THE BUREAU OF
PLANNING &
SUSTAINABILITY

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Administrative Rules
Commercial Building Energy Performance Reporting
ENN – 5.05

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1. Applicability

Portland City Code (PCC) Chapter 17.104 seeks to make energy performance in commercial buildings transparent and motivate investment in efficiency improvements that save energy and reduce carbon emissions.

Buildings are the second largest source of carbon emissions in Portland. City Council has adopted communitywide carbon emissions reductions targets since 1993. Targets evolve with current science. Building emissions reductions have always been and will continue to be central to local decarbonization efforts.

2. Purpose

These administrative rules are intended to clarify the requirements for commercial building energy reporting within PCC Chapter 17.104.

Annual energy tracking and reporting of Portland's largest commercial buildings enables the City to measure and manage progress toward its climate goals.

3. Definitions

As used in these administrative rules, the following words and phrases shall be construed as defined in this section, unless the context indicates a different meaning is intended.

A. **City Administrator** means the City Administrator of the City of Portland or their authorized representative, designee or agent.

B. **Person** means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.

4. Regulatory Authority

All rules will be adopted or revised following the procedures outlined in Chapter 1.05 of the City Code.

5. Requirements for Owners of Covered Buildings

A. Determining Whether a Building Is Covered
In addition to the gross floor area threshold of 20,000 square feet, excluding any parking garage, the primary use of a building determines whether a building is covered by the requirements of PCC Chapter 17.104. The primary use of a building is initially designated by the City based on the Multnomah County property tax assessor description and includes the following property types for the primary use of a building:

- Auto dealership
- Bowling alley
- Commercial building
- Commercial condominium
- Day care center
- Fraternal building
- Generic commercial use or shop

- Health club
- Hotel
- Medical office
- Motel
- Office
- Public Building
- Recreation
- Store
- Theater
- Warehouse predominantly used as any of the above property types

Based on additional information regarding the nature of how a particular building is used, the City may determine exceptions or additions to the primary use of the building.

If the owner of a covered building does not agree with the City's designation, the owner may request a change in that building's designation by submitting information and relevant evidence to the Bureau of Planning and Sustainability (BPS). The City Administrator may revise a building's covered status or other designation based on the information provided by the owner.

B. General Requirements

The owner of any covered building must annually track energy performance using ENERGY STAR Portfolio Manager.

1. To track energy performance of a building using ENERGY STAR Portfolio Manager, three types of information must be entered by the owner: building profile, property use attributes, and energy consumption data.

    a. Building profile information must be entered by the owner, reviewed annually and updated as needed, including contact person name, telephone number, email address, building site address, original year of construction, and a Portland Building ID. Each building must be entered as a unique record within ENERGY STAR Portfolio Manager. If the Portland Building ID is not entered correctly into ENERGY STAR Portfolio Manager, the owner will be out of compliance. The City will make all Building ID(s) available online and make a reasonable effort to reach each owner through written or email communication.

    The owner may use an existing ENERGY STAR Portfolio Manager account if the Portland Building ID provided to the owner by the City is added to the account for every covered building.

    b. Property use attributes, including gross floor area of the entire building and specific uses within the building, must be entered by the owner, reviewed annually, and updated as needed. ENERGY STAR Portfolio Manager can accommodate all types of covered building uses. In addition, for certain buildings ENERGY STAR produces a benchmark for energy use relative to similar buildings nationwide. This benchmark is called an ENERGY STAR Score and is expressed on a scale of 1 to 100.

    A covered building is eligible for an ENERGY STAR Score if at least 50% of the gross floor area (excluding parking lots and garages) is defined as one or more of the

following property types (note that this list of property types is different than the list of property types in section 5.A. that determine whether a building is covered by the requirements of PCC Chapter 17.104):

- Bank branch
- Convenience store
- Courthouse
- Data center
- Financial office
- Hospital (general medical & surgical)
- Hotel
- Medical office
- Office
- Retail store
- Supermarket/grocery store
- Vehicle dealership
- Wholesale club/supercenter

The owner is responsible for determining whether a covered building is eligible for an ENERGY STAR Score. If a covered building is eligible for an ENERGY STAR Score, the owner must make its ENERGY STAR Score available to the City as described in section 5.C.

Buildings eligible to receive the ENERGY STAR 1-100 score must enter the property use attributes that are required by Portfolio Manager to compute the score. For example, property use attributes for an office building must include the number of computers, operating hours and number of full-time employees. Although ENERGY STAR Portfolio Manager allows the user to select default, estimated or temporary values, these values can produce inaccurate results. Such values may not be used unless specifically authorized by the City Administrator for a specific covered building.

Because parking is a common amenity of commercial building types, the ENERGY STAR Score makes adjustments to accommodate the presence of parking; however the gross floor area and energy consumed within separately metered parking areas should not be entered by the owner, whenever possible. This includes open parking lots, completely enclosed parking garages, and partially enclosed parking garages.

c. Monthly energy consumption data must be entered into ENERGY STAR Portfolio Manager for all fuel types consumed including electricity, natural gas, steam, hot or chilled water used for heating or cooling, propane, fuel oil, wood, coal, and any other fuel that meets a covered building's energy load. All energy meters servicing the building must be included, regardless of who receives or pays the utility bills. Energy consumption data for the whole building must be obtained by the owner for 12 consecutive months in the previous calendar year, including energy use from January 1 through December 31 of that calendar year. If energy consumption billing data is available from mid-month to mid-month, then up to 14 months of billing information may be needed to cover the full calendar year.

   Beginning January of each year, an owner may request monthly energy consumption data for the previous calendar year from a utility. The owner may request aggregated energy data by identifying all the utility meters serving the covered building. To fulfill

the request, a utility may require written authorization from separately metered tenant accountholders, and additional meter identification information, such as meter numbers or account numbers.

When metered energy data becomes available for the previous calendar year through December 31, each utility must provide the owner with necessary data within 45 days of the request.

To ensure compliance by April 22, the owner must contact their utilities and tenants with sufficient lead time to allow for processing requests. Requests to the utilities should be made no later than February 28 for the previous calendar year's energy data.

Where available, owners may request utilities to upload monthly building energy use data directly into ENERGY STAR Portfolio Manager; however automated upload does not relieve the owners' responsibility to report accurate energy performance information to the City.

If energy is generated on-site and used within the building, only net consumption of electricity must be reported.

2. The owner's responsibility for obtaining energy consumption data, creating an accurate record in ENERGY STAR Portfolio Manager annually, and determining ENERGY STAR Score eligibility for the whole building includes tenant spaces.

3. If the owner receives notice that a tenant intends to vacate a space, the owner must request all tenant information necessary to complete the requirements of this section. tenants must provide the owner access to utility data, as well as any other information needed to complete or update an ENERGY STAR Portfolio Manager building record.

4. When a covered building changes ownership, the previous owner must transfer the building ENERGY STAR Portfolio Manager account or building update to the new owner or provide all information necessary to complete the requirements of this section for the months of any calendar year when the previous owner was still in control of the building. This transfer of information must be completed by the previous owner within 30 days of the close of sale.

5. The owner must retain all information tracked and entered into ENERGY STAR Portfolio Manager for at least three years beyond the date on which reporting was required. Following written or electronic notice by the City Administrator, the owner must make all energy performance information available for inspection and audit during normal business hours in the Portland metropolitan region.

C. Energy Performance Information Submitted to the City

1. No later than April 22 of each year, the owner must accurately use ENERGY STAR Portfolio Manager to create energy performance information for the previous calendar year and report this information through Portfolio Manager to BPS. The following energy performance information must be entered by the owner into ENERGY STAR Portfolio Manager and submitted using the City's Data Request Template:

- Building contact information,
- Portland building identification number (provided by BPS);
- Building address;
- Building name;
- Year of construction;
- Primary building use type and additional use types; and
- Gross floor area as defined by ENERGY STAR Portfolio Manager;

The following Energy performance information is output from ENERGY STAR Portfolio Manager that is submitted through the City's Data Request Template:

- ENERGY STAR score, where available;
- Site energy use intensity (Site EUI);
- Source energy use intensity (Source EUI);
- Weather-normalized Site EUI;
- Weather-normalized Source EUI; and
- Total greenhouse gas emissions, which may be updated by the City to reflect utility-specific emission factors.

The accuracy of energy performance information values will be confirmed by reviewing the report submitted through the City's data request template in ENERGY STAR Portfolio Manager and additional follow up with building contacts on an as-needed basis. Other data may be included in the City's data request template to confirm accuracy and for other evaluative purposes.

2. Optional energy performance information may be entered annually into the property notes section of an ENERGY STAR Portfolio Manager building profile by an owner and submitted through the City's data request template:

    - Contextual information related to energy use in the building, such as operational changes, energy audits, or tenant uses; and
    - Verification of energy performance information in this section by a licensed professional.

3. For campus portfolios where two or more covered buildings are served by a single utility meter or shared utility services, the owner may report a campus-wide gross floor area, renewable energy generated on-site, Site EUI, Source EUI, weather-normalized Site EUI, weather-normalized Source EUI, and total annual greenhouse gas emissions using the City's data request template in ENERGY STAR Portfolio Manager.

4. To report energy performance information, the owner must submit a report to the City's data request template in ENERGY STAR Portfolio Manager according to the following reporting schedule:

    a. For every covered building containing a gross floor area of at least 50,000 square

feet, the Energy performance information must be submitted through the City's data request template in ENERGY STAR Portfolio Manager to BPS no later than April 22.

b. For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the first year of Energy performance information must be submitted through the City's data request template in ENERGY STAR Portfolio Manager to BPS no later than April 22.

Any potential errors identified by the City must be resolved by July 15 of the reporting year. By October 1 of each reporting year, the City will publish individual building energy performance information and compliance status as of July 15 of the reporting year.

5. The City will provide notification of requirements to the owner of record by mail for at least the first two years of the reporting requirement, and if available, to a building contact by email. However, the failure of the City to notify an owner does not affect the obligation of the owner to report.

6. The owner may designate an agent to act on behalf of the owner, such as a property manager, a building owner that leases property beneath a building, or the net lessee in the case of a building or property subject to a triple net lease. No later than November 15 for the following year of reporting, a representative of the current property owner identified in Multnomah County tax assessment records must complete a primary contact form to coordinate compliance with the policy requirements. The designation must include the name of the property owner, the property owner representative's email address, the property owner representative's telephone number, and the name of the representative's organization.

D. Extensions and Exemptions

1. Upon written request from an owner, the City Administrator may extend the reporting date in paragraph 5.C.4. based on extenuating circumstances (for example, a separately metered tenant that has not provided the owner access to utility data or other necessary tenant information). The written request must state with specificity the reason for the requested extension. If an extension is granted by the City Administrator, the owner must submit the energy performance information through the City's data request template in ENERGY STAR Portfolio Manager by the deadline approved by the City Administrator, no later than June 22 of the reporting year.

2. Upon written request from an owner, the City Administrator may exempt a covered building for a specific year based on one or more of the following conditions:

a. Energy service to the covered building was not provided for a full calendar year for which reporting would otherwise be required;

b. The covered building was wholly unoccupied during the entire calendar year for which reporting would otherwise be required;

c. A demolition permit was issued for the covered building during the calendar year for which reporting would be required; or

d. Due to a special circumstance unique to the covered building, compliance would cause undue hardship for the owner.

The exemption request must be received by BPS no later than April 22 of the reporting year. Within 30 days of receiving the exemption request, the City Administrator will provide a written response to acknowledge receipt of the request and determine whether the request is approved or denied.

6. Requirements for Tenants of Covered Buildings

A. General Requirements

1. Upon receipt of a written or electronic request from the owner, within 30 days each tenant of a covered building must provide all data necessary for the owner to comply with the ENERGY STAR Portfolio Manager requirements of section 5. In addition to the types of use in the tenant space and energy consumption information, the tenant may need to include property use attributes. These attributes will vary based on the types of use within the tenant space. For example, an office use must include the number of computers, operating hours and number of full-time employees.

2. Where a space within the covered building is occupied by a tenant and separately metered by a utility, the tenant must authorize the owner to access monthly energy consumption data directly from utilities serving the tenant.

7. Requirements for Utilities Serving Covered Buildings

A. General Requirements

1. Within 45 days, upon receipt of a written or electronic request from the owner and availability of metered energy data through December 31 of the previous calendar year, a utility providing service to the covered building must provide the monthly energy consumption data to the owner for all covered buildings identified by the owner. To fulfill the request, a utility may require meter identification information, such as meter numbers or account numbers. Where applicable, the utility may include monthly consumption data for customers that purchase energy through a direct access service. The covered building energy consumption data will be aggregated for the whole covered building by the utility. The covered building energy consumption data provided by a utility to the owner will not contain personally identifying information of utility customers, such as names associated with the data or any customer-specific billing data.

2. Each utility must establish its own business process for providing utility energy consumption data to an owner or where available, directly uploading into ENERGY STAR Portfolio Manager, subject to the governing state or federal data privacy laws to which the utility is subject at the time of the owner's request.

3. Where a unit or other space is occupied by a separately metered tenant, the utility may require the owner to identify tenant utility meters or accounts using a utility release form that is signed by the customer served by each meter.

4. Utilities must maintain all energy consumption data for meters serving each covered building for at least the most recent calendar year in a format compatible with ENERGY STAR

Portfolio Manager.

8. Compliance and Enforcement

A. Standard for Determining Violation

Any owner, tenant or person who fails, omits, neglects or refuses to comply, or misrepresents any material fact in reported information, may be in violation of City Code Chapter 17.104. In determining whether a violation has occurred, the City Administrator will evaluate the totality of the circumstances related to the violation.

Upon determining that a violation has occurred, the City Administrator will:

1. Upon the first violation, issue a written warning notice to the owner, tenant or person, describing the violation.

2. Upon determination of any subsequent violation, deliver a notice of violation assessing a civil penalty of up to $500 per covered building for every 90-day period during which the violation has continued and specifying a deadline for payment.

The City Administrator has discretion to adjust the assessment amount after considering the following criteria:

- The nature and extent of the person's involvement in the violation;
- Whether the person received any benefits, economic or otherwise, through the violation;
- Whether the violation was isolated and temporary, or repeated and continuous;
- The length of time from any prior violations;
- The magnitude and seriousness of the violation;
- The costs of investigation and remedying the violation; and
- Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

B. Right of Appeal and Payment of Assessments

1. Payment of Assessments Required or Appeal. Upon receipt of a notice of violation of a civil penalty for any provisions of Chapter 17.104 or these Administrative Rules, the alleged offender will, within 15 calendar days of issuance of the written notice of violation, pay to BPS the stated civil penalty or request an appeal hearing by a Code Hearings Officer in accordance with the procedures set forth in PCC Title 22.10 and Chapter 3.130.020.

2. 15-Day Payment Required Upon Failed Appeal. If, pursuant to said appeal hearing, an assessment is ordered, payment of said assessment must be received or postmarked within 15 calendar days after the order becomes final.

3. Interest on Assessment. An assessment which is not paid within the time provided will accrue interest at the rate consistent with the City's established accounting practices. BPS may take legal action to collect assessments which are not paid when due.

4. City May Take Legal Action to Collect Assessments. The City may take legal action to collect Assessments, which are not paid when due.

C. Delivery of Notices of Warning or Violation

Any notice of warning or violation provided for under these rules will be sufficient if in writing and accomplished by any of the following means to the owner: (1) delivered personally to the entity being notified; (2) deposited in the United States Mail, first class, postage prepaid; or (3) sent by commercial courier. Any such notice, communication or delivery will be deemed effective and delivered upon the earliest to occur of either (1) actual personal delivery to the entity's office address, during normal business hours; (2) three business days after depositing in the United States Mail as aforesaid; or (3) one business day after shipment by commercial courier as aforesaid.