

## SUMMARY OF PROPOSED COMMITTEE DRAFT:

### BILL 22 (2022) RELATING TO BUILDING BENCHMARKING.

The **PROPOSED CD1** amends Bill 22 (2022), as follows (all section references are to the new ROH sections proposed to be enacted by the bill):

- A. In proposed Section \_-1.1:
  - 1. Excludes from the definition of "covered property" any building with less than 25,000 square feet in total floor area, that is not otherwise part of a campus for the purposes of benchmarking; and
  - 2. Adds a definition of "tenant."
- B. Clarifies that one of the permissible methods of aggregating whole-building data on a property's energy and water use is by "requesting and obtaining" aggregated whole-building data from a utility.
- C. Amends the table of initial reporting dates in Section \_-1.3(a) as follows:
  - 1. Row 1: Delays the initial reporting date for covered properties with gross area equal to or greater than 100,000 sq. ft. from December 1, 2022 to June 30, 2023.
  - 2. Row 2: Deleted. In the "as introduced" version of the bill, the row would have set the date by which covered properties with gross area equal to or greater than 50,000 sq. ft. must submit their initial report.
  - 3. Row 3: Amends the date by which covered properties with gross area equal to or greater than 25,000 sq. ft. must provide their initial report from June 30, 2025 to June 30, 2024, and clarifies by adding "Other" that the row does not apply to properties with gross square footage equal to or in excess 100,000 square feet, which are covered by Row 1 of the table and subject to a different reporting deadline.
- D. In Section \_-1.4 ("Exemptions and time extensions"):
  - 1. Adds a new subsection (b) and realphabetizes the following subsections. The new subsection (b) would allow the owner of a covered property with more than six tenant meters from a single utility to request an exemption from reporting for a reporting year if the owner, despite good faith efforts, is unable to obtain aggregate whole-building data from that utility and specifies the efforts that must be made to qualify as good faith efforts.

2. Amends realphabetized subsection (d) (formerly subsection (c)) to allow an owner to apply for a time extension if, despite good faith efforts, they are unable to complete the required actions prior to the reporting deadline. (In the as-introduced version of the bill, the inability would have had to be due to the failure of a utility provider or a tenant to provide necessary information.) The subsection is also amended to require that the request for an extension must be filed prior to the reporting deadline.
- E. Section \_-1.5 ("Penalty for violations and enforcement") is amended as follows:
1. Subsections (b) and (c) are amended to replace "30 days of the date of mailing of the notice of violation" to "60 days from the date of mailing of the notice of violation."
  2. Subsection (c) is amended to increase the maximum civil fine that may be threatened in a notice of violation to \$1,000 (the previous maximum had been \$500).
  3. Establishes a maximum level of civil fines per facility per reporting year of \$5,000. (No maximum had been set in the "as introduced" version of the bill.)
- F. Completely revises Section \_-1.6 ("Publication of data").
- G. Moves the provision authorizing the "director" to adopt rules to implement the new Article 1 of the new chapter from an uncodified provision to proposed new Section \_-1.9.
- H. Makes numerous, grammatical, technical, and nonsubstantive amendments.



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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 City Council ("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 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 in size. 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:



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**"Chapter \_\_.**

### **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 square feet in gross 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 fewer than five units;
- (2) Any building with less than 25,000 square feet in gross floor area, that is not otherwise part of a campus for the purposes of benchmarking;
- (3) Properties classified as industrial per designated Standard Industrial Classification (SIC) codes 20 through 39;
- (4) Properties owned by government bodies not subject to the authority of this article or already governed by other articles; and
- (5) Other building types not meeting the purpose of this article, as determined by the director.



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"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 planning and permitting.

"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.



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"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 project;
- (3) The master association, in the case of a condominium project 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) A K-12 school;
    - (ii) A hospital;
    - (iii) A hotel;



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- (iv) Multifamily housing; or
- (v) A 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:

- (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);



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- (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.

"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 or through ownership of a unit within, or portion of, the building.

### **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 \_-1.3.
- (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) Requesting and obtaining aggregated whole-building data from a utility;
  - (2) Reading a master meter; or
  - (3) Collecting data from all tenants, when a utility cannot provide aggregated whole-building data.
    - (A) Each nonresidential tenant located in a covered property must, 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.



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- (B) Nothing in this article will 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.
- (d) If the current owner learns that any information reported as part of the benchmarking report is inaccurate or incomplete, the owner must amend the information reported within the benchmarking tool, and must 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.

<b>Property</b>	<b>Initial Reporting Date</b>
Covered properties $\geq$ 100k sq. ft.	June 30, 2023
Covered properties $\geq$ 50k sq. ft. but $<$ 100k sq. ft.	June 30, 2024
Covered properties $\geq$ 25k sq. ft. but $<$ 50k sq. ft.	June 30, 2025

- (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 the owner to complete and submit required benchmarking reports.



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### **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
  - (4) Due to special circumstances unique to the property, compliance with the provisions of this article would not be in the public interest.
- (b) The owner of a covered property that contains more than six tenant meters from a single utility may request an exemption from submitting a specified portion of a benchmarking report for a reporting year if the owner, despite good faith efforts, is unable to obtain aggregated whole-building data from that utility. Documentation of good faith efforts must be provided to the department and must include multiple requests by the owner for aggregated whole-building data from the utility or written communication from the utility stating its inability to provide aggregated whole-building data. An owner of a covered property granted an exemption from submitting a specified portion of a benchmarking report shall be required to enter and submit all other data, not covered by the exemption, that are necessary to benchmark the property.
- (c) Any owner requesting an exemption from benchmarking must, 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. The granting of any exemption is limited to the benchmarking report for which the request was made and does not extend to past or future submittals.
- (d) An owner may apply for a time extension to complete and submit a benchmarking report if, despite the owner's good faith efforts, it is unable to complete the required actions prior to the reporting deadline. The owner requesting an extension must, prior to the reporting deadline, submit to the



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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 is 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 planning and permitting. The director of planning and permitting may issue a written notice of violation to the property owner. The notice of violation must require the property owner to correct the violation and submit the initial or updated benchmarking information to the department within 60 days of the date of the mailing of the notice of violation.
- (c) If initial or updated benchmarking information is not received by the department within 60 days of the date of the mailing of the notice of violation issued by the director of planning and permitting, the department will notify the director of planning and permitting. The director of planning and permitting may issue a notice of order requiring the property owner to comply with the order and pay a civil fine not to exceed \$1,000 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, with civil fines not to exceed a total of \$5,000 per facility per reporting year.
- (d) The order issued by the director of planning and permitting becomes 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 will not stay any provision of the order, including the daily fines.
- (e) The director 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 an order, the director of planning and permitting need only show that



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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.**

- (a) On an annual basis, no sooner than four months following the reporting deadline specified in Section -1.3, the department shall make available on a publicly accessible website a summary of the reported benchmarking information for each covered property for the previous calendar year.
- (b) The summary will include, for each covered property, the property address, gross floor area, and primary use; aggregated annual total water use; aggregated annual energy use by fuel type; water and energy use intensity; total annual greenhouse gas emissions; ENERGY STAR® scores where available; year-over-year trends when applicable and available; and summary comments when provided by the property owner.
- (c) When the ENERGY STAR® score or ENERGY STAR® Water Score is not applicable or available for a covered property, it must be reported as "N/A" and not designated as a numeric score.
- (d) For at least 60 days following publication, the online summary of benchmarking information shall be considered preliminary, during which time a property owner may review the summary. For each covered property, the owner may report any errors, inaccuracies, or other discrepancies related to the benchmarking information to the department for consideration and correction where appropriate.
- (e) The department may include an aggregated summary of benchmarking information and trends 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.



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- (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.

### **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 otherwise 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.

### **Sec. \_-1.9 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 3. 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.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL **22 (2022), CD1**

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SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Tommy Waters (br)

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DATE OF INTRODUCTION:

March 10, 2022

Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
RICK BLANGIARDI, Mayor  
City and County of Honolulu