



## Benchmarking and Transparency Ordinance Draft

### Section A: Definitions

As used in this chapter, the following terms shall have the meaning ascribed to them in this section.

- (1) “Aggregated, whole-building data” means energy or water data that has been summed for an entire property, which may include a single occupancy or a group of separately metered tenants.
- (2) “Anonymized data” means data that does not reveal names, addresses or any other information that would identify an individual or business.<sup>1</sup>
- (3) “Benchmark” means to input and submit the total energy and water consumed for a property for the previous calendar year and other descriptive information for such property as required by the benchmarking tool. Total energy and water consumption shall not include separately metered uses that are not integral to building operations, as determined by the Administrator.

**BOMA Comment:** Definition of Benchmark should be more specific on “other descriptive information for such property as required” ...

- (4) “Benchmarking submission” means a subset of:
  - (a) Information input into the benchmarking tool; and
  - (b) Benchmarking information generated by the benchmarking tool, as determined by the Administrator.

**BOMA Questions:** Why would the Administrator determine the benchmarking information generated by the benchmarking tool? Could the Administrator alter or adjust it?

- (5) “Benchmarking tool” means the U.S. Environmental Protection Agency’s ENERGY STAR® Portfolio Managers, or any additional or alternative tool adopted by the Administrator, used to track and assess the energy and water use of certain properties relative to similar properties.
- (6) “Building management system” means a computer-based system that monitors and controls a building’s mechanical and electrical equipment, such as HVAC, lighting, power, water, fire, and security systems.

**BOMA Suggestion:** Correct “fire” by adding to it “suppression”.

- (7) “Condominium” means a property that combines separate ownership of individual units with common ownership of other elements such as common areas.
- (8) “Covered city property” means a property that:
  - (a) All city-owned building over fifty thousand square feet 50,000 sq. ft. of gross floor area, beginning with 2022 data and thereafter.
  - (b) Is owned, leased, or managed by the city such that the city regularly pays all or part of the annual energy and/or water bills
- (9) “Covered non-city property” means a property, other than a covered city property, that exceeds the gross square feet in total floor area in the years listed below

**BOMA’s Position:** Include buildings 200,000 sq. ft. of gross floor area and above.

- (a) All buildings over one hundred thousand square feet 100,000 sq. ft. of gross floor area, beginning with 2023 data and thereafter.
- (b) All buildings over fifty thousand square feet 50,000 sq. ft of gross floor area, beginning with 2024 data and thereafter.

(10) "Covered property" means any covered city property or covered non-city property.

EXCEPTIONS:

The following properties are not considered to be covered properties, and are not subject to any of the requirements of this chapter:

- (a) Single family, duplex, triplex and fourplex residential homes and related accessory structures, or any other residential building with less than 4 units;
- (b) Properties owned by government entities not subject to the authority of this ordinance;

**BOMA's Position:** Exclude all industrial properties as utilities are typically not accessible to the landlord and therefore cannot be entered into the ENERGY STAR® Performance Portfolio.

(11) Other building types not meeting the purpose of this Chapter, as determined by the administrator. "

(12) "Sustainability Office" means the Office of Sustainability overseeing the management and implementation of the ordinance].

(13) "Department" means the Department Business and Neighborhood Services overseeing the enforcement and compliance of the ordinance.

(14) "Administrator" means the Director of the Office of Sustainability overseeing the management and implementation of the ordinance.

(15) "Director" means the Director of the Business and Neighborhood Services department overseeing the enforcement and compliance of the ordinance.

**BOMA Comment:** Correct to "Director of the Department of Business and Neighborhood Services" and strike the "department" at the end of that clause.

(16) "Energy" means electricity, natural gas, steam, or other product sold by a utility to a customer of a property, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses as recorded in the benchmarking tool.

(17) "ENERGY STAR score" means the 1-100 numeric rating generated by the ENERGY STAR Portfolio Manager tool as a measurement of a building's energy efficiency.

(18) "ENERGY STAR Portfolio Manager" means the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings.

(19) "Financial hardship" (of a property) means that a property:

- (a) Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within the prior two years, on the city's annual tax lien sale list; or
- (b) Has a court appointed receiver in control of the asset due to financial distress; or
- (c) Is owned by a financial institution through default by the borrower; or
- (d) Has been acquired by a deed in lieu of foreclosure; or
- (e) Has a senior mortgage subject to a notice of default.

(20) "Owner" means any of the following:

- (a) An individual or entity possessing title to a property;
- (b) The board of the owners' association, in the case of a condominium;
- (c) The master association, in the case of a condominium where the powers of an owners' association are exercised by or delegated to a master association;
- (d) The board of directors, in the case of a cooperative apartment corporation; or
- (e) An agent authorized to act on behalf of any of the above

(21) "Property" means any of the following

- (a) A single building;
- (b) One or more buildings held in the condominium form of ownership, and governed by a single board of managers; or
- (c) A campus of two or more contiguous buildings which are owned and operated by the same party, have a single shared primary function, and are:
  - 1. Behind a common utility meter or served by a common mechanical/electrical system (such as a chilled water loop) which would prevent the owner from being able to easily determine the energy use attributable to each of the individual buildings; or
  - 2. Used primarily for one of the following functions:
    - a. K-12 school
    - b. Hospital
    - c. Hotel
    - d. Multifamily housing
    - e. Senior care community

BOMA Question on Item (21, c) – Would all campuses have a “single shared primary function”? Many campuses have different uses and offices but there is not typically a single shared primary function. This is an odd term to use to clarify a campus of buildings. Recommend deleting it, as if it is a campus, primary function is too limiting.

(22) "Gross floor area" means the total property area, measured between the outside surface of the exterior walls of the building(s). This includes all areas inside the building(s) including but not limited to lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms.

(23) "Data Quality Checker" means the function in ENERGY STAR Portfolio Manager that runs a set of basic data checks on properties to help identify possible data entry error and to see whether a building differs from typical operational patterns.

(24) "Shared benchmarking information" means information generated by the benchmarking tool and descriptive information about the physical property and its operational characteristics, which is shared with the public. The information, as defined by the ENERGY STAR Portfolio Manager glossary, shall include, but need not be limited to:

(a) Descriptive information

1. Property address
2. Primary use;
3. Gross floor area;
4. Number of floors;
5. Number of years the property has been ENERGY STAR® Certified and the last approval date, if applicable; and
6. Individual or entity responsible for the benchmarking submission.

(b) Output information

1. Site and source energy use intensity;
2. Weather normalized site and source energy use intensity;
3. The ENERGY STAR score, where available;
4. Total annual greenhouse gas emissions;
5. Indoor water use and water use intensity (consumption per gross square foot);
6. Total water use;
7. The ENERGY STAR Water Score, where available; and
8. General comments section, if needed, to explain the building's ENERGY STAR scores.

(c) Compliance or noncompliance status.

BOMA Comment on Item (24, c) – “Compliance or noncompliance status” is to be included in shared benchmarking information. Compliance or noncompliance with what? What standard or test is it to comply with? With “this Ordinance”? Clarify.

(25) "Space" means an area within a building enclosed by floor to ceiling walls, partitions, windows and doors.

(26) "Tenant" means a person or entity occupying or holding possession of a building, part of a building or premises pursuant to a rental or lease agreement;

(27) "Utility" means an entity that distributes and/or sells natural gas, electric, water, or thermal energy services for buildings.

BOMA Comment on Item (27) – Correct “electric” to be “electricity”.

## Section B: Collecting and Entering Benchmarking Data

- (28) Each year the owner of each covered property shall collect and enter all data needed to benchmark the entire property for the previous calendar year into the benchmarking tool ENERGY STAR Portfolio Manager, in a manner that conforms to latest guidance provided by the U.S. Environmental Protection Agency for use of the tool. Aggregated whole-building data for the property's energy and water use shall be compiled using one or more of the following methods:
- (a) Obtaining aggregated whole-building data from a utility.
  - (b) Collecting data from all tenants.
  - (c) Reading a master meter.

**BOMA Comment:** Ensuring a single source entry into Energy Star® Portfolio Manager is critical. This ordinance cannot create a duplication of similar efforts already undertaken by many owners.

- (29) If the owner of a covered property does not have access to aggregated whole-building energy and water data, such property owner shall request aggregated whole-building data from each utility that provides energy or water service to the property. When a utility does not provide aggregated whole-building energy or water data, the owner of a covered property shall request energy and water data from tenants as per the provisions in the remainder of this section.
- (a) In the event that tenants do not provide data to the owner of each covered property, the building owner must submit form documenting why they are not able to acquire whole-building aggregate data.

- (30) Each nonresidential tenant located in a covered property shall, within 30 days of a request by the owner and in a form to be determined by the Administrator, provide all information that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this ordinance.

**BOMA Comment:** If the Tenant does not convey utility information to Owner, then the Owner should not be held liable to provide the information for benchmarking purposes.

- (31) When the owner of a covered property receives notice that a nonresidential tenant intends to vacate a space within such property, and the utilities do not provide aggregated whole-building energy and water data, the owner shall request information relating to such tenant's energy and water use for any period of occupancy relevant to the owner's obligation to benchmark. Such tenant shall report such information to the owner of the covered property within 30 days of a request by the owner.
- (32) Nothing in this Chapter shall be construed to permit a property owner to use tenant energy usage data for purposes other than compliance with benchmarking report requirements, nor shall the reporting requirements of this Chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.
- (33) When a covered property changes ownership, the previous owner shall provide the new owner with all information needed to benchmark for the period during which the previous owner was in possession of the property. **BOMA Comment:** If new owners will be indemnified for information not received from previous owners. BOMA questions if there is a penalty for a seller if they don't transfer data.

BOMA Comment Regarding Sections B. (30) and (31) and (33) – This requires tenants to provide utility information that the Owner needs to comply with this ordinance. But what is the penalty if they do not? The Penalty provisions in Section J only refer to Failure to report under Section C, and this requirement of tenants is in Section B. Need to correct the Penalty section to have teeth with respect to tenants who don't provide this information to owners. Same with a predecessor owner who sells and doesn't provide the historical information to the buyer as part of the transfer of ownership. New owners should be indemnified for information not received from previous owners.

### Section C: Benchmarking Reporting

(34) For every covered property subject to this chapter, the owner shall annually submit to the Administrator an energy and water benchmarking report through ENERGY STAR Portfolio Manager in an electronic format as established by the Administrator, by the date specified in Section D: Benchmarking Schedule.

BOMA Question: Does Phase 3: 2023, for example mean that 2023 reporting is for 2022 data, or does Phase 3 really apply to 2023 data reported in 2024?

Proposed Implementation Phased-In Schedule				
Phase 1: 2021	Phase 2: 2022	Phase 3: 2023	Final Phase: 2024	
Voluntary benchmarking and data submission for covered city and non-city property	Covered City property equal to or >50,000 SF must comply	Covered City property equal to or over >25,000 SF must comply	Covered City property equal to or over >25,000 SF must comply	Data for phases 1&2 will be made transparent
	Covered Non-City Property: Data submission is voluntary	Covered Non-City property equal to or over >100,000 SF must comply	Covered Non-City property equal to or over >50,000 SF must comply	

(35) The information included in the annual energy and water benchmarking report shall include, at a minimum, the shared benchmarking information, as defined Section A for the previous calendar year no later than September.

(36) The owner of each covered property shall enter data into the benchmarking tool such that the energy and water benchmarking report shall be based on an assessment of the aggregated total energy and water consumed by the whole property for the entire calendar year being reported.

(37) Before submitting a benchmarking report the owner shall run all automated data quality checker functions available within the benchmarking tool and shall verify that all data has been accurately entered into the tool. In order for the benchmarking report to be considered in compliance with this ordinance, the owner shall correct all missing or incorrect information as identified by the data quality checker prior to submitting the benchmarking report to the Administrator.

(38) Where the current owner learns that any information reported as part of the benchmarking submission is inaccurate or incomplete, the owner shall amend the information reported within the benchmarking tool and shall provide the Administrator with an updated benchmarking submission within 30 days of learning of the inaccuracy.

(39) Utilities providing energy or water service to a covered property shall maintain aggregated whole-

building data for each property for at least the most recent 24 months in an electronic format capable of being uploaded to the benchmarking tool.

#### Section D: Benchmarking Schedule

- (40) The owner of a covered property shall ensure that for each such property a benchmarking report is generated, completed, and submitted to the Administrator annually.
- (41) The initial benchmarking reports for each covered property shall be filed in accordance with the schedule in the following table. Subsequent benchmarking reports for each covered property shall be due by June 1 of each year thereafter.
- (42) The Administrator shall annually make available on a publicly accessible website the shared benchmarking information, as defined in Section H, in accordance with the schedule in the following table. Subsequent Data Transparency information will be made public one year after the initial year of compliance.
- (43) The shared benchmarking information for each covered property shall first be made available to the public beginning the year after each such property is first required to submit a benchmarking report.
- (44) The Administrator will determine if any benchmarking shared summary data shall be excluded from publishing because it is not in the public interest.

#### Section E: Benchmarking Exemptions and Time Extensions

- (45) Benchmarking is not required for a covered city property for the current reporting year if the owner submits documentation to the Administrator, in such form and with such certifications as required by the Administrator, establishing that the property met one or more of the following conditions for the calendar year to be benchmarked:
  - (a) A wrecking permit for the entire building was issued during that year, provided that demolition work commenced, and legal occupancy was no longer possible prior to end of that year;
  - (b) The property did not receive energy or water utility services for at least 30 days during that year;
  - (c) The property had an average physical occupancy rate of less than 50 percent over that year;  
or
  - (d) Due to special circumstances unique to the property, strict compliance with provisions of this ordinance would not be in the public interest.

**BOMA Comment:** There should be an exemption for a 12-month period after an ownership transfer. There should be an exemption “Due to special circumstances unique to the property, Owner is unable to gain access to utility and benchmarking data”.

**BOMA Comment:** Section E. (45) – as used several times in this, what would be an example of “not be in the public interest” regarding strict compliance with the ordinance?

(46) Benchmarking is not required for a covered non-city property for the current reporting year if an owner submits documentation to the Administrator. The Administrator will oversee the exemption process and holds the ability to designate a separate department for document submission, if necessary. Submitted documentation in such form and with such certifications as required by the Administrator, establishing that the property has met one or more of the following conditions:

- (a) It meets any of the exemptions defined for a covered city property;
- (b) Due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this ordinance would cause undue hardship;
- (c) The property is under financial hardship;
- (d) Building is used for manufacturing or other industrial purposes for which benchmarking results would not meaningfully reflect building energy use characteristics due to the intensive use of process energy. "Process energy" refers to energy used in the actual manufacturing, production, or processing of a good, commodity or other material.
- (e) More than 50% of gross floor area is used for residential purposes and:
  - 9. More than four meters are associated with the property; and
  - 10. The owner is not able to obtain aggregated whole-building data; and
  - 11. The serving electric utility does not provide access to aggregated whole-building data. Once such services are available from the utility, as determined by the Administrator, such properties will no longer be exempt from benchmarking requirements, and shall file initial benchmarking reports in the first required reporting year following such data availability.
- (f) Other special conditions as determined by the Administrator

(47) Any owner requesting an exemption from benchmarking shall, by March 1 in the year for which the exemption is being requested, submit to the Administrator any documentation reasonably necessary to substantiate the request or otherwise assist the Administrator in the exemption determination.

Any exemption granted will be limited to the benchmarking submission for which the request was made and does not extend to past or future submittals.

**BOMA Question:** Why should the deadline for filing for exemption be before the due date of the report?

An owner may apply for a time extension to complete and submit a benchmarking report if, despite such owner's good faith efforts, they are unable to complete the required actions prior to the scheduled due date due to the failure of either a utility provider or a tenant (or both) to provide the owner with information needed to complete this report. The owner requesting an extension shall submit to the Administrator and documentation reasonably necessary to substantiate the request or otherwise assist the Administrator in the determination. For each property, the Administrator may grant no more than two such extensions per year of no more than 30 days each.

**BOMA Position:** We have suggested from the beginning all industrial (including warehouse, distribution and manufacturing) properties be exempt from the ordinance. We would request exemptions for properties with ownership change in the reporting year or properties that underwent renovation or significant construction activity during the reporting year.

#### Section F: Notification by the City

(49) By December 1 of each year prior to a year in which benchmarking submissions are due, the Administrator may publicly post a list of all covered properties that must provide a benchmarking

submission to the Administrator during the following year.

- (50) Between January 1 and March 1 of each year, for at least the first three years during which an owner is required to provide a benchmarking submission, the Administrator shall attempt to notify those owners of their obligation to benchmark via direct mail, electronically via email, or through a public posting on a web site.
- (51) Failure of the Administrator to notify any owner shall not affect the obligation of such owner to complete and submit their benchmarking reports.

## Section G: Sharing of Data

- (52) The Administrator may provide non-anonymized data from benchmarking to any utility serving a covered property or to any federal, state, county or city-managed energy efficiency or management program, provided that the data will be used only for purposes of offering programs, services, and incentives related to energy and water efficiency and management, and provided that the Administrator has first obtained the covered property owner's written or electronic permission to share the data with the utility or energy efficiency and/or management program. Where the property owner's permission can be granted electronically through acceptance of a default option, the city shall provide a clearly delineated option for owners of covered properties to choose to opt out of granting this permission.
- (53) The Administrator may disclose any data from benchmarking submissions, to a third party for academic or other non-commercial research purposes provided that such data is anonymized.

**BOMA Indy's Position:** No building-specific information is disclosed publicly; all data is held at the city level and only aggregated data is released.

## Section H: Annual Report and Analysis

- (54) Beginning no later than December 1, 2025 and every year thereafter, the Administrator shall make available on a publicly accessible website an annual report on the benchmarking of all covered properties. The report shall include a summary of energy and water consumption statistics, and an assessment of compliance rates, accuracy and issues affecting accuracy, changes across the portfolio over time, and trends observed.
- (55) Nothing in this ordinance shall prevent the Administrator from including all such information in a combined annual energy and water efficiency report covering the progress of all of the city's energy efficiency ordinances and programs.

**BOMA Indy's Position:** No building-specific information is disclosed publicly; all data is held at the city level and only aggregated data is released.

## Section I: Maintenance of Records

- (56) Owners shall maintain records as the Administrator determines is necessary for carrying out the purposes of this ordinance, including but not limited to the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of five years. At the request of the Administrator, such records shall be made available for inspection and audit by the Administrator.

**BOMA Question:** Why do Owners have the obligation to maintain records if they've reported as required?

(57)When a covered property is sold, the records shall be given to the new property owner and the online Portfolio Manager benchmarking records shall be transferred to the new owner.

BOMA Position: New Owner should be indemnified for not receiving records.

(58)The Sustainability Office reserves the right to spot check records as it deems necessary to evaluate the efficacy of this Ordinance. Records shall be provided to the Administrator upon request.

BOMA Comment: Section I. (56) and (58) – Providing and making available owner operator information for inspection and audit and spot check seems a bit far. Would certain or all owners have heartburn about this access and inspection, right? Should the City or Administrator have to show good cause or some other reason? And at no cost to the owner?

## Section J: Penalties and Enforcement

(59)Failure to report annual benchmarking information as required by Section C shall be subject to admission of violation and payment of a civil penalty in violation in an amount provided in section 103-52 of the Code.

BOMA Comment Section J. (59) – The penalty section of this part of the municipal ordinance doesn't list a dollar amount for this since it hasn't been adopted yet, and so the amount is not set yet. And we can't determine what civil penalty would apply and why would it apply for each "rental unit"? The city code already has a penalty provision in 851-107 for failing to register so why would that be in this ordinance? And residential units up to 4 units is exempt under this ordinance anyway, so why have it in here?

BOMA Comment: Entice participation with incentives including energy saving information and not by sharing public data to shame owners who are doing everything right, but may not have the funds to create measurable savings.

(60)Failure to update the registration within thirty (30) days of a change in ownership as required by section 851-104 is subject to admission of violation and payment of a civil penalty for each rental unit.

(61)The penalties allowed under subsections (a) through (d) may not be imposed until after:

- (1) A notice of violation has been issued to the owner or the owner's designee by personal service or by first class United States Mail, postage prepaid;
- (2) Passage of thirty (30) days, which must be stated in the notice, for the violation to be cured; and
- (3) Failure of the violation to be cured within the time stated in the notice.

## Section K: Additional Compliance Procedures

(62)Necessary Trust Funds or accounts shall be established by the Department to deposit monies received under this Chapter,

- (a) Any potential monies collected for report submittals (compliance purposes) under this Chapter shall be allocated to improve the energy and water efficiency of public and private sector properties within the City of Indianapolis, with 50% allowed to be used to support city government administration of this Chapter and related educational activities, as well as energy and water improvements to local government facilities and 50% allowed to be used to support educational activities as well as energy and water improvements to non-city facilities.
- (b) A portion of the monies collected due to noncompliance under this Chapter shall be allocated

to improve the energy and water efficiency of covered properties designated as affordable housing or as B or C class buildings within the City of Indianapolis.

- (c) Once the collection of the monies begins, the Administrator shall recommend a five-year plan to the Mayor of Indianapolis and Indianapolis City-County Council regarding how these funds should be allocated.

BOMA Indy's Position: An important aspect of the energy benchmarking ordinance is to provide awareness and education of the ordinance itself. BOMA Indianapolis would like to see funding to provide relevant training and support to building owners and their support staff. This looks to be included but requires clarification. Would support money going towards affordable housing.

#### Section L: Rules

- (63) The Administrator and Director shall promulgate such rules as deemed necessary to carry out the provisions of this ordinance.

#### Section M: Severability

- (64) If any provision, section, subsection, sentence, clause, phrase or other portion of this ordinance is for any reason found or declared to be unconstitutional or otherwise invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining provisions or portions of this ordinance, which remaining portions shall continue in full force and effect and can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. The Indianapolis City-County Council hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

#### Section N: Timing

- (65) This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

BOMA Comment: BOMA International has received a total of 12 ENERGY STAR® Partner of the Year Awards. BOMA encourages building owners and managers to take voluntary steps to reduce energy consumption in buildings, as such improvements to support sustainability, reduce energy consumption, and increase profitability and competitiveness. This initiative *should be designed* to engage owners and arm them with non-public project-specific information, anonymized peer group information, education, access to resources, incentive programs, and other pathways to savings. However, the ordinance as written is focused on public dissemination, compliance steps, and non-compliance penalties.