

ORDINANCE No. **187095**

Require annual energy performance reporting for commercial buildings to promote reduction in local carbon emissions (Ordinance; add Code Chapter 17.104)

The City of Portland ordains:

Section 1. The Council finds:

1. The world's leading scientists consistently conclude that climate change caused by human emission of greenhouse gases is among the most significant problems facing the world today and potentially poses the greatest economic, environmental, and social challenge of the 21st century.
2. The immediate economic benefits of climate solutions are often significant, including energy efficiency savings and green job creation, while long term climate stabilization can prevent irreparable harm from catastrophic climate change impacts.
3. The State of Oregon has established a goal to reduce greenhouse gas emissions to 75 percent below 1990 levels by 2050.
4. The City of Portland established a goal to reduce carbon emissions 80 percent below 1990 levels by 2050 (Resolution No. 36548), and the 2009 Climate Action Plan (Resolution No. 36748) includes a 2030 Objective to reduce the total energy use of all buildings built before 2010 by 25 percent.
5. Buildings are the largest source of carbon emissions in Portland, and the 2009 Climate Action Plan identifies a three-year action to require energy performance benchmarking for all commercial and multi-family residential buildings.
6. In 2009, Resolution No. 36749 directed City bureaus to implement the three-year actions identified in the 2009 Climate Action Plan.
7. From 2012 to 2014, the City partnered with the Northwest Energy Efficiency Alliance, Building Owners and Managers Association, Energy Trust of Oregon, Portland Development Commission, Multnomah County, and Clark Public Utilities on a voluntary program to provide technical assistance and recognition to commercial buildings that benchmarked their energy use and those buildings that participated achieved significant energy savings.

NOW, THEREFORE, the Council directs:

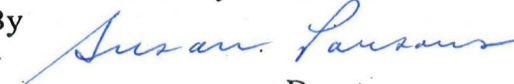
- a. Title 17 of the City Code is amended by adding Chapter 17.104 Commercial Building Energy Performance Reporting as shown in Exhibit A attached to the ordinance.

Passed by the Council: **APR 22 2015**

Mayor Charlie Hales  
Prepared by: Vinh Mason  
Date Prepared: March 25, 2015

**Mary Hull Caballero**  
Auditor of the City of Portland

By

  
Deputy

## EXHIBIT "A"

**Chapter 17.104 Commercial Building Energy Performance Reporting**

**17.104.010 Purpose.** The purpose of this Chapter is to provide information about building energy performance and motivate investment in efficiency improvements that save energy and reduce carbon emissions. This Chapter shall be known as the Commercial Building Energy Performance Program.

**17.104.020 Definitions.** For purposes of this Chapter, and administrative rules adopted under this Chapter, the following words and phrases shall be construed as defined in this Section.

- A. **"Covered building"** means any commercial building containing a gross floor area of at least 20,000 square feet and predominantly used for office, retail, grocery, health care, higher education and hotel purposes. "Covered building" does not include buildings predominantly used for housing, industrial, nursing home, parking, primary and secondary education, residential, warehouse and worship purposes.
- B. **"Director"** means the Director of the Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.
- C. **"Energy"** means electricity, natural gas, steam, heating oil, or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.
- D. **"ENERGY STAR"** score means the 1 to 100 numeric rating generated by the ENERGY STAR Portfolio Manager tool that compares the relative energy usage of the building to that of similar buildings, where available.
- E. **"Energy performance information"** means information related to a building's energy consumption as generated by the ENERGY STAR Portfolio Manager tool, and descriptive information about the physical building and its operational characteristics.
- F. **"ENERGY STAR Portfolio Manager"** means a software program developed for evaluating and managing building energy data, used for creating an ENERGY STAR score.
- G. **"Energy use intensity (EUI)"** means a numerical value calculated by the ENERGY STAR Portfolio Manager that represents the annual site energy consumed by a building relative to its gross floor area, reported as thousand British thermal units per square foot (kBtu/sf).
- H. **"Gross floor area"** means the total number of enclosed square feet measured between the principal exterior surfaces of the fixed walls of a building.
- I. **"Owner"** means any of the following:

1. Any individual or entity possessing title to a property with one or more covered buildings;
2. The net lessee in the case of a building or property subject to a triple net lease;
3. The association of unit owners responsible for overall management in the case of a condominium; or
4. Any agent designated to act on behalf of a building or property owner.

J. **“Shared Utility Services”** means energy-related services such as electricity, natural gas, chilled water, heated water or steam serving two or more buildings from a centralized system or a single utility billing meter.

K. **“Tenant”** means a person or entity occupying or holding possession of any part of a building or premises pursuant to a rental or condominium agreement.

L. **“Utility”** means an entity that distributes and sells natural gas, electric, or thermal energy services to covered buildings.

#### **17.104.030 Authority of Director to Adopt Rules.**

A. The Director is hereby authorized to administer and enforce provisions of this Chapter.

B. The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.

1. Any rule adopted pursuant to this section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor’s Portland Policy Documents repository.

#### **17.104.040 Energy Performance Tracking and Reporting for Covered Buildings.**

A. No later than April 22<sup>nd</sup> of each year, the owner of a covered building shall accurately report energy performance information of such building to the Director for the previous calendar year using ENERGY STAR Portfolio Manager. At a minimum, the energy performance information shall include:

1. Building address;
2. Year of construction;
3. Primary use type and additional use types;

4. Gross floor area as defined by ENERGY STAR Portfolio Manager's glossary;
5. ENERGY STAR score, where available;
6. Site energy use intensity (Site EUI);
7. Source energy use intensity (Source EUI);
8. Weather-normalized Site EUI;
9. Weather-normalized Source EUI; and
10. Total annual greenhouse gas emissions.

B. Optional energy performance information may be reported annually by the owner of a covered building to the Director, including but not limited to:

1. Contextual information related to energy use in the building; and
2. Verification of energy performance information in this section by a professional engineer or a registered architect licensed in the State of Oregon, or another trained energy professional as prescribed by rule.

C. The owner of a covered building shall retain all information tracked and entered into the ENERGY STAR Portfolio Manager for at least three years beyond the date on which reporting was required, and make all energy performance information available for inspection and audit by the Director during normal business hours, following reasonable notice by the Director.

D. For campus portfolios where two or more covered buildings are served by shared utility services and predominantly used for health care, research or higher education purposes, the owner may opt to report a campus-wide gross floor area, Site EUI and total annual greenhouse gas emissions using the ENERGY STAR Portfolio Manager.

#### **17.104.050 Energy Performance Reporting Schedule.**

A. The reports required by Section 17.104.030 shall occur according to the following schedule:

1. For every covered building containing a gross floor area of at least 50,000 square feet, the report shall be submitted no later than April 22, 2016, and no later than every April 22<sup>nd</sup> thereafter.
2. For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the first report shall be submitted no later than April 22, 2017, and not later than every April 22<sup>nd</sup> thereafter.

B. The Director may extend the reporting submission date.

#### **17.104.060 Transparency of Energy Performance Information.**

A. The Director shall make city-wide summary statistics available to the public for the previous calendar year no later than October 1, 2016, and each October 1 thereafter.

B. For every covered building containing a gross floor area of at least 50,000 square feet, the Director shall make the compliance status and energy performance information of such covered buildings available to the public for the previous calendar year no later than October 1, 2017, and each October 1 thereafter.

C. For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the Director shall make the compliance status and energy performance information of such covered buildings available to the public for the previous calendar year no later than October 1, 2018, and each October 1 thereafter.

#### **17.104.070 Notification and Posting.**

A. Between September 1 and December 31 of each year, the Director shall notify owners of their obligation to report energy performance information for that calendar year, provided that the failure of the Director to notify any such owner shall not affect the obligation of such owner to report.

B. The Director may exempt a building owner from the requirements of Sections 17.104.040 and 17.104.050 if the building owner submits documentation establishing any of the following:

1. The covered building or areas of the building subject to the requirements of this section have been fully unoccupied during the entire calendar year for which reporting is required;
2. The building is a new construction and the building's certificate of occupancy was issued during the calendar year for which reporting is required;
3. A demolition permit has been issued for the building during the calendar year for which reporting is required;
4. Due to a special circumstance unique to the building, compliance would cause undue hardship.

#### **17.104.080 Utility Data Access.**

A. The owner of a covered building shall obtain data from each utility providing energy service to such building, subject to the governing state and/or federal data privacy laws to which the utility is subject at the time of the owner's request.

B. On and after January 1, 2016, and every year thereafter, upon the written or electronic request of an owner, each utility shall provide the building owner with access to the monthly energy consumption data for all utility meters identified by the owner. The data provided by the utility to the building owner will be aggregated by the utility and shall not contain personally identifying information or any customer-specific billing data. The utility shall provide access to such aggregated utility data within 45 days of the building owner's request. Utilities providing energy service to a covered building shall maintain energy consumption data for meters serving each building for at least the most recent calendar year.

1. Where a unit or other space is occupied by a tenant and separately metered by a utility, the utility may require the owner to submit a written or electronic request identifying such meters and follow the consent requirements of such utility.

**17.104.090 Building Data Access.**

A. Where a unit or other space is occupied by a tenant and separately metered by a utility, the owner may request tenant data relating to energy use, use of space, operating hours, and other information required for ENERGY STAR Portfolio Manager reporting.

1. Within 30 days of a request by the owner, each tenant located in a covered building shall provide all data that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this section including consent to access utility data as described in Section 17.104.080. If such tenant is not in compliance, the building owner may provide a written or electronic request to the Director for an extension to the reporting schedule in section 17.104.050.
2. When the owner of a covered building receives notice that a tenant intends to vacate a space in such building, the owner shall request information relating to such tenant's energy use for any period of occupancy relevant to the owner's obligation to meet the reporting requirements in Sections 17.104.040 and 17.104.050.
3. When a covered building changes ownership, the previous owner must provide the new owner all information for the months of the calendar year during the time the previous owner was still in possession of the property.

**17.104.100 Enforcement and Penalties.** It shall be a violation of this Chapter for any entity or person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter.

A. Any building owner, tenant, utility or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter shall be subject to:

1. Upon the first violation, the Director may issue a written warning notice to the entity or person, describing the violation.
2. Upon any subsequent violation, the Director may assess a civil penalty of up to \$500 for every 90 day period during which the violation continues.

**17.104.110 Right of Appeal and Payment of Assessments.**

After being issued a written warning notice of a first violation, any person receiving a subsequent notice of violation shall, within ten days of issuance of the notice, either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.

**17.104.120 Annual Review of Reported Information**

The Director may arrange for annual reviews of verifying the energy performance information submitted to the City. The Director or a duly authorized agent may examine the records of the building owner regarding the energy performance data to verify the accuracy of the information submitted to the City. The Director shall provide prior written notice to the building owner at least 30 days prior to examining the energy performance data. The building owner shall provide the Director with access to the requested records within the Portland metropolitan region, during normal business hours. Any failure by the building owner to comply with the City's efforts to verifying the energy performance information shall constitute a violation of this Chapter.