



Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.

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Commented [MV1]: New effective date to be determined after the Administrative Rules Update Hearing and public comment period.

**ADMINISTRATIVE RULES
Commercial Building Energy Performance Reporting**

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PART 1.0, SCOPE, PURPOSE AND BACKGROUND

These administrative rules are intended to clarify the requirements for commercial building energy reporting within Portland City Code (PCC) Chapter 17.104. PCC Chapter 17.104 seeks to make energy performance in commercial buildings transparent and motivate investment in efficiency improvements that save energy and reduce carbon emissions.

Portland's Climate Action Plan established goals to reduce carbon emission 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050. Buildings are the largest source of carbon emissions in Portland. The key Climate Action Plan objective for existing buildings is to reduce the total energy use of buildings built before 2010 by 25 percent before 2030.

Annual energy tracking and reporting of Portland's largest commercial buildings enables the City to measure and manage progress toward its climate goals. Aggregate, city-wide summary statistics will be made available to the public starting in 2016. ~~Beginning in 2017, the City will annually publish individual building energy performance information for buildings over 50,000 square feet and larger; beginning in 2018, the City will also publish this information for buildings between 20,000 to 50,000 square feet.~~

Commented [MV2]: Publication of building information applies to all Covered buildings starting 2018.

PART 2.0, ADOPTION AND REVISION OF ADMINISTRATIVE RULES

A. Director's Authority to Adopt Rules

The Director of the Bureau of Planning and Sustainability (BPS) may adopt rules, procedures and forms to implement PCC Chapter 17.104.

B. Adoption and Revision of Rules

1. Any rule adopted or revised according to the authority of the City Code 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 local 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 or the Director's designee 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 rule, modify the proposed rule or reject the comments.

If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. The Director or the Director's designee shall determine whether a modification is substantial or not. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.

3. Notwithstanding paragraphs 1. and 2. of this section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for

a period of not longer than one year (365 days). Within five business days of the adoption of such interim rule, BPS staff shall send notice of the rule change and invite comments by email from Neighborhood Coalitions, Neighborhood Business Associations, and persons on the BPS list of parties interested in commercial administrative rules.

PART 3.0, COMMERCIAL BUILDING ENERGY PERFORMANCE REPORTING

Part 3.1, Definitions: As used in these administrative rules, the following words and phrases shall be construed as defined in this Section, unless the context indicates a different meaning is intended.

- A. “Covered building”** means any commercial building containing a Gross floor area of at least 20,000 square feet, where no more than 50% of the Gross floor area is used for housing, nursing home, parking, primary and secondary education, industrial, warehouse or 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, fuel oil or other product sold for consumption in a building, or energy generated on-site, for purposes of providing heating, cooling, ventilation, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities. “Energy” does not include fuel oil used by any emergency backup generators for Covered Buildings.
- D. “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.
- E. “ENERGY STAR® Portfolio Manager”** means the web-based tool created by the US Environmental Protection Agency (EPA) to benchmark building energy use annually and track performance over time.
- F. “ENERGY STAR Score”** means the numeric rating on a scale from 1 to 100 generated by the ENERGY STAR Portfolio Manager tool. The Score compares the relative energy usage of the building to that of similar buildings, where available. For example, a score of 50 represents median energy performance, while a score of 75 means the building is a top energy performer and may qualify for ENERGY STAR certification.
- G. “Energy use intensity (EUI)”** means a numerical value calculated by the ENERGY STAR Portfolio Manager that represents the annual energy consumed within a building relative to its Gross floor area, reported as a value of thousand British thermal units per square foot (kBtu/sf).
- H. “Gross floor area”** means the total number of enclosed square feet as defined by ENERGY STAR Portfolio Manager. Gross floor area is measured between the principal exterior surfaces of the fixed walls of a building, including all supporting functions such as offices, lobbies, rest rooms, equipment storage areas, mechanical rooms, break rooms, elevator shafts, etc. Atriums should only include the base floor area that they occupy. The total Gross floor area should not include outside loading bays or docks.

- I. **“Owner”** means any person possessing title to a property with one or more Covered buildings, including an association of unit owners responsible for overall management in the case of a commercial condominium.

The property owner may designate an agent to act on behalf of the property owner, such as a building owner that leases the property beneath a building, or the net lessee in the case of a building or property subject to a triple net lease.

- J. **“Person”** means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.
- K. **“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.
- L. **“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.
- M. **“Utility”** means an entity that distributes, meters and/or sells natural gas, electric, or thermal energy services to Covered buildings subject to regulatory oversight by the Oregon Public Utility Commission.

Part 3.2, Requirements for Owners of Covered Buildings

A. Determining Whether a Building Is Covered

In addition to the Gross floor area threshold of 20,000 square feet, the primary use of a building determines whether a building is covered by the requirements of PCC Chapter 17.104. The primary use of a building is initially designated by the City based on the Multnomah County property tax assessor description and includes the following property types for the primary use of a building:

- Auto dealership
- Bowling alley
- Commercial building
- Commercial condominium
- Day care center
- Fraternal building
- Generic commercial use or shop
- Health club
- Hotel
- Medical office
- Motel
- Office
- Public Building
- Recreation
- Store
- Theater
- Warehouse predominantly used as any of the above property types

Based on additional information regarding the nature of how a particular building is used, the City may determine exceptions or additions to the primary use of the building.

If the Owner of a Covered building does not agree with the City's designation, the Owner may request a change in that building's designation by submitting information and relevant evidence to the Director. The Director may revise a building's covered status or other designation based on the information provided by the Owner.

B. General Requirements

The Owner of any Covered building must annually track energy performance using ENERGY STAR Portfolio Manager.

1. To track energy performance of a building using ENERGY STAR Portfolio Manager, three types of information must be entered by the Owner: building profile, property use attributes, and energy consumption data.
 - i. Building profile information must be entered by the Owner, reviewed annually and updated as needed, including contact person name, telephone number, email address, building site address, original year of construction, and a Portland Building ID. Each building must be entered as a unique record within ENERGY STAR Portfolio Manager. If the Portland Building ID is not entered correctly into ENERGY STAR Portfolio Manager, the Owner will be out of compliance. The City will make all Building ID(s) available online and make a reasonable effort to reach each Owner through written and/or email communication.

The Owner may use an existing ENERGY STAR Portfolio Manager account if the Portland Building ID provided to the Owner by the City is added to the account for every Covered building.

- ii. Property use attributes, including Gross floor area of the entire building and specific uses within the building, must be entered by the Owner, reviewed annually, and updated as needed. ENERGY STAR Portfolio Manager can accommodate all types of Covered building uses. In addition, for certain buildings ENERGY STAR produces a benchmark for energy use relative to similar buildings nationwide. This benchmark is called an ENERGY STAR Score and is expressed on a scale of 1 to 100.

A Covered building is eligible for an ENERGY STAR Score if at least 50% of the Gross floor area (excluding parking lots and garages) is defined as one or more of the following property types (note that this list of property types is different than the list of property types in section 3.2.A. that determine whether a building is covered by the requirements of PCC Chapter 17.104):

- Bank
- Courthouse
- Data center
- Financial office
- Hospital (general medical & surgical)
- Hotel

- Medical office
- Office
- Retail store
- Supermarket/grocery store
- Wholesale club/supercenter

The Owner is responsible for determining whether a Covered building is eligible for an ENERGY STAR Score. If a Covered building is eligible for an ENERGY STAR Score, the Owner must make its ENERGY STAR Score available to the City as described in section 3.2.C.

Buildings eligible to receive the ENERGY STAR 1-100 score must enter the property use attributes that are required by Portfolio Manager to compute the score. For example, property use attributes for an office building must include the number of computers, operating hours and number of full time employees. Although ENERGY STAR Portfolio Manager allows the user to select default, estimated or temporary values, these values can produce inaccurate results. Such values may not be used unless specifically authorized by the Director for a specific Covered building.

Because parking is a common amenity of commercial building types, the ENERGY STAR Score makes adjustments to accommodate the presence of parking; however the Gross floor area and energy consumed within separately metered parking areas should not be entered by the Owner, whenever possible. This includes open parking lots, completely enclosed parking garages, and partially enclosed parking garages.

- iii. **Monthly Energy** consumption data must be entered into ENERGY STAR Portfolio Manager for all fuel types consumed (not including fuel oil used for emergency back up generators) and for all energy meters servicing the building, regardless of who receives or pays the utility bills. Energy consumption data for the whole building must be obtained by the Owner for 12 consecutive months in the previous calendar year, including energy use from January 1st through December 31st of that calendar year. If energy consumption billing data is available from mid-month to mid-month, then up to 14 months of billing information may be needed to cover the full calendar year.

Commented [MV3]: Clarification regarding monthly energy data entry.

Beginning January of each year, an Owner may request monthly energy consumption data for the previous calendar year from a Utility. The Owner may request aggregated energy data by identifying all the Utility meters serving the Covered building. To fulfill the request, a Utility may require written authorization from separately metered tenant accountholders, and additional meter identification information, such as meter numbers or account numbers.

When metered energy data becomes available for the previous calendar year through December 31st, each Utility must provide the Owner with necessary data within 45 days of the request.

To ensure compliance by April 22nd, the Owner must contact their Utilities and Tenants with sufficient lead time to allow for processing requests. Requests to the Utilities should be made no later than February 28th for the previous calendar year energy data.

Where available, Owners may request utilities to upload monthly building energy use data directly into ENERGY STAR Portfolio Manager; however automated upload does not relieve the Owners' responsibility report accurate Energy performance information to the City.

If energy is generated on-site and used within the building, the Owner must enter this energy according to the ENERGY STAR Portfolio Manager Green Power Technical Reference. Energy performance metrics and greenhouse gas emission metrics within ENERGY STAR Portfolio Manager will reflect the benefits of on-site renewable energy if that energy is separately metered and not sold by the Owner as renewable energy certificates. Although ENERGY STAR Portfolio Manager can record the purchase of offsite green power and its benefit to a Covered building's greenhouse gas emissions, green power purchasing does not affect energy use metrics because it does not directly lower building energy use.

2. The Owner's responsibility for obtaining energy consumption data, creating an accurate record in ENERGY STAR Portfolio Manager annually, and determining ENERGY STAR Score eligibility for the whole building includes Tenant spaces.
3. If the Owner receives notice that a Tenant intends to vacate a space, the Owner must request all Tenant information necessary to complete the requirements of this section. Tenants must provide the Owner access to Utility data, as well as any other information needed to complete or update an ENERGY STAR Portfolio Manager building record.
4. When a Covered building changes ownership, the previous Owner must transfer the building ENERGY STAR Portfolio Manager account or building profile to the new Owner or provide all information necessary to complete the requirements of this section for the months of any calendar year when the previous Owner was still in control of the building. This transfer of information must be completed by the previous owner within 30 days of the close of sale.
5. The Owner must retain all information tracked and entered into ENERGY STAR Portfolio Manager for at least three years beyond the date on which reporting was required. Following written or electronic notice by the Director, the Owner must make all Energy performance information available for inspection and audit during normal business hours in the Portland metropolitan region.

Commented [MV4]: Clarification regarding owner responsibility.

Commented [MV5]: Adds flexibility to transfer a single building rather than an entire portfolio.

C. **Energy Performance Information Accessible by Submitted to the City**

1. No later than April 22nd of each year, the Owner must accurately use ENERGY STAR Portfolio Manager to create Energy performance information for the previous calendar year and report this information through Portfolio Manager by allowing electronic access to the Director. The following Energy performance information must be entered by the Owner into ENERGY STAR Portfolio Manager and will be accessed by submitted using the City's Data Request Template:
 - Building contact information,
 - Portland building identification number (provided by City of Portland BPS);
 - Building address;
 - Building name;
 - Year of construction;

Commented [MV6]: Clarification regarding the reporting process.

Commented [MV7]: Addition of name to help identify buildings.

- Electricity generated ~~from onsite renewable systems on-site (renewable or not),~~ where applicable;
- ~~Offsite green power purchased, where applicable;~~
- Primary building use type and additional use types; and
- Gross floor area as defined by ENERGY STAR Portfolio Manager;

Commented [MV8]: Simplification to only include renewable onsite electricity generation.

Commented [MV9]: Simplification due to complexity within ENERGY STAR Portfolio Manager.

The following Energy performance information is output from ENERGY STAR Portfolio Manager ~~that is submitted through the City's Data Request Template and will be accessed by the City;~~

Commented [MV10]: Clarification regarding the reporting process.

- ENERGY STAR score, where available;
- ~~Electricity use per square foot (kWh/sf);~~
- ~~Natural gas use per square foot (therms/sf);~~
- Site energy use intensity (Site EUI);
- Source energy use intensity (Source EUI);
- Weather-normalized Site EUI;
- Weather-normalized Source EUI; and
- ~~Avoided and not annual~~ Total greenhouse gas emissions.

Commented [MV11]: Simplification of Energy performance information.

Commented [MV12]: Simplification of greenhouse gas reporting.

The accuracy of Energy performance information values will be confirmed ~~by reviewing the report submitted~~ through the City's ~~Data Request Template in access to~~ ENERGY STAR Portfolio Manager ~~and additional follow up with building contacts on an as-needed basis.~~ ~~Other data may be included in the City's Data Request Template to confirm accuracy and for other evaluative purposes.~~

Commented [MV13]: Clarification regarding the reporting process and data reported through ENERGY STAR Portfolio Manager.

- Optional Energy performance information may be ~~reported through- entered annually into the Property Notes section of an~~ ENERGY STAR Portfolio Manager ~~building profile annually~~ by an Owner and ~~accessed by- submitted through~~ the City's ~~Data Request Template;~~

Commented [MV14]: Clarification regarding the reporting process.

- Contextual information related to energy use in the building, such as operational changes, energy audits, or tenant uses; and
- Verification of Energy performance information in this section by a ~~licensed p~~Professional ~~e~~Engineer or a ~~r~~Registered ~~a~~Architect ~~licensed in the State of Oregon.~~

Commented [MV15]: Allows more flexibility for Licensed Professional selection.

- For campus portfolios where two or more Covered buildings are served by a single utility meter or Shared utility services, the Owner may report a campus-wide Gross floor area, ~~renewable~~ energy generated on-site, ~~offsite green power purchased, electricity use per square foot, natural gas use per square foot,~~ Site EUI, Source EUI, weather-normalized Site EUI, weather-normalized Source EUI, and total annual greenhouse gas emissions using the ~~City's Data Request Template in~~ ENERGY STAR Portfolio Manager.

Commented [MV16]: Simplification of Energy performance information and clarification regarding the reporting process.

- To report Energy performance information, the Owner must ~~give the City electronic access to submit a report to the City's Data Request Template in~~ ENERGY STAR Portfolio Manager according to the following reporting schedule:

Commented [MV17]: Clarification regarding the reporting process.

- For every Covered building containing a Gross floor area of at least 50,000 square feet, the Energy performance information must be accessible to the Director no later than April 22, 2016, and no later than every April 22nd thereafter.

- ii. 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 year of Energy performance information must be accessible to the Director no later than April 22, 2017, and no later than every April 22nd thereafter.

~~The 1st year of Energy performance information for any individual Covered building will not be made readily available to the public by the City. By October 1st of each reporting year, The City will make publish individual building Energy performance information and compliance status as of July 22nd of the reporting year publicly available, beginning with the 2nd year of Energy performance information for any Covered building.~~

Commented [MV18]: Publication of building information applies to all Covered buildings starting 2018.

- 5. The City will provide notification of requirements to the Owner of record by mail for at least the first two years of the reporting requirement, and if available, to a building contact by email. However, the failure of the Director to notify an Owner does not affect the obligation of the Owner to report.
- 6. The Owner may designate an agent to act on behalf of the Owner, such as a property manager, energy services provider, a building owner that leases property beneath a building, or the net lessee in the case of a building or property subject to a triple net lease. A written or electronic designation must be ~~received by provided to BPS and the designated agent no later than February 28th for the year of reporting.~~ The designation must include the name of the designated agent, mailing address, building contact name and building contact email address.

Commented [MV19]: Allows more flexibility for designating an agent.

D. Extensions and Exemptions

- 1. Upon written request from an Owner, the Director may extend the reporting date in paragraph 3.2.C.4. based on extenuating circumstances (for example, a separately metered Tenant that has not provided the Owner access to Utility data or other necessary tenant information). The written request must state with specificity the reason for the requested extension. ~~Requests for extensions must be received by the Director no later than March 31st of the reporting year.~~ If an extension is granted by the Director, the Owner must ~~submit make~~ the Energy performance information ~~through the City's Data Request Template in accessible through~~ ENERGY STAR Portfolio Manager by the deadline ~~determined approved~~ by the Director, ~~no later than July 22nd of the reporting year.~~
- 2. Upon written request from an Owner, the Director may exempt a Covered building for a specific year based on one or more of the following conditions:
 - i. ~~The Covered building is a new construction and eEnergy service to the Covered building was not provided has not yet been established for a full calendar year for which reporting would otherwise be required;~~
 - ii. The Covered building was wholly unoccupied during the entire calendar year for which reporting would otherwise be required;
 - iii. A demolition permit was issued for the Covered building during the calendar year for which reporting would be required; or

Commented [MV20]: Allows more flexibility for extensions and clarifies reporting process.

Commented [MV21]: Allow more flexibility for this exemption to apply to new construction as well as existing buildings where utility data is not available for a full calendar year.

- iv. Due to a special circumstance unique to the Covered building, compliance would cause undue hardship for the Owner.

The exemption request must be received by the Director no later than March 31st of the reporting year. Within 30 days of receiving the exemption request, the Director will provide a written response to acknowledge receipt of the request and determine whether the request is approved or denied.

Part 3.3, Requirements for Tenants of Covered Buildings

A. General Requirements

1. Upon receipt of a written or electronic request from the Owner, within 30 days each Tenant of a Covered building must provide all data necessary for the Owner to comply with the ENERGY STAR Portfolio Manager requirements of Section 3.2. In addition to the types of use in the Tenant space and energy consumption information, the Tenant may need to include property use attributes. These attributes will vary based on the types of use within the Tenant space. For example, an office use must include the number of computers, operating hours and number of full time employees.
2. Where a space within the Covered building is occupied by a Tenant and separately metered by a Utility, the Tenant must authorize the Owner to access monthly energy consumption data directly from Utilities serving the Tenant.

Part 3.4, Requirements for Utilities Serving Covered Buildings

A. General Requirements

1. Within 45 days, upon receipt of a written or electronic request from the Owner and availability of metered energy data through December 31st of the previous calendar year, a Utility providing service to the Covered building must provide the monthly energy consumption data to the Owner for all Covered buildings identified by the Owner. To fulfill the request, a Utility may require meter identification information, such as meter numbers or account numbers. Where applicable, the Utility may include monthly consumption data for customers that purchase energy through a direct access service. The Covered building energy consumption data will be aggregated for the whole Covered building by the Utility. The Covered building energy consumption data provided by a Utility to the Owner will not contain personally identifying information of Utility customers, such as names associated with the data or any customer-specific billing data.
2. Each Utility must establish its own business process for providing Utility energy consumption data to an Owner or where available, directly uploading into ENERGY STAR Portfolio Manager, 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.
3. Where a unit or other space is occupied by a separately metered Tenant, the Utility may require the Owner to identify Tenant utility meters or accounts using a Utility release form that is signed by the customer served by each meter.

4. Utilities must maintain all energy consumption data for meters serving each Covered building for at least the most recent calendar year in a format compatible with ENERGY STAR Portfolio Manager.

Part 3.5, Compliance and Enforcement

A. Standard for Determining Violation

Any Owner, Tenant or person who fails, omits, neglects or refuses to comply, or misrepresents any material fact in reported information, may be in violation of City Code Chapter 17.104. In determining whether a violation has occurred, the Director will evaluate the totality of the circumstances related to the violation.

Upon determining that a violation has occurred, the Director shall:

1. Upon the first violation, the Director will issue a written warning notice to the Owner, Tenant or person, describing the violation.
2. Upon ~~determination by the Director of~~ any subsequent violation, the Director shall deliver a Notice of Violation assessing a civil penalty of up to \$500 per covered building for every 90-day period during which the violation ~~continues~~has continued and specifying a deadline for payment.

The Director has the discretion to adjust the Assessment amount after considering the following criteria:

- The nature and extent of the person’s involvement in the violation;
- Whether the person received any benefits, economic or otherwise, through the violation;
- Whether the violation was isolated and temporary, or repeated and continuous;
- The length of time from any prior violations;
- The magnitude and seriousness of the violation;
- The costs of investigation and remedying the violation; and
- Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

B. Right of Appeal and Payment of Assessments

1. ~~Payment of Assessments Required or Appeal. Upon receipt of a Notice of Violation of a civil penalty for any provisions of City Code Chapter 17.104 or these Administrative Rules, the~~ alleged offender shall, within fifteen (15) calendar days of BPS issuance of the written ~~Notice of Assessment/Violation~~, pay to BPS the stated civil penalty or request an appeal hearing by a Code Hearings Officer in accordance with the procedures as follow the procedures established set forth in Portland City Code ~~Chapter-Title 22.10.~~
2. 15-Day Payment Required Upon Failed Appeal. If, pursuant to said appeal hearing, an Infraction assessment is ordered, payment of said Assessment must be received by BPS or postmarked within 15 calendar days after the order becomes final.
3. Interest on Assessment. An Assessment which is not paid within the time provided shall accrue interest at the rate consistent with the City’s established accounting practices. BPS may take legal action to collect assessments which are not paid when due.

Commented [MV22]: Adds flexibility for the Director to determine whether to pursue a civil penalty or not.

Commented [MV23]: Clarification of payment and appeals process for consistency with the City’s Code Hearings Officer process.

4. City May Take Legal Action to Collect Assessments. The City may take legal action to collect Assessments, which are not paid when due.

C. Delivery of Notices

Any notice provided for under these Rules shall be sufficient if in writing and accomplished by any of the following means: (1) delivered personally to the entity being notified; (2) deposited in the United States Mail, first class, postage prepaid; (3) sent by commercial courier; or (4) sent by email. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of either (1) actual personal delivery to the entity's office address, during normal business hours; (2) three (3) business days after depositing in the United States Mail as aforesaid; (3) one (1) business day after shipment by commercial courier as aforesaid; or (5) the same day as email transmission (or the first Business day thereafter if emailed on a Saturday, Sunday or legal holiday).

Commented [MV24]: Clarification of the methods that the City may use to notify an Owner that an out-of-compliance warning or violation has occurred..