

5/13/2016
7/14/2016
8/2/2016

33-O-16

AN ORDINANCE

**Amending Title 4 of the Evanston City Code Codifying a
Building Energy and Water Use Benchmarking Ordinance**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

SECTION 1: Title 4 of the Evanston City Code of 2012, is hereby amended to add Chapter 22 and read as follows:

**CHAPTER 22 – BUILDING ENERGY AND WATER USE BENCHMARKING
ORDINANCE**

4-22-1: SHORT TITLE.

This Chapter is titled and may be cited as the “Building Energy and Water Use Benchmarking Ordinance.”

4-22-2: PURPOSE.

The purpose of this Chapter is to promote the public health, safety and welfare by requiring certain buildings within the City of Evanston to track and disclose building energy and water consumption in order to promote energy conservation, reduce greenhouse gas emissions, and improve overall environmental quality.

4-22-3: DEFINITIONS.

For purposes of this Chapter the following definitions apply:

<i>BENCHMARK.</i>	To track and input a building's energy and water consumption data and other relevant building information in any given calendar year as required by the benchmarking tool, to quantify the building's total energy and water use.
<i>BENCHMARKING TOOL.</i>	The website-based software, commonly known as "ENERGY STAR Portfolio Manager," developed and maintained by the United States Environmental Protection Agency. This term also applies to any successor system

	thereto, including any change or addition made to such tool by the United States Environmental Protection Agency.
<i>CERTIFICATE OF OCCUPANCY.</i>	The certificate issued by the Community Development Department allowing building occupancy or use, as required under the International Building Code adopted in City Code Section 4-2-1.
<i>CERTIFIED PROFESSIONAL.</i>	A professional engineer or a registered architect licensed in the State of Illinois, or another trained individual acceptable to the City Manager or his/her designee.
<i>CITY BUILDING.</i>	Any municipally owned building or group of buildings that have the same property identification or index number (PIN), containing 10,000 or more gross square feet, as identified by the City Manager or his/her designee.
<i>COVERED BUILDING.</i>	Any Type 1, Type 2, or Type 3 Covered Building as defined by this Chapter. The term "covered building" does not include any building whose primary occupancy use is classified as Assembly Group A-5 uses, Factory Group F uses, Storage Group S uses, High Hazard Group H uses, or Utility and Miscellaneous Group U uses, as defined by Chapter 3 "Use and Occupancy Classification" of the International Building Code adopted pursuant to City Code Section 4-2-1.
<i>ENERGY PERFORMANCE SCORE.</i>	The 1 to 100 numerical score produced by the benchmarking tool, also known as "ENERGY STAR score", or any successor score thereto. The energy performance score assesses a building's energy performance relative to similar buildings, based on total energy use, operating characteristics, and geographical location.
<i>ENERGY USE INTENSITY ("EUI").</i>	The total annual energy consumed by a building per gross square foot.
<i>GROSS SQUARE FEET.</i>	"Gross Square Feet" as defined in the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager, as amended.
<i>OWNER.</i>	"Owner" has the meaning ascribed to the term in City Code Section 6-18-3.
<i>REPORTED BENCHMARKING INFORMATION.</i>	Descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool related to the building's energy

	consumption and efficiency. Reported benchmarking information includes, but is not limited to, the building identification number, address, gross square feet, energy performance score (if available), energy use intensity, water use and annual greenhouse gas emissions.
<i>TYPE 1 COVERED BUILDING.</i>	Any building or group of buildings that have the same property identification or index number (PIN), containing 100,000 or more gross square feet, as identified by the City Manager or his/her designee.
<i>TYPE 2 COVERED BUILDING.</i>	Any building or group of buildings that have the same property identification or index number (PIN), containing 50,000 or more gross square feet but less than 100,000 gross square feet, as identified by the City Manager or his/her designee.
<i>TYPE 3 COVERED BUILDING.</i>	Any building or group of buildings that have the same property identification or index number (PIN), containing 20,000 or more gross square feet but less than 50,000 gross square feet, as identified by the City Manager or his/her designee.

4-22-4: BUILDING PERFORMANCE DISCLOSURE.

- (A) In accordance with the schedule under City Code Section 4-22-5, the owner of any covered building must submit reported benchmarking information for the previous calendar year, using the benchmarking tool, as required by the City Manager or his/her designee.
- (B) The City Manager or his/her designee must prepare and submit an annual report to the Mayor and the City Council for review and evaluation of the energy and water efficiency in covered buildings, including, but not limited to, summary statistics on the most recent reported energy and water benchmarking information.
- (C) The City Manager or his/her designee is authorized to make reported benchmarking information readily available to the public, except to the extent allowable under applicable law, the City Manager or his/her designee will not make readily available to the public any individually-attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark.

4-22-5: BENCHMARKING REQUIREMENTS.

- (A) The owner of any covered building must retain all information for the previous calendar year and input any and all descriptive information required by the benchmarking tool into the benchmarking tool for the previous calendar year. The owner must input this information according to the following schedule:
1. City Buildings and Type 1 Covered Buildings must provide data for the 2016 calendar year by June 30, 2017 and for every year thereafter by every subsequent June 30;
 2. Type 2 Covered Buildings must provide data for the 2017 calendar year by June 30, 2018 and for every year thereafter by every subsequent June 30; and
 3. Type 3 Covered Buildings must provide data for the 2018 calendar year by June 30, 2019 and for every year thereafter by every subsequent June 30.
- (B) **Exception.** The City Manager or his/her designee may exempt from the benchmarking requirement the owner of a covered building that submits documentation establishing any of the following:
1. The building is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages, (2) the building is controlled by a court appointed receiver, or (3) the building has been acquired by a deed in lieu of foreclosure; or
 2. The building had average physical occupancy of less than fifty percent (50%) throughout the calendar year for which benchmarking is required; or
 3. The building is a new construction and the building's certificate of occupancy was issued during the calendar year for which benchmarking is required.
- (C) **Retention of Records.** Each owner is responsible for retaining the previous three (3) years' worth of benchmarking data, where applicable.

4-22-6: BUILDING DATA VERIFICATION.

- (A) **Data Verification.** Prior to the first benchmarking deadline in City Code Section 4-22-5 and prior to each third benchmarking deadline thereafter, the owner of a covered building must ensure that reported benchmarking information for that year is verified by a certified professional. Such verification must be in a form of a signed statement by a certified professional attesting to the accuracy of the information. The owner of a covered building must produce such statement for

the most recent year in which verification of reported benchmarking information was required upon a written request by the City Manager or his/her designee.

- (B) **Exception.** The City Manager or his/her designee may exempt from the verification requirement the owner of a covered building that submits documentation establishing that compliance with this Section will cause undue financial hardship.

4-22-7: SOLICITATION OF COMPLIANCE INFORMATION.

Within thirty (30) calendar days of a request by the building owner, each tenant of a unit in a covered building must provide all information that cannot otherwise be acquired by the building owner and that is necessary for the building owner to comply with the requirements of this Chapter.

Any owner of a covered building must request such information no later than March 1 of the years in which benchmarking is required by City Code Section 4-22-5. If the owner of a covered building receives notice that a tenant intends to vacate a unit which is subject to the requirements of this Section, the owner must request the information specified in this Section within ten (10) calendar days of such notice, and the tenant must provide such information within thirty (30) calendar days of the request.

The failure of any tenant to provide the information required under this Section to the owner of a covered building does not relieve such owner of the obligation to benchmark the building as provided in City Code Section 4-22-5, using all information otherwise available to the owner.

Failure of any tenant to provide the information required under this Section to the owner of a covered building creates a rebuttable presumption that the owner, tenant, or both have not complied with the time limits specified in this Section.

If a tenant of a unit in a covered building fails to provide information to the owner of the building as provided in this Section, the owner is deemed to be in compliance with City Code Section 4-22-5 with respect to the building if: (1) the owner proves that the owner has requested the tenant to provide such information as specified in this Section; and (2) the owner has benchmarked the building as provided in City Code Section 4-22-5, using all information otherwise available to the owner.

4-22-8: ENFORCEMENT.

The City Manager or his/her designee is authorized to enforce this Chapter. The City Manager or his/her designee is also authorized to adopt rules and regulations for the proper administration and enforcement of this Chapter.

4-22-9: NOTICE OF VIOLATION.

Whenever the City Manager or his/her designee determines that an owner fails to meet any requirement of this Chapter, he/she must give written notice to the owner. Such notice must include, but not limited to, stating that the owner failed to comply with the requirements of this Chapter and that the owner has twenty (20) calendar days to comply with the applicable requirement. The notice must be in writing and may be served in person or sent by certified mail, return receipt requested. The notice must provide any recipient an opportunity to file a written request for a hearing with the City Manager or his/her designee by the owner within twenty (20) calendar days. Failure to respond to the notice or failure to comply with the applicable requirements requested therein constitutes a violation of this Chapter by the owner.

4-22-10: HEARINGS.

If a written request is filed within twenty (20) calendar days, an opportunity for a hearing with the City Manager or his/her designee must be afforded within ten (10) calendar days of receipt of the request. The hearing will be conducted by the City Manager or his/her designee affording the owner an opportunity to appear and show cause as to how they have complied with the provisions of this Chapter. The City Manager or his/her designee will make a final decision in writing, including the reasons for such decision, and will serve said decision on the owner subject to the provisions of this Chapter within ten (10) calendar days after the conclusion of the hearing.

4-22-11: PENALTY.

Any person who violates any provision of this Chapter will be fined one hundred dollars (\$100.00) for each such offense. Every month a violation continues will be deemed a separate offense.

4-22-12: SEVERABILITY.

If any provision of this Chapter or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity must not affect other provisions or applications of this Chapter that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Chapter is severable.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: If any provision of this Ordinance 33-O-16 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity does not affect other provisions or applications of this Ordinance that can be

given effect without the invalid application or provision, and each invalid application of this Ordinance is severable.

SECTION 4: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and will be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 5: This Ordinance 33-O-16 is in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: _____, 2016

Approved:

Adopted: _____, 2016

_____, 2016

Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene, City Clerk

W. Grant Farrar, Corporation Counsel