

Ordinance No. 150299 - Energy Empowerment
Director's Rule

Purpose

Pursuant to the authority granted in Chapter 18 of the Code of Ordinances, entitled “Buildings and Building Regulations”, Article XVI consisting of Sections 18-500 through 18-508 entitled “Energy Empowerment”, the City of Kansas City promulgates these rules and regulation.

1. Definitions
2. Identification of Covered Buildings
3. Compliance Schedule
4. Benchmarking Requirements
5. Reporting Requirements
6. Maintenance of Records
7. Exceptions
8. Enforcement

1. Definitions

Terms defined in Article XVI of Chapter 18 are adopted in this section. The following additional terms are defined herein:

- A. Actual energy and water data:** Data from utility meters or billing information, or provided by the utility for the entire building.
- B. Aggregated energy and water data:** Energy or water data that is aggregated for the whole building (including individual units and common areas).
- C. Benchmarking Information:** Data that is reported to the City pursuant to the Ordinance.
- D. Building:** A building is a permanent structure that is at least partially enclosed and has at least one operating building system (mechanical, plumbing or electrical).
 - i.** Buildings with a partial or fully shared wall that serves as a fire wall and creates two or more structurally independent units with separate foundations and building systems shall be considered two buildings.
 - ii.** An enclosed structure connecting multiple units (e.g. elevated walkway) shall be considered part of the building hosting its building systems. If the structure does not have any building systems, then it should be considered an accessory structure and not a part of any adjoining independent buildings.
 - iii.** A permanent structure that is used primarily for grain storage and constructed as a silo is not considered a building.
 - iv.** A lift or pump station is not considered a building where the lift or pump is the primary operation of the building.
- E. Building ID:** A unique building identification number assigned to each Covered Building by the Director to facilitate annual benchmarking submission.
- F. City of Kansas City benchmarking website:** means the URL <http://kcmo.gov/kcgreen/benchmarking> or any successor website published by the

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Director to convey information about the ordinance and rules and regulations promulgated thereunder.

- G. Covered Building:** A building subject to the Ordinance.
- H. Director:** The designee of the City Manager is the Chief Environmental Officer of Kansas City.
- I. Gross Square Feet (Gross Square Footage):** A building's total square footage as provided by the County Assessor's records, or as has been calculated by the Covered Building's Owner or Agent.
 - i.** Gross square footage shall be calculated as the total number of square feet measured between the exterior surfaces of the enclosing fixed walls.
 - a.** All enclosed spaces, conditioned or non-conditioned, must be included, including but not limited to all supporting functions such as vent shafts, elevator shafts, flues, pipe shafts, vertical ducts, stairwells, light wells, basement space, mechanical/electrical rooms, equipment storage areas, lobbies, rest rooms, and interior parking. Atriums or areas with high ceilings should only include the base floor area.
 - b.** Excludes unroofed courtyards, unroofed light wells, exterior loading bays or docks, and exterior spaces such as balconies or driveways.
- J. Ordinance:** Article XVI of Chapter 18 of the Municipal Code of Kansas City, Missouri.
- K. Owner or Owner's Authorized Agent:** The Owner as provided by the County Assessor's records. The Owner's Authorized Agent as a representative of the building designated by the owner described in *Rule 2.G*.

2. Identification of Covered Properties

Unless described below as being not included as Covered Building, all non-city buildings which are larger than 50,000 square feet and all city buildings which are larger than 10,000 square feet, and which are located within the jurisdictional boundary of City of Kansas City, MO are Covered Buildings and subject to the requirements of the Ordinance. The Director may use multiple information sources to identify Covered Buildings. The Director will create and maintain a list of Covered Buildings for purposes of making the list available to the public. The list of Covered Buildings will include Owner's name, Covered Building Name, Covered Building address, Building ID and Gross Square Footage.

- A. Notification.** The Director may notify Owners of their Covered Building(s) status. Lack of notification by the Director does not relieve the Owners of a Covered Building from the obligation to comply with the Ordinance.
- B. Not included as Covered Building.** Covered Buildings shall not include any property excluded by definition of Covered Building in the Ordinance. A Covered Building may request a change in the designation of Covered Building through the process described in *Rule 2.C*. A Covered Building may request a one-year exemption to the Benchmarking Submission through the process described in *Rule 6*.
- C. Requesting a change of Covered Building(s) status.** If an Owner does not agree with a buildings' status as a Covered Building, the Owner may request a change in the designation of Covered by submitting an original signed written request,

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supporting information, and relevant evidence to the Director. The Director may revise the status as a Covered Building.

- D. Building ID.** Owners of Covered Buildings shall include the Building ID in their Portfolio Manager profile. An Owner of a Covered Building that has not received a Building ID is not relieved of the obligation to comply with the Ordinance. Such Owners must request a Building ID through the Energy Empowerment Ordinance Help Center (Benchmarking@kcmo.org, 816.513.3462). If the Building ID is not entered correctly into the “Kansas City Building Reporting ID” field in Portfolio Manager, the Covered Building may be deemed to be out of compliance. Additionally, the Director may assign a Building ID to other participating properties that are not otherwise Covered Properties for voluntary reporting.
- E. Gross square footage.** The Owner must enter the gross square footage into Portfolio Manager. The gross square footage will be the measurement on record with the County Assessor’s Office, unless the Owner submits approved documentation to the Director. All space areas entered into Portfolio Manager for a building must add up to the building’s gross floor area.
- F. Requesting a change of gross square footage on record.** If an Owner does not agree with the gross square footage measurement on record for the Covered Building, the Owner may request a change by submitting a written request, supporting information, and relevant evidence to the Director. The Director may revise the gross square footage on record.
- G. Owner’s Authorized Agent.** If an Owner wants to assign, or to remove the assignment of, responsibility to act on behalf of the Owner in regards to the Ordinance, the Owner may authorize an agent by submitting a designation to the Director. Such designated authorized agent shall continue until the Owner submits a revocation to the Director. Designation does not exempt the Owner from any enforcement action taken by the Director. Communication regarding a Covered Building, including reporting and enforcement, shall be sent to both the Owner and Authorized Agent.
- H. New Construction.** Any building constructed and completed after June 14, 2015 must provide a Benchmarking Submission by May 1 of the first year following a complete calendar year of occupancy, as determined by the date the Certificate of Occupancy is issued. Example: A new building that is completed and receives its Certificate of Occupancy on June 20, 2018 will be occupied for the entire 2019 calendar year, and is subject to an initial compliance deadline of May 1, 2020.

3. Benchmarking Requirements

In accordance with the Ordinance, the Owner of a Covered Building must enter energy and water data from all energy and water providers into Portfolio Manager for January 1st through December 31st of each calendar year.

- A. Using ENERGY STAR Portfolio Manager.** Unless explicitly directed otherwise by the Director, the Owner of a Covered Building shall follow ENERGY STAR Portfolio Manager data entry instructions.
 - i.** This includes inputting all energy and water use data and property details. The Owner is not required to track or report any financial or cost-related

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data, though a Covered Building may choose to do so, according to Portfolio Manager instructions.

- ii. Portfolio Manager requires the input of property use details for specific space types, based on occupancy uses. Owners must make a good faith effort to obtain property use details requested by Portfolio Manager, using all information available to the Owner, including requesting information from tenant(s).
- iii. Any use of default energy and water values, and default property use details, shall be noted in Portfolio Manager, according to ENERGY STAR Portfolio Manager instructions. Upon determining that default values are no longer reasonable, the Director may disallow the use of default values.
- iv. If a Covered Building was already voluntarily benchmarked in Portfolio Manager prior to the date of its initial reporting deadline, the Owner may continue to use the building's existing Portfolio Manager record rather than creating a new record, provided that all utility, building profile and other data in the record meets the requirements stated in the Ordinance and this Rule.

B. Whole-Building Data. ENERGY STAR Portfolio Manager requires whole-building energy and water use data. Owners of Covered Properties may obtain this data from several sources, including utility bills, utility data aggregation services, or tenants or other occupants of the Covered Building.

- i. Where an Owner obtains all energy data for a given energy type for the entire building via aggregated energy data from the utility company, meter data, and/or data collected from tenants, the owner must enter such information into Portfolio Manager as actual energy data for that energy type. In the energy meter section of Portfolio Manager, the owner must respond "No" to the question, "Are temporary values being used for energy data?" No further calculation of energy use for that energy type is required.
- ii. When Whole-Building Data are not available, despite good-faith efforts to obtain whole-building data, the Owner may submit documentation of such efforts and request an exemption of Covered Building per *Rule 6.G*.

C. Separate Meters not to be Included. Owner of a Covered Building may choose not to include sub-metered or separately-metered consumption for the following services, systems or activities that are considered ancillary to the Covered Building's operations:

- i. Broadcast antennas
- ii. Cellular towers
- iii. Illuminated exterior signs
- iv. Electric vehicle charging
- v. Emergency generators, if not used to power regular building operations
- vi. Separately-metered fire pumps

D. Automated Data Transfer. Owner of a Covered Building may authorize utility companies to transfer actual or aggregated energy and/or water data directly into Portfolio Manager. Automated data transfer does not relieve an Owner of the duty to enter other requested information into Portfolio Manager, and to verify

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that all utility data is correctly transferred to Portfolio Manager from the utility company.

- E. Special conditions.** The following special conditions must be addressed in the following ways:
- i. Multiple owners - complex.** The Owner of a Covered Building is responsible for compliance with the Ordinance for the Covered Building. There may be Covered Building(s) with a complex ownership arrangement, not clearly defined under Owner in the Ordinance. In these situations, the Director will provide further guidance on a case-by-case basis.
 - ii. Buildings with change in ownership.** The Owner on record as of December 31 is required to provide the Benchmarking Submission for that calendar year. The new Owner must provide a Benchmarking Submission by May 1 of the year following transfer of ownership, and by the same date every year thereafter. It is the responsibility of the Owner of a Covered Building to notify the Director of the change in contact information if the owner chooses to subscribe to voluntary Ordinance notifications.

4. Reporting Requirements

Each year, the Owner of each Covered Building shall make a Benchmarking Submission by using the Benchmarking Tool, pursuant to Sec 18-501. (o) "Reported benchmarking information" of the Ordinance. Each year, the Director shall make the reported Benchmarking Information available to the public and shall publish a report.

- A. Kansas City Benchmarking Reporting Template.** The Owner or Agent shall make the Benchmarking Submission through the Kansas City Benchmarking Reporting Template interface in Portfolio Manager, according to the Kansas City Benchmarking Guidance, or as otherwise specified by the Director.
- B. Proof of Reporting.** Upon making the Benchmarking Submission through the Kansas City Benchmarking Reporting Template, Owner will receive a confirmation email from the US Environmental Protection Agency (EPA), which shall serve as proof-of-submission.
- C. Public Disclosure of Individual Building Information.** Missouri Revised Statute Section 610.029 requires the public disclosure of benchmarking information. The Director shall make public the information following guidance of the Ordinance and state statute. An Owner specifically requesting confidentiality in whole or part of the reported benchmarking information shall follow process described in *Rule 6.H*.
- D. Annual Benchmarking report.** The Director shall annually publish a report following guidance of the Ordinance. The Director will not make the ENERGY STAR Score of any individual building available to the public through this annual report without the Owner's consent. Owner's written consent will be kept on record by the Director.
- E. Obligation to Correct Inaccurate Data.** If an Owner learns that any reported benchmarking information is inaccurate, the building's Portfolio Manager profile must be amended, a revised Benchmarking Submission made through the Kansas

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City Benchmarking Reporting Template, and a signed letter sent to the Director within sixty (60) days of learning of its inaccuracy.

- F. Obligation of tenants.** The Owner of a Covered Building shall request energy and water data from tenant(s) when aggregated energy and water data is not available from other sources, as well as property information necessary to comply with the Ordinance. Such information shall also be requested when the Owner of a Covered Building receives notice that the tenant intends to vacate the Covered Building. The tenant is not mandated by the Ordinance to provide the information.

5. Maintenance of Records

The Owner of each Covered Building shall retain documentation of all building data entered into or produced by Portfolio Manager for a period of no less than two years from the required submission date of May 1 and must be made available to the Director, for inspection and audit by the Director, upon request. Benchmarking documentation shall include:

- A.** Information regarding energy and water use inputs, including but not limited to, utility bills, calculations and correspondence demonstrating a good faith effort to obtain actual utility data.
- B.** Information on property use details and other data requested by Portfolio Manager.
- C.** The confirmation email from the EPA containing proof of submission with submission date.
- D.** Proof of request to tenants and utility company for information related to energy and water use;
- E.** A copy of water and energy data entered into Portfolio Manager.

6. Exemptions

There are several exemptions to the Ordinance, as detailed below. To request an exemption, the Owner of a Covered Building shall submit a written request using a form prescribed by the Director below. The Director may grant exemptions for a single Benchmarking Submission (one reporting year) and for the requested exemption only.

- A. Exemptions.** Exemption requests shall be submitted as a hard copy with an original signature to the Director and must be received at least thirty (30) days prior to a Benchmarking Submission deadline. The Owner shall include supporting information and relevant evidence to demonstrate reason for exemption.
- B. Exemption from Benchmarking Requirement – Certificate of Occupancy.** The Covered Building does not have a certificate of occupancy or temporary certificate of occupancy for all 12 months of the calendar year being benchmarked.
- C. Exemption from Benchmarking Requirement – Demolition Permit.** The Covered Building has been issued a demolition permit, and demolition has commenced, energy or water related systems have been compromised, and legal occupancy is no longer possible.
- D. Exemption from Benchmarking Requirement – Low Physical Occupancy.** The Covered Building has an average physical occupancy (of the building's leasable square footage) of less than fifty (50) percent through the calendar year for which benchmarking was required. The calculation for occupancy is weighted by the length of time for each occupancy rate throughout the calendar year.

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E. Exemption from Benchmarking Requirement – Special Circumstances.

Based upon special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with the provisions of the Ordinance would cause undue hardship or would not be in the public interest.

F. Exemption from Benchmarking Requirement – Manufacturing or Industrial.

The Covered Building is primarily used for manufacturing or other industrial purposes for which benchmarking results would not meaningfully reflect Covered Building energy use characteristics due to the intensive use of process energy. A Covered Building with existing sub metering that would allow for a reasonable accounting of the process energy would not be eligible for the exemption.

G. Exemption from Benchmarking Requirement – Utility Information

Unavailable. The owner is unable to benchmark due to failure of a utility, tenant, or both, to report information necessary for the Owner to complete the Benchmarking Submission. Evidence shall include, at a minimum, demonstrated communication with relevant parties per the Ordinance.

H. Exemption from Public Disclosure. An Owner specifically requesting confidentiality of the Benchmarking Information shall demonstrate that the release of such information would divulge confidential information that is otherwise protected from disclosure by law, by submitting to the Director supporting information and relevant evidence to demonstrate such. This written submission shall include, with specificity, the source of law giving rise to the purported disclosure protection.

7. Enforcement

The Director is authorized to enforce the Ordinance and determine if an Owner has complied with the requirements of the Ordinance.

A. Written Warning. An Owner will be considered in status of Failure to Submit on May 2 of every year the Covered Building is subject to the Ordinance. A written warning will be issued per the Ordinance.

B. Violation and Penalty. An Owner will be considered in violation if the Benchmarking Submission is not made within sixty (60) days of the date the written warning is issued. Lack of receipt of the written warning by the Owner does not relieve the Owners of the obligation to comply with the Ordinance. Penalties will be assessed by Municipal Court at this time per the Ordinance.

C. Challenge to Violations. An Owner may challenge a violation for failure to benchmark. Such challenge must be made in writing to the Director within sixty (60) days from the postmark date of the written warning. Proof in support of any such challenge may include, but need not be limited to:

- i.** Proof that the building in question is not a Covered Building.
- ii.** Proof of timely benchmarking as indicated by a date-stamped copy of the Proof of Reporting from the EPA; or,
- iii.** Proof of change in ownership during the year in question.