for all 12 months of the calendar year
2 being benchmarked.

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

6 (3) The covered property had average physical occupancy of less than
7 50 percent throughout the calendar year for which benchmarking is
8 required.

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

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

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

21 (7) The property is primarily multifamily residential, it is not master
22 metered, and the serving electric utility does not provide data

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1 aggregation services or access to whole-building utility data. Once
2 such services are available from the utility, as determined by the
3 director, such buildings will no longer be exempt from
4 benchmarking requirements, and shall file initial benchmarking
5 reports in the first required reporting year following such data
6 availability.

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

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

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

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

21 (a) The Commissioner shall make available to the public annually the
22 reported benchmarking information for the previous calendar year according to the

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1 following schedule:

2 (1) For each Group 1 covered property, no later than March 31, 2018

3 and no later than every August 1 thereafter; and

4 (2) For each Group 2 covered property, no later than August 1, 2018

5 and every August 1 thereafter.

6 (b) The commissioner shall publish a summary report in accordance with the

7 following schedule:

8 (1) No later than December 1, 2018, and annually thereafter, a

9 summary report on the benchmarking of Group 1 covered property,

10 including an assessment of accuracy and issues affecting accuracy,

11 summary energy and water consumption statistics and trends

12 observed, including an assessment of changes across the portfolio

13 over time.

14 (2) No later than December 1, 2019, and annually thereafter, a

15 summary report on the benchmarking of Group 1 covered property

16 and Group 2 covered property, including an assessment of

17 compliance rates, an assessment of accuracy and issues affecting

18 accuracy, summary water and energy consumption statistics, and

19 trends observed.

20 In no event shall any Commissioner's summary report, mandated by this subsection,

21 include a covered property's ENERGY STAR score without the owner's consent.

22 (c) All reported benchmarking information and data on a covered property

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1 obtained from any benchmarking submittal, including any ENERGY STAR score, shall
2 be available to the public, without restriction, unless the owner specifically requests
3 confidentiality and is able to demonstrate to the satisfaction of the Commissioner that the
4 release of such information would divulge confidential information that is otherwise
5 protected from disclosure by law. Any such request shall state, with specificity, the
6 source of law giving rise to the purported disclosure protection.

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

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

19 (f) The City may provide non-anonymized benchmarking data to any utility
20 serving a covered building or to any federal, state, or City-managed energy efficiency
21 program, provided that the data will be used only for purposes of targeting incentives
22 provided through energy efficiency programs, and provided that the City has first

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1 obtained the covered building owner’s written or electronic permission to share the data
2 with the utility or energy efficiency program. Where the building owner’s permission
3 can be granted electronically through acceptance of a default option, the City shall
4 provide a clearly delineated option for owners of covered buildings to choose to opt out
5 of granting this permission.

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

10 **SECTION FIVE. Maintenance of Records.**

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

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

20 **SECTION SIX. Violations and Enforcement.**

21 (a) Ordinance violation. Any person who fails to comply with any
22 benchmarking information submittal requirement mandated by this article or

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1 misrepresents any material fact in a document or report prepared as required by this
2 article shall result in the following:

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

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

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

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

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1 **SECTION SEVEN. Rules.**

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

4 **SECTION EIGHT. Severability.**

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

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