

**To:** Don Gerrish, Interim City Manager  
**From:** Tex Haeuser, Planning Director   
**Cc:** Josh Reny, Assistant City Manager and Economic Development Director  
Julie Rosenbach, Sustainability Coordinator  
Mary Perry, Executive Assistant  
**Date:** City Council Workshop of December 19, 2016  
**Re:** **Energy & Water Use Benchmarking Amendments to the Zoning Ordinance**

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### **Planning Board Recommendation**

The Planning Board voted 2 – 2 (Phillips, Carr, and Misiuk absent) at their December 13th meeting on a motion to send a favorable recommendation to the City Council regarding the proposed energy and water use benchmarking zoning amendments based on conformity with the City's Comprehensive Plan, Climate Action Plan, and Mill Creek Master Plan.

There was no public testimony at the hearing other than an educational presentation by representatives of the Northeast Energy Efficiency Partnership (including Charlie Taylor who gave a similar talk at the October 12th City Council workshop). The minutes of the Planning Board meeting are attached.

### **Introduction**

Benchmarking is a program in which owners of larger buildings disclose data about energy and water usage on an annual basis. It is intended to enable more effective energy and climate protection planning by the City and others. In addition, it helps building owners as well as prospective buyers and tenants better understand the performance of participating buildings over time. Benchmarking is a market-based mechanism that results in greater energy and water use efficiency.

Buildings account for 40% of U.S. carbon emissions.<sup>1</sup> It is reasonable, therefore, to ask owners of larger buildings to partner with the City and with residents in meeting the community's climate action goals. This is especially true in the case of Mill Creek given the recently conferred zoning benefits.

The Comprehensive Plan Implementation Committee has brought forward a proposed Benchmarking article to be added to the Zoning Ordinance. It is a key recommendation of the

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<sup>1</sup> Institute for Market Transformation

Mill Creek Master Plan and was discussed as part of the forums and hearings associated with the adoption of the Plan.

In addition to all City buildings  $\geq 5,000$  square feet, the proposed benchmarking amendments would apply to 30 buildings in Mill Creek and are a complement to the liberalized zoning rules recently approved by the City Council as part of an effort to revitalize this downtown center for South Portland. The significant potential financial benefit to Mill Creek property owners from the new zoning, coupled with the financial incentive provisions of the proposed Benchmarking amendments, balance the Benchmarking reporting requirements—if the many benefits of Benchmarking for building owners do not already do so.

In response to input from the City Council, Planning Board, residents, and businesses, a number of revisions have been made to the original draft of the zoning amendments. For the most part the changes are intended to reduce tenant responsibility for providing needed data. As these changes are substantive, a new Planning Board hearing was required.

### **Public Notice**

Legal advertisements regarding this request appeared in the Portland Press Herald on November 29 and December 5, 2016. Notices were also posted at City Hall, the Public Libraries, and on the City's webpage. In addition, an article about the Planning Board hearing was included in the December 2, 2016 Community e-Newsletter and was part of the agenda for an information meeting for Mill Creek property owners held on December 9<sup>th</sup>.

### **Previous Hearings and Workshops**

As mentioned, Benchmarking was included in the forums and hearings associated with the adoption of the Mill Creek master plan. The Comprehensive Plan Implementation Committee then brought a Benchmarking article forward to the Planning Board for a public hearing on July 26, 2016. The recommendation by the Board in favor of the proposed amendments was 2 – 4 (Neff and Phillips for; Laidley, Carr, Misiuk, and Dowling against). A copy of the minutes of the meeting is attached.

Most recently, the City Council held a workshop on the proposed Benchmarking amendments on October 12, 2016. Some of the questions and comments made by residents and Councilors include:

- Has this led to litigation in the cities that have adopted benchmarking? [Based on subsequent discussions with staff at the Northeast Energy Efficiency Partnership, Benchmarking has not led to litigation.]
- We should require whole building meters for new buildings. [Agreed, and have included City financial assistance for this a possible incentive.]

- If a building participates in the program will it have a higher property tax valuation? [Answer: no.]
- The ordinance puts too much of a burden on tenants. [We have made changes.]
- Anything new is scary.
- Ordinance strikes a reasonable balance between privacy rights and the environment. Owners of larger buildings have a responsibility to be environmental stewards.

### **Meeting with Property Owners**

Given the recently adopted Mill Creek zoning amendments, the proposed Benchmarking amendments, and the concepts being developed for the first phase of Mill Creek public improvements, it was felt that a meeting with the Mill Creek Property owners would be beneficial. Notices were mailed out to the approximately 70 Mill Creek property owners, and an informal informational meeting was held early Friday morning, December 9<sup>th</sup>. Those who attended included representatives from the Mill Creek Shopping Center (Commercial Properties), the Shaw's Mill Creek Plaza Shopping Center (Finard Properties), and Yankee Ford. The only comment at the meeting regarding benchmarking was from the Commercial Properties representative who felt that the data reporting requirement would be a burden and that the City, therefore, should consider a tax reduction for the affected properties.

While there already is a development fee reduction incentive (up to \$5,000) built into the benchmarking proposal, I have included, in response to the Commercial Properties comment, a reporting assistance incentive in the Planning Department's FY 2018 Green Capital Improvements Program request. This would be \$18,000 to cover the licensing fee for one year (but not setup costs) for up to 30 buildings in Mill Creek for the benchmarking reporting and value added analysis services of Rapport, a firm located in Portland. This represents a 50% discount being offered by Rapport.

### **Changes from the Previous Draft**

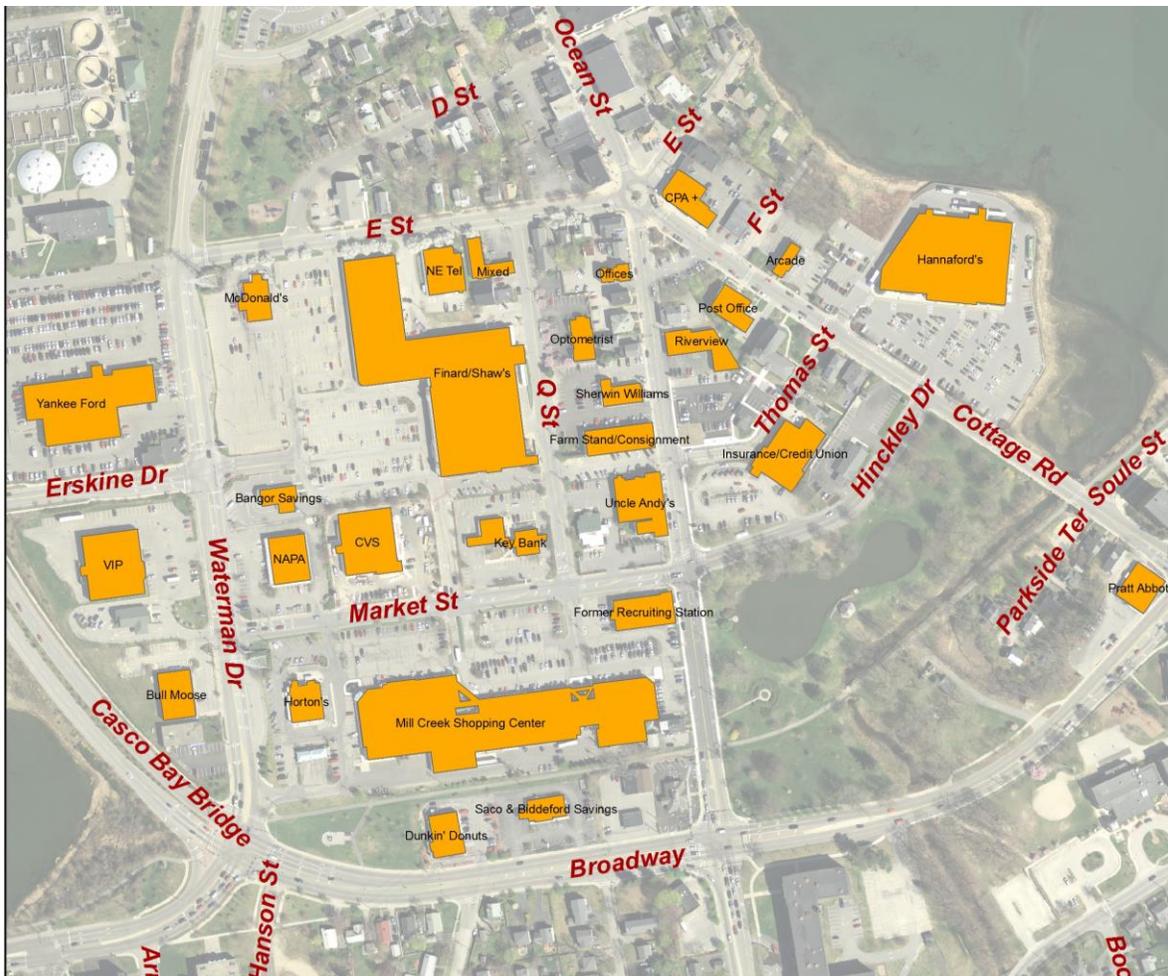
In response to comments made at the Planning Board hearing, at the City Council workshop, and by building owners, staff have made a number of changes to the proposed ordinance amendments. These are mostly to reduce the burden on of any tenants for reporting energy and water use data. The revisions include:

- Sec. 27-1701(d)(2): Sub-c is eliminated for redundancy.
- Sec. 27-1701(e): Sub-4 is eliminated to take the onus off of tenants and because provisions for providing partial building data by the owner are included in Sec. 27-1701(f)(2) and (3).
- Sec. 27-1701(f): "master meters" is changed to just "meters" as in many cases it is impractical to reroute all the services to one location while instead there are cases

where individual sub-meters have been installed that report usage data directly to the building owner.

- Sec. 27-1701(f)(2): a clause is eliminated as being unnecessary and as likely to be perceived as adding more burdens on tenants.
- Sec. 27-1701(f)(3): a clause is added to indicate, when partial data is provided, that area as well as usage information is needed. In addition, a sentence is eliminated as being potentially burdensome to tenants.
- Sec. 27-1701(g): this section is eliminated as it was the main provision that put legal responsibilities on tenants for providing benchmarking data.
- Sec. 27-1701(o): the \$5,000 financial incentive is clarified to indicate that it is per project, and City financial assistance with meters that provide whole-building data is added as a possible incentive.

### **Non-City Buildings Eligible for the Proposed Benchmarking Program**



## **Attachments**

1. Mill Creek Energy and Water Use Benchmarking 12-5-16 Revised to Reduce Tenant Impacts and Incorporating Corp Counsel's Comments.
2. Benchmarking Policy One-Pager from the Northeast Energy Efficiency Partnership.
3. Minutes of the 12-13-16 Planning Board public hearing.
4. See also the Power Point presentations and other materials in the Comprehensive Plan Implementation Committee's section of the City's website:  
<http://www.southportland.org/our-city/board-and-committees/comprehensive-plan-committee/b/>.