

**This draft ordinance is for discussion purposes only.**

## **BUILDING ENERGY AND WATER CONSUMPTION BENCHMARKING**

Sec. XX-XX. Building Energy and Water Consumption Benchmarking Ordinance ("Ordinance").

Intent. This Article shall be known and may be cited as the City of Miami Beach's ("City") Building Energy and Water Consumption Benchmarking Ordinance and is intended to allow a data-based approach to analyze future energy needs, improve future usages, eliminate waste, and reduce costs.

Sec. XX-XX. Definitions. Unless otherwise expressly stated, the following terms shall, for the purpose of this Article, have the meanings indicated in this Section:

*Aggregated, Whole-Building Data* means energy or water data that has been summed for an entire property, which may include a single occupant or a group of separately metered tenants.

*Base Building Systems* mean the systems or subsystems of a building that use or distribute energy, water, impact energy, and/or water consumption, including, but not limited to the building's envelope as well as its HVAC systems, conveying systems, electrical and lighting systems, on-site generation systems, domestic hot water systems, water distribution systems, plumbing fixtures and other water-using equipment, and landscape irrigation systems and water features, including fountains and excluding systems or subsystems that operate industrial applications or processes or any systems or subsystems in a multifamily residential building appurtenant only to the specific dwelling unit for which the occupant of that unit bears responsibility for its maintenance and such usage is measured by a meter or submeter.

*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 Director.

*Benchmarking Submission* means a subset of information input into the Benchmarking Tool and Benchmarking information generated by the

*Benchmarking Tool* as determined by the Director. Benchmarking Tool means the U.S. Environmental Protection Agency's ("EPA") ENERGY STAR® Portfolio Manager, or any additional or alternative tool adopted by the Director, used to track and assess the energy and water use of certain properties relative to similar properties.

*Covered Private Property* means a property, other than a covered City property, or any property owned or operated by Miami-Dade County, the State of Florida, or the Federal government with a building or buildings that exceed 20,000 square feet of Gross Floor Area.

*Covered Public Property* means a property with a building or buildings that exceed 20,000 square feet of Gross Floor Area and is owned, leased, or managed by the City and where the City regularly pays all or part of the annual energy and/or water bills.

*Covered Property* means any Covered Public Property or Covered Private Property except for any property with a single-family home or duplex, a solely residential multi-family building of five (5) units or less, or any building with an industrial use per designated Standard Industrial Classification (SIC) codes 20 through 39.

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*Department* means the City's XX Department. Director means the Director of the City's XX Department or designee.

*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.

*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.

*ENERGY STAR® Portfolio Manager* means the tool developed and maintained by the EPA to track and assess the relative energy performance of buildings.

*Financial Hardship* (of a property) means that a property:

1. Had arrears of property taxes or special assessments that resulted in the issuance of a tax certificate against the property within the prior two (2) years;
2. Has a court appointed receiver in control of the asset due to financial distress;
3. Is owned by a financial institution through default by the borrower;
4. Has been acquired by a deed in lieu of foreclosure; or
5. Has a senior mortgage subject to a notice of default.

*Gross Floor Area* means Floor Area as defined in Article XX, Section XX of Ordinance No. XX of the City of Miami Beach, Florida, as amended.

*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, includes, but is not limited to, descriptive information such as the property's address, primary use, Gross Floor Area, number of floors, number of years the property has been ENERGY STAR® Certified, and the last approval date, if applicable, as well as energy-related output information such as site and source energy use intensity, weather normalized site and source energy use intensity, the ENERGY STAR® score, where available, total annual greenhouse gas emissions, monthly energy use by fuel type, indoor water use and water use intensity (consumption per gross square foot), outdoor water use (where available), total water use, the property's ENERGY STAR® Water Score, where available, and any other general comments required to explain said ENERGY STAR® Scores.

*System or Subsystem* means a building assembly made up of various components that serve a specific function including but not limited to exterior walls, windows, doors, roofs, ceilings, floors, lighting, piping, ductwork, insulation, Heating, Ventilation, and Air Conditioning ("HVAC") system equipment or components, electrical appliances, and plumbing appliances.

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

Sec. XX-XX. Applicability. This Ordinance shall apply to all new and existing Covered Properties in accordance with the initial compliance timetable set forth in Sec. XX-XX of the City Code so long as the Benchmarking Tool as selected by the Director remains free to use by members of the general public.

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Sec. XX-XX. Procedures. The owner of each Covered Property shall collect and enter data for the previous calendar year into the Benchmarking Tool. Unless otherwise defined in this Ordinance, the owner of each Covered Property shall input all data into the Benchmarking Tool in a manner that conforms to latest guidance provided by the EPA for use of the Benchmarking Tool. Whole-building utility 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 company;
- (b) Collecting data from all tenants for nonresidential properties; or
- (c) Reading a master meter.

If the owner of a Covered Property does not otherwise have access to 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 and that has made aggregated utility data available to owners before the reporting date of that calendar year. When a Utility does not provide whole-building energy or water data, the owner of a Covered nonresidential property shall request energy and water data from tenants or occupants.

Each non-residential tenant located in a Covered Property shall, within thirty (30) days of a request by the owner and in a form to be determined by the Director, 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.

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 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.

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.

Sec. XX-XX. Duty to Report Benchmarking.

For every Covered Property subject to this Chapter, the owner shall annually submit to the Director an energy and water Benchmarking report in an electronic format as established by the Director by the date specified in Sec. XX-XX of the City Code.

The information included in the annual Energy and Water Benchmarking Report shall include, at a minimum, the Shared Benchmarking Information for the previous calendar year.

The owner of each Covered Property shall enter data into the Benchmarking Tool such that that the energy and water Benchmarking report shall be based on an assessment in the Benchmarking Tool of the aggregated total energy and water consumed by the whole property for the entire calendar year being reported.

Before submitting a Benchmarking Submission, 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 Benchmarking Tool. In order for the Benchmarking report to be considered in compliance with this Ordinance, the owner shall correct all missing or incorrect

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information as identified by the Benchmarking Tool prior to submitting the Benchmarking report to the Director.

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 so reported within the Benchmarking Tool and shall provide the Director with an updated Benchmarking Submission within thirty (30) days of learning of the inaccuracy.

**Sec. XX-XX. Benchmarking Requirements.**

- (a) The owner of a Covered Property shall ensure that for each such property, a Benchmarking report is generated, completed, and submitted to the Director annually.
- (b) The Benchmarking reports for each Covered Property shall be due by the dates as defined in the following table. Subsequent Benchmarking reports for each Covered Property shall be due by [TBD] of each year thereafter.

<b>Size (Gross Floor Area)</b>	<b>Initial Compliance Required by:</b>
Buildings 100,000 square feet or larger	<i>TBD</i>
Buildings between 50,000 and 99,999 square feet	<i>TBD</i>
Buildings between 20,000 and 49,999 square feet	<i>TBD</i>

**Sec. XX-XX. Benchmarking Exemptions.**

- (a) Benchmarking is not required for a Covered Public Property for the current reporting year if the owner submits documentation with the Director establishing that the property has met one of the following conditions:
  - 1. The property does not have a Certificate of Occupancy or Temporary Certificate of Occupancy for all 12 months of the calendar year being Benchmarked;
  - 2. A demolition permit for the entire building was issued for the calendar year being Benchmarked, provided that demolition work has commenced and legal occupancy was no longer possible prior to end of that year;
  - 3. The property did not receive energy or water services for the entire calendar year to be Benchmarked; or
  - 4. The Covered Property had average physical occupancy of less than fifty percent (50%) throughout the calendar year for which Benchmarking is required.
- (b) Benchmarking is not required for a Covered Private Property for the current reporting year if an owner submits documentation with the Director, in such form and with such evidence as required by the Director, establishing that the property has met one of the following conditions:
  - 1. It meets any of the exemptions defined for a Covered Public Property;
  - 2. The Director determines that due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the

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applicant, strict compliance with provisions of this Ordinance would cause undue hardship or would not be in the public's interest;

3. The owner notifies the Director that the property is under Financial Hardship and provides proof of the same; or

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4. The Covered Property may be exempted from electricity Benchmarking if more than fifty percent (50%) of Gross Floor Area is used for residential purposes and:

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i. The property is not master metered or the owner does not have access to master meters or other means to obtain whole-building electricity data; and

ii. The serving electric utility provides written notice that it does not provide data aggregation services or access to whole-building utility data or that such data is not available for the requested building. Once such services are available from the Utility as determined by the Director, 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.

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(c) Any entity or owner requesting an exemption from Benchmarking shall submit an Annual Benchmarking Exemption Request form to the Director by [TBD] in the year for which the exemption is being requested. 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.

(d) For each reporting year in which an owner files a request for an exemption, the Director shall determine whether that exemption is approved. Appeal of a determination that a property is not exempt shall be made within XX (XX) days of such determination to a review committee comprised of XX. The review committee, acting by majority vote, shall either affirm the Director's denial or reverse his/her denial and grant the requested exemption.

Sec. XX-XX. Sharing of Data.

- (a) The Director shall make available on a publicly accessible website the Shared Benchmarking Information as defined in Sec. XX-XX for the previous Calendar Year for each Covered Property.
- (b) The Shared Benchmarking Information for each Covered Property shall be made available to the public beginning one (1) year after each such property is first required to submit a Benchmarking report.
- (c) The Director will determine if any Benchmarking shared summary data shall be excluded from publishing because it is not in the public interest.
- (d) The City may provide non-anonymized data from Benchmarking submissions to any Utility serving a Covered Property or to any federal, State, County, or City-managed Energy efficiency program, provided that the data will be used only for purposes of targeting incentives provided through energy and water efficiency programs and

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provided that the City has first obtained the Covered Property owner's written or electronic permission to share the data with the Utility or energy efficiency 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.

- (e) The City 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.
- (f) All third parties receiving data from Benchmarking submissions shall sign a non-disclosure agreement with the City stipulating terms for acceptable use of the data, including assurances that such data shall not be disclosed to other entities, before receiving such data.

**Sec. XX-XX. Annual Report and Analysis.**

- (a) The Director shall make available on a publicly accessible website and update annually the following information:
  - 1. No later than [TBD], a report on the Benchmarking of all available Covered Properties, including an assessment of accuracy and issues affecting accuracy, summary energy and water consumption statistics, trends observed, and an assessment of changes across the portfolio over time; and
  - 2. No later than [TBD], a report on the Benchmarking of all available Covered Properties, including an assessment of compliance rates, an assessment of accuracy and issues affecting accuracy, summary energy and water consumption statistics, trends observed, and an assessment of changes across the portfolio over time.
- (b) Nothing in this Ordinance shall prevent the Director from including all such information in a combined annual energy and water efficiency report covering the progress of all the City's energy and water efficiency ordinances and programs.

**Sec. XX-XX. Enforcement.**

- (a) It shall be unlawful for any entity or person to fail to comply with the requirements of this Ordinance or misrepresent any material fact in a document required to be prepared or shared by this Ordinance.
- (b) If the Director determines that a property owner has failed to report Benchmarking information as required under this Ordinance or the owner has submitted incomplete or false Benchmarking information, the Director may refer the owner for enforcement as set forth in Chapter X, Article X of the City Code, titled "XX," and may be brought for further proceedings before the Code Enforcement Board. A property owner in violation of this Article may be fined \$XX.00 per day for a first-time offense or \$XX.00 per day for a repeat violation of this Article. The City may also avail itself of any other legal remedy available and the use of one enforcement option shall not preclude the use of another.

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