



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 22 (2022)

A BILL FOR AN ORDINANCE

RELATING TO BUILDING BENCHMARKING.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and Findings.

The purpose of this ordinance is to establish a better buildings benchmarking and reporting requirement for energy and water usage of covered properties within the City and County of Honolulu ("City").

The Council finds that energy consumed by buildings not only contributes to the climate crisis, but also to high costs of living for O'ahu residents, where many residents face energy burdens much higher than the national average of 3.5 percent. The Council additionally finds that reduced energy demand through increased energy efficiency will play a large role in meeting the aligned State and City zero emissions clean energy targets and reducing energy burdens for residents. In 2019, the building sector accounted for more than one-third of O'ahu's total greenhouse gas emissions. Recognizing this, the Council adopted Resolution 21-229 requesting the City Administration to work with the Council to establish a benchmarking program to increase the efficiency and resiliency of commercial and residential buildings on O'ahu.

Building benchmarking is the process of measuring a building's energy and water usage over time, allowing owners and occupants to understand a building's performance relative to similar buildings and to identify opportunities to reduce energy waste and associated costs. Such policies are growing across the United States, where more than 35 municipalities now see the benefits of measuring and reporting on energy and water usage in buildings. In December 2020, the Honolulu City Council adopted Ordinance 20-47 that established a municipal benchmarking policy to measure and report the energy and water usage of all City facilities over 10,000 square feet. The Council finds that establishment of a complementary building benchmarking program for certain commercial and multi-family buildings on O'ahu will improve building performance and create cost-savings opportunities and sustainability benefits for businesses and residents island-wide.

SECTION 2. The Revised Ordinances of Honolulu 1990, is amended by adding a new chapter to be appropriately designated by the revisor of ordinances and to read as follows:

"Chapter ____.



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BUILDING MANAGEMENT

Article 1. Better Buildings Benchmarking Program

Sec. _-1.1 Definitions.

For the purposes of this article, the following definitions apply unless the context clearly indicates or requires a different meaning:

“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.

“Benchmarking tool” means the U.S. Environmental Protection Agency’s ENERGY STAR® Portfolio Manager, or any additional or alternative tool adopted by the department, used to track and assess the energy and water use of certain properties relative to similar properties.

“Covered property” means a property that exceeds 25,000 gross square feet in total floor area. The following properties are not considered to be covered properties and are not subject to any of the requirements of this article:

- (1) Single family, duplex, triplex and fourplex residential homes and related accessory structures, or any other residential building with less than five units;
- (2) Properties classified as industrial per designated Standard Industrial Classification (SIC) codes 20 through 39;
- (3) Properties owned by government bodies not subject to the authority of this article or already governed by other articles; and
- (4) Other building types not meeting the purpose of this article, as determined by the director.

“Department” means the office of climate change, sustainability and resiliency, except where it refers to the department of planning and permitting.

“Director” means the executive director of the office of climate change, sustainability and resiliency, except where it refers to the director of the department of planning and permitting.



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"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 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 U.S. Environmental Protection Agency 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 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;
- (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 the total property area, measured between the outside surfaces of the exterior walls of the building. This includes all areas inside the building including but not limited to lobbies, tenant areas, common areas, meeting rooms, break rooms, base level atriums, restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms.

"Owner" means:

- (1) An individual or entity possessing title to a property;
- (2) The board of the owners' association, in the case of a condominium;



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- (3) 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;
- (4) The board of directors, in the case of a cooperative apartment corporation; or
- (5) An agent authorized to act on behalf of any of the above.

"Property" means:

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

"Shared benchmarking information" means information generated by the benchmarking tool and descriptive information about the physical property and its operational characteristics that is shared with the department. The information must include, but need not be limited to:



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- (1) Descriptive information, such as:
 - (A) Property address;
 - (B) Primary use;
 - (C) Gross floor area;
 - (D) Number of floors;
 - (E) Number of building parking spaces or parking area in square feet;
 - (F) Number of years the property has been ENERGY STAR® Certified and the last approval date, if applicable; and
 - (G) Individual or entity responsible for the benchmarking submission.
- (2) Output information, such as:
 - (A) Site and source energy use intensity;
 - (B) Weather normalized site and source energy use intensity;
 - (C) The ENERGY STAR® score, where available;
 - (D) Total annual greenhouse gas emissions;
 - (E) Monthly energy use by fuel type;
 - (F) Indoor water use and water use intensity (consumption per gross square foot);
 - (G) Outdoor water use (where available);
 - (H) Total water use;
 - (I) The ENERGY STAR® Water Score, where available; and
 - (J) General comments section, if needed, to explain the building's ENERGY STAR® scores.



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Sec. -1.2 Annual Benchmarking and Reporting.

- (a) For every covered property subject to this article, the owner shall collect and enter all data needed to benchmark the entire property for the previous calendar year into the benchmarking tool and annually submit to the department the shared benchmarking information in an electronic report as established by the department and by the date specified in Section -_.3.
- (b) The benchmarking report must be based on an assessment of the aggregated total energy and water consumed by the property for the entire calendar year being reported. Aggregated whole-building data for the property's energy and water use shall be compiled by the property owner using one or more of the following methods:
 - (1) Obtaining aggregated whole-building data from a utility;
 - (2) Reading a master meter; or
 - (3) Collecting data from all tenants, where a utility cannot provide aggregated whole-building data.
 - (A) 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 department, 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.
 - (B) Nothing in this article shall be construed to permit a property owner to use tenant energy usage data for purposes other than compliance with benchmarking reporting requirements established by this article, nor shall the reporting requirements of this article be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.
- (c) Before submitting the benchmarking report, the owner shall run all automated data quality check functions available within the benchmarking tool. The owner shall verify that all data has been accurately entered into the tool or correct all missing or incorrect information as identified by the data quality checker prior to submitting the benchmarking report.



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

Sec. -1.3 Benchmarking Schedule.

- (a) 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 30 of each year thereafter.

Property	Initial Reporting Date
Covered properties \geq 100k sq. ft.	December 1, 2022
Covered properties \geq 50k sq. ft.	June 30, 2023
Covered properties \geq 25k sq. ft.	June 30, 2024

- (b) No later than three months before each reporting deadline, for at least the first three years during which an owner is required to provide a benchmarking report, the department shall attempt to notify those owners of their obligation to benchmark via direct mail, electronically via email, or through a public posting on a website. Failure of the department to notify any owner shall not affect the obligation of such owner to complete and submit required benchmarking reports.

Sec. -1.4 Exemptions and Time Extensions.

- (a) The owner of a covered property may request an exemption from submitting a benchmarking report for a reporting year if one or more of the following conditions for the calendar year to be benchmarked are met:
- (1) The property did not have a certificate of occupancy or temporary certificate of occupancy for the entire year required to be benchmarked;
 - (2) A demolition permit for the entire building was issued and demolition work has commenced prior to the benchmarking report due date for that year;
 - (3) The property did not receive energy or water utility services for more than a total of 30 days during that year; or



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- (4) Due to special circumstances unique to the property, compliance with provisions of this article would not be in the public interest.
- (b) Any owner requesting an exemption from benchmarking shall, no later than 30 days before the reporting deadline, submit to the department any documentation reasonably necessary to substantiate the request or otherwise assist the department in the exemption determination. Any exemption granted will be limited to the benchmarking report for which the request was made and does not extend to past or future submittals.
- (c) An owner may apply for a time extension to complete and submit a benchmarking report if, despite the owner's good faith efforts, they are unable to complete the required actions prior to the reporting deadline due to the failure of either a utility provider or a tenant to provide the owner with information needed to complete this report. The owner requesting an extension shall submit to the department any documentation reasonably necessary to substantiate the request or otherwise assist the department in the determination. For each property, the department may grant no more than two such extensions per year of no more than 60 days each.

Sec. -1.5 Penalty for Violations and Enforcement.

- (a) It shall be unlawful for any entity or person to fail to comply with the requirements of this article or misrepresent any material fact in a document required to be prepared or shared by this article.
- (b) If the department determines that a property owner has submitted incomplete or false benchmarking information or failed to report benchmarking information as required under this article, the department shall refer the matter to the director of the department of planning and permitting. The director of the department of planning and permitting may issue a written notice of violation to the property owner. The notice of violation shall require the property owner to correct the violation and submit the initial or updated benchmarking information to the department within 30 days of date of the mailing of the notice of violation.
- (c) If initial or updated benchmarking information is not received by the department within 30 days of date of the mailing of the notice of violation issued by the director of the department of planning and permitting, the department shall notify the director of the department of planning and permitting. The director of the department of planning and permitting may issue a notice of order requiring the



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property owner to comply with the order and pay a civil fine not to exceed \$500 and pay a civil fine in the amount of \$100 per day for each day the initial or updated benchmarking information is not reported to the department.

- (d) The order issued by the director of the department of planning and permitting shall become final 30 days after the date of mailing of the order. The property owner may appeal the order to the department of planning and permitting. However, the appeal to the department of planning and permitting shall not stay any provision of the order, including the daily fines.
- (e) The director of the department of planning and permitting may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director of the department of planning and permitting need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

Sec. -1.6 Publication of Data.

The department shall make available on a publicly accessible website all or a portion of the shared benchmarking information, for the previous calendar year for each covered property and may include a summary of benchmarking information in the city's annual sustainability report.

Sec. -1.7 Benchmarking Data Sharing.

- (a) The department may provide non-anonymized data from benchmarking reports to any utility serving a covered property or to any federal, state, 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 department has first obtained the covered property owner's written or electronic permission to share the data with the utility or energy efficiency or management program.
- (b) The department may disclose any data from benchmarking reports to a third party for academic or other non-commercial research purposes, provided such data is anonymized.



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Sec. _-1.8 Maintenance of Records.

- (a) Owners of covered properties subject to this article shall maintain records as the department determines is necessary for carrying out the purposes of this article, including but not limited to the energy and water bills and reports or forms received from tenants or utilities. Such records shall be preserved for a period of five years. At the request of the department, such records shall be made available for inspection by the department.
- (b) When a covered property is sold or changes ownership, the previous owner shall provide the new owner with all previous records related to the requirements of this article and all information needed to benchmark for the period during which the previous owner was in possession of the property.

SECTION 3. Rules. In accordance with HRS Chapter 91, the department may adopt rules having the force and effect of law for the implementation, administration, and enforcement of this article.

SECTION 4. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.



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SECTION 5. This ordinance takes effect upon its approval.

INTRODUCED BY:

Tony Wah (BR)

DATE OF INTRODUCTION:

MAR 10 2022

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu