

Draft Amendments to Chapter 27 Zoning to Implement the Mill Creek Master Plan

-- ENERGY & WATER USE BENCHMARKING --

Proposed additions to the ordinance are underlined;

Proposed deletions are ~~struck-out~~.

Revisions to the previous draft are **highlighted**.

Create a new Article XVII, Energy & Water Use Performance Benchmarking that reads:

ARTICLE XVII

ENERGY AND WATER USE PERFORMANCE BENCHMARKING

Sec. 27-~~1600~~1701. Energy and Water Use Performance Benchmarking

(a) Definitions

For purposes of this section, the following terms shall have the following meanings:

Benchmarking information. Information generated by the Benchmarking Tool, as herein defined, including descriptive information about the physical property and its operational characteristics. The information shall include, but need not be limited to:

- (1) Property address;
- (2) Primary use type;
- (3) Gross floor area;
- (4) Site Energy Use Intensity (EUI) as defined in this section;
- (5) Weather normalized source EUI;

- (6) Annual greenhouse gas emissions;
- (7) Water use;
- (8) The energy performance score that compares the energy use of the building to that of similar buildings, where available; and
- (9) Compliance or noncompliance with this section.

Benchmarking Tool. The Energy Star Portfolio Manager internet-based tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide; or an equivalent tool adopted by the City of South Portland Sustainability Coordinator.

Covered Property. A building or buildings existing as of and/or constructed or enlarged after the date of adoption of this section of the ordinance that meets any one of the following thresholds:

- (1) A municipal or school building with five thousand (5,000) square feet or more of gross floor area;
- (2) A non-residential building with five thousand (5,000) square feet or more of gross floor area that is located in the Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts;
- (3) A residential building with ten (10) or more dwelling units that is located in the Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts; or
- (4) A residential apartment complex with ten (10) or more units that is located in the Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts.

In determining the gross floor area of a building or the number of dwelling units in a building or apartment complex, the current records of the South Portland Assessor shall apply.

Energy:— Electricity, natural gas, steam, hot or chilled water, heating oil, or other product for use in a building, or renewable on-site electricity generation, for purposes of

providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

Energy Performance Score:—. The numeric rating generated by the Benchmarking Tool that compares the energy usage of the building to that of similar buildings.

Energy Use Intensity (EUI):—. A score generated by the Energy Star Portfolio Manager, or by an equivalent Benchmarking Tool adopted by the City of South Portland Sustainability Coordinator, indicating energy used per square foot of gross floor area in kBtus (1,000 British Thermal Units).

Gross Floor Area:—. the total square footage, on all floors, at, above, and below grade, of all building components—including spaces without heating, ventilation, or air conditioning—as depicted in building layout diagrams in the current records of the South Portland Assessor.

Owner. Any of the following:

- (1) An individual or entity having title to a Covered Property;
- (2) An agent authorized to act on behalf of the owner of a Covered Property;
- (3) The net lessee in the case of a property subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options;
- (4) The board of managers or trustees in the case of a condominium; and/or
- (5) The board of directors or trustees in the case of a cooperative apartment corporation.

Site Energy. The amount of heat and electricity consumed by a Covered Property as reflected in utility bills or other documentation of actual energy use.

Source Energy. All the energy used in delivering energy to a Covered Property, including power generation and transmission and distribution losses, to perform a specific function, such as

but not limited to space conditioning, lighting, or water heating.

Tenant. A person or entity leasing, occupying or holding possession of a Covered Property.

Utility. An entity that distributes and sells Energy for Covered Properties.

(b) Purpose.

In keeping with the City of South Portland Climate Action Plan, and to encourage efficient use of energy and to reduce the emission of greenhouse gases, this section requires owners of Covered Properties to annually measure and disclose energy and water usage to the South Portland Sustainability Coordinator. Furthermore, this section authorizes the Sustainability Coordinator to collect energy usage data to enable more effective energy and climate protection planning by the City and others. It also is intended to provide information to the real estate marketplace to enable its members to make decisions that foster better energy performance.

(c) Applicability.

This section is applicable to all Covered Properties as defined in ~~Section~~ Sec. 27-16001701(a).

(d) Energy Performance Report and Schedule.

- (1) Covered Property owners subject to reporting requirements shall furnish an Energy Performance Report outlining the previous calendar year's energy and water use of each applicable property, as well as other building characteristics necessary to evaluate absolute and relative energy use intensity. Building owners shall report this information using the Benchmarking Tool.
- (2) Energy Performance Reports for Covered Properties shall be submitted annually to the South Portland

Sustainability Coordinator by May 1 (or the first business day thereafter if May 1 is a Saturday or Sunday) according to the following implementation schedule:

(a) For Covered Properties existing as of the date of adoption of this section of the ordinance, the first required reporting date is May 1, 2018.

(b) For newly constructed Covered Properties or for properties that are enlarged such that the building exceeds the reporting thresholds, the owner shall fulfill the requirements of this section beginning with the first full calendar year after the building receives its Certificate of Occupancy.

~~(c) For a new or enlarged Covered Property that has not accumulated 12 months of energy use data by the first applicable reporting date following occupancy, owners shall comply with this section in the following year.~~

(3) Notwithstanding the foregoing, the South Portland Sustainability Coordinator shall develop a procedure for establishing alternative reporting dates for owners who supply timely notification of extenuating circumstances that delay compliance with the reporting requirements.

(e) Energy Performance Report Contents.

The Energy Performance Report must be completed using a format provided by the South Portland Sustainability Coordinator and, in addition to other descriptive information required by the Benchmarking Tool, shall include the following:

- (1) For a building type for which a Portfolio Manager benchmark score is available, a score result between one (1) and one hundred (100); or
- (2) If a Portfolio Manager benchmark score is not available, an Energy Use Intensity (EUI) score may be satisfactory; or

(3) If insufficient information is available to achieve a Portfolio Manager Benchmark score or an EUI score, ~~an~~ a detailed explanation of why the requirements were not met ~~sufficient in detail~~, as determined by the Sustainability Coordinator.

~~(4) The Report shall identify information on any non-residential tenants who did not provide needed data or authorization to obtain information from the utility including the tenant's name, contact information, and gross floor area leased; and whether whole-building data was included for all utilities, or, if partial-building utility data was included, which set(s) of utility data were partial, and which covered the whole building.~~

(f) Procedure.

Covered Property owners shall enter data in Energy Star Portfolio Manager and benchmark their building(s) using whole-building utility data. Whole-building utility data can be obtained from a utility company (with tenant authorization where required), from ~~master~~ meters, or from tenants.

(1) If a utility company has made aggregated utility data available to building owners, then a building owner must benchmark using whole-building utility data from that utility.

(2) When a building owner does not have whole-building information sufficient to fulfill the requirements of this section, and has made a reasonable effort to obtain the information required ~~or authorization to obtain that information from the utility from a tenant, but that information has not been received from that tenant~~, the building owner shall not be relieved of their benchmarking obligations, and shall instead submit a partial-building benchmarking report.

(3) A partial-building benchmarking report shall include any available whole-building information (including any available aggregated utility data), any tenant information received ~~including square footage covered by energy and water data submitted~~ (where applicable), and

~~all common area information. If it is reasonable to estimate usage of a tenant that refuses to provide the necessary information or an authorization to obtain that information from the utility, this may be done with prior approval of the Sustainability Coordinator.~~

~~(4) The report shall be submitted annually to, and maintained by, the City's Sustainability Coordinator.~~

~~**(g) Provision of Benchmarking Information by Tenants to the Owner**~~

~~The objective of this provision is for Owners to secure authorization from Tenants, if any, in order to obtain Benchmarking information from utilities for the Tenants' units, thus enabling utilities to provide the Owner with whole-building utility data and obviating the need for Tenants to submit Benchmarking information. Nevertheless, each Tenant located in a Covered Property shall, within 30 days of a request by the Owner and in a form to be determined by the South Portland Sustainability Coordinator, provide all information that cannot otherwise be acquired by the Owner and that is needed to comply with the requirements of this section.~~

~~**(hg) Five Year Comprehensive Energy Audit Requirements.**~~

~~(1) Owners of each Covered Property subject to the reporting requirements of this section shall complete and submit to the Sustainability Coordinator an additional audit, as described below, within five years of the first annual Energy Performance Report deadline and every five years thereafter. The audit must meet the following criteria:~~

~~(a) Benchmarking audits must be performed by a licensed professional engineer every five years.~~

~~(b) The benchmarking audit shall consist of a review of the owner's meter data for up to the most recent three years, as appropriate, and include a determination as to whether accurate data is being used and whether the Portfolio Manager tool is being appropriately applied. Any~~

inconsistencies shall be documented and recommendations for corrections shall be provided.

(2) Exemptions: Owners of each building subject to the requirement of this subsection are not required to complete an audit for a given filing period, if any of the following circumstances exist:

(a) The building is to be fully demolished within six months of when the assessment or action would otherwise be due.

(b) The building is fully vacant for the five-year period.

(ih) Notification of Covered Properties.

Between September 1 and December 1 of each year, the City of South Portland Sustainability Coordinator shall notify Owners of Covered Properties of their obligation to input energy use into the Benchmarking Tool. By January 15 of each year, the Sustainability Coordinator shall post the list of the addresses of Covered Properties on a public website.

(ji) Qualifications of Benchmarkers.

The South Portland Sustainability Coordinator may establish minimum proficiency requirements for the users of Benchmarking Tools.

(kj) Publication of Benchmarking Information.

The South Portland Sustainability Coordinator shall make available to the public the Benchmarking Information for Covered Properties for each calendar year of reporting no later than September 1 of the following year.

(1) Benchmarking information received by the Sustainability Coordinator for the first year a Covered Property is required to provide an energy performance report will not be published except to disclose whether or not the Covered Property is in compliance with this section.

(2) The South Portland Sustainability Coordinator shall make available to the public and update at least annually, the following information:

(a) Summary statistics on Energy consumption for Covered Properties derived from aggregating Benchmarking Information;

(b) Summary statistics on overall compliance with this section;

(c) For each Covered Property:

(1) The status of compliance with the requirements of this section;

(2) Annual summary statistics for the Covered Property, including EUI, annual greenhouse gas emissions, water use per square foot, and an Energy Performance Score where available; and

(3) A comparison of Benchmarking Information across calendar years for any years such Covered Property has input the total Energy consumed and other descriptive information for such Properties.

(lk) Assessing Results

By December 31, 2026, the South Portland Sustainability Coordinator shall review the effect of this section on improving energy performance for Covered Properties. If energy performance for buildings in Covered Properties has not improved significantly, the Sustainability Coordinator shall make recommendations to the City Council as to whether amendments to this section or other measures are necessary to improve building energy performance for Covered Properties.

(ml) Maintenance of Records

(1) Owners shall maintain records as the South Portland Sustainability Coordinator determines is necessary for carrying out the purposes of this section, including, but not limited to, energy and water bills and other

documents received from Tenants and/or Utilities. Such records shall be preserved by Owners for a period of three (3) years. At the request of the Sustainability Coordinator, such records shall be made available for inspection by the Sustainability Coordinator.

(2) At the time ownership of any occupied Covered Property is transferred, the buyer and seller shall arrange for the seller to provide to the buyer all information necessary for the buyer to report Benchmarking Information for the entire year in a timely manner. It shall be a violation of this section for any seller to fail to so provide any such information.

(am) Waivers

The Sustainability Coordinator shall grant a waiver from a requirement of this section if he/she determines that either, (1) due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this section would cause hardship, or (2) an application for a permit to substantially remodel or demolish the facility will be filed not later than 6 months after the time of sale.

(an) Violations

It shall be unlawful for any entity or person to fail to comply with the requirements of this section or misrepresent any material fact in a document required to be prepared or disclosed by this section. Any delay in report submission greater than thirty (30) calendar days shall be deemed a violation.

(ap) Compliance Incentives

Notwithstanding relevant ordinance provisions with fee requirements to the contrary, the Owner of a Covered Property for which at least one Energy Performance Report has been issued, and which the South Portland Sustainability Coordinator deems is in compliance with the Energy and Water Use

Benchmarking provisions, shall, for however long a period such compliance is maintained, be excused from paying the first \$5,000 per project of any building, electrical, plumbing, demolition, site plan, or other City application, review, or inspection fee(s) associated with building construction or redevelopment on the Covered Property. In addition, to the extent otherwise allowed by law, the Owner of a Covered Property in compliance with these provisions shall also be eligible for any financial incentives, reduced interest loans, assistance with the cost of meters that would aid in the collection by owners of whole-building data by owners, or other programs the City of South Portland may provide associated with improving energy and water efficiency and/or meeting the objectives of the City's Climate Action Plan.