

# Model Building Benchmarking and Performance Standards Ordinance

## 1. STATEMENT OF PURPOSE

The purpose of this ordinance is to improve building performance, reduce operating costs, conserve resources for the equitable benefit of the residents of [jurisdiction], and mitigate climate change.<sup>1</sup>

## 2. DEFINITIONS

- 2.1. AGGREGATED WHOLE-BUILDING DATA means a sum of ENERGY or water data for an entire COVERED PROPERTY, which may include a single occupant or a group of separately metered TENANTS.<sup>2</sup>
- 2.2. ALTERNATIVE COMPLIANCE PAYMENT (ACP) means a payment established by the DEPARTMENT that an OWNER pays to comply with this ordinance in lieu of a COVERED PROPERTY achieving required levels of performance.<sup>3</sup>
- 2.3. BASELINE YEAR means, for any individual COVERED PROPERTY, the first calendar year such property is required to BENCHMARK.<sup>4</sup>
- 2.4. BENCHMARK means to input and submit the total ENERGY and water consumed for a COVERED PROPERTY for the previous calendar year and other information required by the BENCHMARKING TOOL. Total ENERGY and water consumption shall not include separately metered uses that are not integral to building operations, as determined by the DIRECTOR.<sup>5</sup>

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<sup>1</sup> Based on Institute for Market Transformation, Short Model BPS Law (hereinafter “IMT Short BPS”), Statement of Purpose (2022), available at <https://www.imt.org/resources/short-building-performance-standard-model-law/>.

<sup>2</sup> Based on City Energy Project, Annotated Model Ordinance Language for Improving Performance of Existing Buildings (hereafter “CEP Improving Performance”) § A.1 (2018), available at [https://www.cityenergyproject.org/wp-content/uploads/2019/01/City\\_Energy\\_Project\\_Resource\\_Library\\_Annotated\\_Model\\_Ordinance.pdf](https://www.cityenergyproject.org/wp-content/uploads/2019/01/City_Energy_Project_Resource_Library_Annotated_Model_Ordinance.pdf).

<sup>3</sup> Based on IMT Short BPS § 1, ALTERNATIVE COMPLIANCE PAYMENT. “The use of the term ‘ALTERNATIVE COMPLIANCE PAYMENT’ instead of the term ‘fine’ or ‘penalty’ will facilitate OWNERS passing through some or all of the costs to commercial TENANTS and thereby better align landlord and TENANT incentives.” *Id.*, Discussion.

<sup>4</sup> Based on CEP Improving Performance § A.6.

<sup>5</sup> Based on CEP Improving Performance § A.7.

- 2.5. BUILDING PERFORMANCE FUND means the fund established under Section 19.<sup>6</sup>
- 2.6. BENCHMARKING SUBMISSION means:
- 2.6.1. SHARED BENCHMARKING INFORMATION; and
- 2.6.2. additional information, determined by the DIRECTOR, that is a subset of information entered into or generated by the BENCHMARKING TOOL.<sup>7</sup>
- 2.7. BENCHMARKING TOOL means the U.S. Environmental Protection Agency’s ENERGY STAR® PORTFOLIO MANAGER, or any additional or alternative tool adopted by the DIRECTOR, used to track and assess the ENERGY and water use of certain properties relative to similar properties.<sup>8</sup>
- 2.8. CO-LOCATED BUILDINGS<sup>9</sup> means buildings located on one or more parcels so no parcel in the group is more than [500] feet away from the nearest parcel in the group, measured from the nearest points of the two parcels in question.<sup>10</sup>
- 2.9. CONDOMINIUM means a property that combines separate ownership of individual units with common ownership of other elements such as common areas.<sup>11</sup>
- 2.10. COVERED CITY PROPERTY is COVERED PROPERTY that is owned, leased, or managed by the [jurisdiction] so that the [jurisdiction] regularly pays all or part of the annual energy and/or water bills.<sup>12</sup>
- 2.11. COVERED NON-CITY PROPERTY means COVERED PROPERTY other than a COVERED CITY PROPERTY.<sup>13</sup>

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<sup>6</sup> Based on IMT Short BPS § 1, BUILDING PERFORMANCE STANDARD FUND or BPS FUND.

<sup>7</sup> Based on CEP Improving Performance § A.8.

<sup>8</sup> CEP Improving Performance § A.9.

<sup>9</sup> IMT recently updated its COVERED PROPERTY definition. This version, which has yet to be published, will be referenced here. IMT Short BPS § 1 COVERED PROPERTY (unpublished model statute) (on file with IMT).

<sup>10</sup> This definition is a guideline suggested by IMT, but can be updated to fit jurisdictional needs. IMT Short BPS § 1 COVERED PROPERTY (unpublished model statute) (on file with IMT).

<sup>11</sup> Based on CEP Improving Performance § A.11.

<sup>12</sup> Based on CEP Improving Performance § A.13.

<sup>13</sup> Based on CEP Improving Performance § A.14. “Local governments should focus initially on larger properties, to maximize [jurisdiction]-wide impacts.” *Id.*, Discussion.

2.12. COVERED PROPERTY<sup>14</sup>

2.12.1. COVERED PROPERTY means any of the following with at least [25,000] square feet of GROSS FLOOR AREA:<sup>15</sup>

2.12.1.1. a single building;

2.12.1.2. one or more buildings owned as a CONDOMINIUM, and governed by a single board of managers;

2.12.1.3. two or more buildings served in whole or in part by the same:

2.12.1.3.1. electric or gas meter; or

2.12.1.3.2. heating or cooling system that is not a DISTRICT ENERGY SYSTEM; or<sup>16</sup>

2.12.1.4. a campus of two or more CO-LOCATED BUILDINGS that collectively serve a common purpose and where the majority of each building's space provides functions and services typically associated with exactly one of the following PROPERTY TYPE(S) as defined by ENERGY STAR:

2.12.1.4.1. K-12 school,

2.12.1.4.2. hospital,

2.12.1.4.3. hotel,

2.12.1.4.4. multifamily housing, or

2.12.1.4.5. senior care community.<sup>17</sup>

2.12.2. A building, space, or group of buildings or spaces, that is sub-metered or otherwise subject to easy determination of the resource consumption attributable to each individual building, space, or group of buildings or spaces, shall be treated as a separate COVERED PROPERTY. The DEPARTMENT, in its sole discretion, shall determine whether and which buildings and spaces are subject to this exception.

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<sup>14</sup> Based on IMT Short BPS § 1 COVERED PROPERTY (unpublished model statute) (on file with IMT).

<sup>15</sup> Based on IMT Short BPS § 1 COVERED PROPERTY (unpublished model statute) (on file with IMT).

<sup>16</sup> A jurisdiction may choose to add a water meter to this list, should it desire. *Id.*, Discussion.

<sup>17</sup> Jurisdictions can choose to expand this list to include other PROPERTY TYPE(S), such as universities. *Id.*, Discussion.

- 2.12.3. COVERED PROPERTY does not include:
  - 2.12.3.1. Any facility<sup>18</sup> that uses the majority of its ENERGY:
    - 2.12.3.1.1. for manufacturing;
    - 2.12.3.1.2. to generate electric power or district thermal ENERGY for off-site consumption;
    - 2.12.3.1.3. for communications infrastructure; or
    - 2.12.3.1.4. for purposes other than heating, cooling, ventilation, domestic hot water, cooking, lighting, appliances, office equipment, data centers, or other plug loads;
  - 2.12.3.2. Property owned by the federal government; or
  - 2.12.3.3. Other PROPERTY TYPE(S) that do not meet the purpose of this ordinance as determined by the DEPARTMENT.
- 2.13. DEPARTMENT means the agency or entity overseeing administration of this ordinance.<sup>19</sup>
- 2.14. DIRECTOR means the head of the DEPARTMENT.<sup>20</sup>
- 2.15. DISTRICT ENERGY SYSTEM means a system serving multiple COVERED PROPERTIES and consisting of thermal ENERGY generation, transfer, and distribution equipment providing thermal ENERGY in the form of heat and/or heat rejection.<sup>21</sup>
- 2.16. ENERGY means electricity, natural gas, steam, or other product sold by a UTILITY to a customer of a COVERED PROPERTY, or renewable on-site electricity generation, for the purpose of providing:
  - 2.16.1. heating,
  - 2.16.2. cooling,
  - 2.16.3. lighting,
  - 2.16.4. water heating, or
  - 2.16.5. power or fuel to other end-uses as recorded in the BENCHMARKING TOOL.<sup>22</sup>

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<sup>18</sup> Other industrial facilities designated by Standard Industrial Classification codes 20–39 can also be included here. CEP Improving Performance § A.15.

<sup>19</sup> Based on IMT Short BPS § 1, DEPARTMENT.

<sup>20</sup> Based on CEP Improving Performance § A.18. “DIRECTOR is the term used in this model ordinance. However, each jurisdiction must determine the appropriate individual or group that will be responsible for oversight. DIRECTOR can be replaced by ‘agency,’ ‘DEPARTMENT,’ ‘mayor,’ or another option that makes the most sense for that particular jurisdiction.” *Id.*, Discussion.

<sup>21</sup> Based on IMT Short BPS § 1, DISTRICT ENERGY SYSTEM.

<sup>22</sup> Based on CEP Improving Performance § A.19.

- 2.17. ENERGY STAR SCORE means the 1-100 numeric rating generated by the ENERGY STAR PORTFOLIO MANAGER tool as a measurement of a building's ENERGY efficiency.<sup>23</sup>
- 2.18. ENERGY STAR PORTFOLIO MANAGER means the tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative ENERGY performance of buildings.<sup>24</sup>
- 2.19. EXECUTIVE means the elected leader of [jurisdiction].<sup>25</sup>
- 2.20. FINAL PERFORMANCE STANDARD(S) means the numeric value of a PERFORMANCE METRIC, which COVERED PROPERTIES must achieve by [date].<sup>26</sup>
- 2.21. FINANCIAL HARDSHIP
  - 2.21.1. The DEPARTMENT may define FINANCIAL HARDSHIP by promulgating rules in accordance with Section 18.<sup>27</sup>
  - 2.21.2. Until the DEPARTMENT promulgates rules under Section 2.20.1, FINANCIAL HARDSHIP means a COVERED PROPERTY:
    - 2.21.2.1. had arrears of property taxes or water or refuse charges that resulted in the COVERED PROPERTY's inclusion, within the prior 2 years, on the city's annual tax lien sale list; or
    - 2.21.2.2. has a court-appointed receiver in control of the asset due to financial distress; or
    - 2.21.2.3. is owned by a financial institution through default by the borrower; or
    - 2.21.2.4. has a senior mortgage subject to a notice of default.<sup>28</sup>
- 2.22. FRONTLINE COMMUNITIES means those that experience the most immediate and worst impacts of climate change, and are most often communities of color, indigenous, or low-income.<sup>29</sup>

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<sup>23</sup> CEP Improving Performance § A.21.

<sup>24</sup> CEP Improving Performance § A.22.

<sup>25</sup> Based on IMT Short BPS § 1, EXECUTIVE. "Instead of 'EXECUTIVE,' most jurisdictions should use the appropriate title such as 'Mayor' or 'Governor'. *Id.*, Discussion.

<sup>26</sup> Based on IMT Short BPS § 1, FINAL PERFORMANCE STANDARD(S).

<sup>27</sup> Based on IMT Short BPS § 9.1, third bullet.

<sup>28</sup> Based on Institute for Market Transformation, Model Ordinance for a Building Performance Standard § 1, FINANCIAL HARDSHIP (Oct. 2021), available at [https://www.imt.org/wp-content/uploads/2021/01/IMT\\_Final\\_Annotated\\_Model\\_BPS\\_Ordinance\\_Oct2021.pdf](https://www.imt.org/wp-content/uploads/2021/01/IMT_Final_Annotated_Model_BPS_Ordinance_Oct2021.pdf).

<sup>29</sup> Based on IMT Short BPS § 1, FRONTLINE COMMUNITIES. "Where possible use a definition that has already been established in your jurisdiction or work with community members and local

- 2.23. GROSS FLOOR AREA means the total area of a COVERED PROPERTY, measured between the outside surface of the exterior walls of the COVERED PROPERTY's building(s). The DEPARTMENT shall publish guidance governing the calculation of GROSS FLOOR AREA, including areas to be excluded from the calculation.<sup>30</sup>
- 2.24. INTERIM PERFORMANCE STANDARD(S) means the numeric value of a PERFORMANCE METRIC, which COVERED PROPERTIES must achieve by a fixed date every [five] years from [the effective date of this ordinance].<sup>31</sup>
- 2.25. OWNER means:
- 2.25.1. an individual or entity possessing title to a COVERED PROPERTY;
  - 2.25.2. the board of the OWNER's association, in the case of a CONDOMINIUM;
  - 2.25.3. the master association, in the case of a CONDOMINIUM, where the powers of an OWNER's association are exercised by or delegated to a master association;
  - 2.25.4. the board of directors, in the case of a cooperative apartment corporation; or
  - 2.25.5. an agent authorized to act on behalf of any of the above.<sup>32</sup>
- 2.26. PERFORMANCE METRIC(S) means each of the objectively verifiable numeric measures of building performance regulated by this ordinance as laid out in Section 13.<sup>33</sup>
- 2.27. PROPERTY TYPE(S) means a category of COVERED PROPERTIES subject to the same INTERIM and FINAL PERFORMANCE STANDARDS, as defined by the DEPARTMENT. COVERED PROPERTIES within each PROPERTY TYPE shall have shared characteristics that facilitate the implementation and enforcement of this ordinance. The DEPARTMENT may define one or more

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equity and racial justice experts to find an appropriate definition for your community.” *Id.*, Discussion.

<sup>30</sup> Based on IMT Short BPS §1, GROSS FLOOR AREA. “This definition of GROSS FLOOR AREA is consistent with the way the term is defined in ENERGY STAR PORTFOLIO MANAGER”. *Id.*, Discussion.

<sup>31</sup> Based on IMT Short BPS § 1, INTERIM PERFORMANCE STANDARD(S).

<sup>32</sup> Based on IMT Short BPS § 1, OWNER. “All potential use cases are included under this definition, so that the term OWNER can be used generically throughout the remainder of this ordinance without having to call out special cases. Jurisdictions should consider looking for and referencing an appropriate definition of OWNER that already exists in the jurisdiction’s laws.” *Id.*, Discussion.

<sup>33</sup> Based on IMT Short BPS § 1, PERFORMANCE METRIC(S).

PROPERTY TYPE(S) to be identical to ENERGY STAR PROPERTY TYPE(S).<sup>34</sup>

2.28. SHARED BENCHMARKING INFORMATION<sup>35</sup> means information generated by the BENCHMARKING TOOL and descriptive information about the physical COVERED PROPERTY and its operational characteristics, which is shared with the public. The information, as defined by the ENERGY STAR PORTFOLIO MANAGER glossary, shall include, but is not limited to:

2.28.1. descriptive information:

- 2.28.1.1. property address;
- 2.28.1.2. primary use;
- 2.28.1.3. GROSS FLOOR AREA;
- 2.28.1.4. number of floors;
- 2.28.1.5. number of years the property has been ENERGY STAR® Certified and the last approval date, if applicable; and
- 2.28.1.6. individual or entity responsible for the BENCHMARKING SUBMISSION;

2.28.2. output information:

- 2.28.2.1. site and source ENERGY use intensity;
- 2.28.2.2. weather normalized site and source ENERGY use intensity;
- 2.28.2.3. the ENERGY STAR SCORE, where available;
- 2.28.2.4. total annual greenhouse gas emissions;
- 2.28.2.5. monthly ENERGY use, by fuel type;
- 2.28.2.6. indoor water use and water use intensity (consumption per gross square foot);
- 2.28.2.7. outdoor water use (where available);
- 2.28.2.8. total water use;
- 2.28.2.9. ENERGY STAR Water Score, where available; and
- 2.28.2.10. general comments section, if needed, to explain the building's ENERGY STAR SCOREs; and

2.28.3. compliance or noncompliance status.

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<sup>34</sup> Based on IMT Short BPS § 1 PROPERTY TYPE(S).

<sup>35</sup> CEP Improving Performance § A.32. "SHARED BENCHMARKING INFORMATION is a subset of the BENCHMARKING SUBMISSION information reported to the jurisdiction. Collecting and sharing the greenhouse gas metric is encouraged if the jurisdiction does not have more accurate, localized figures on greenhouse gas (GhG) emissions. Jurisdictions should evaluate the accuracy of the output generated by Portfolio Manager for their individual jurisdiction, as the EPA uses regional coefficients to calculate greenhouse gasses and the results do not always reflect localized conditions." *Id.*, Discussion.

- 2.29. TENANT means a person or entity occupying or holding possession of a building, part of a building or premises pursuant to a rental or lease agreement.<sup>36</sup>
- 2.30. UTILITY means an entity that distributes and/or sells natural gas, electric, water, or thermal ENERGY services for buildings.<sup>37</sup>

# Office of Building Performance and Advisory Boards

## 3. OFFICE OF BUILDING PERFORMANCE

- 3.1. The Office of Building Performance is established within the DEPARTMENT to oversee:
  - 3.1.1. Implementation of, compliance with and enforcement of this ordinance;
  - 3.1.2. benchmarking;
  - 3.1.3. building performance standards; and
  - 3.1.4. any future building performance laws.
- 3.2. When established, the office shall have [x] full-time positions.
- 3.3. The office's budget for fiscal year [year] shall be [\$].<sup>38</sup>

## 4. COMMUNITY ACCOUNTABILITY BOARD (CAB)

- 4.1. **CAB Member Nomination.** The [EXECUTIVE] shall nominate the members of the CAB by [date].<sup>39</sup> Board members shall each take office upon confirmation by a majority of the Legislature. If one or more nominees are neither confirmed nor refused confirmation within [60] days of their nomination, they shall take office on the 61st day. If the [60]-day period ends during a recess of the Legislature, the period shall

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<sup>36</sup> Based on CEP Improving Performance § A.38.

<sup>37</sup> CEP Improving Performance § A.39.

<sup>38</sup> IMT Short BPS § 2.1. "It is critical to the success of this ordinance that the DEPARTMENT have adequate staff and resources to implement. See IMT's 'Putting Policy in Action: Building Performance Standard Implementation Guide' Appendix B for examples of budgets and staffing that three jurisdictions have devoted to their BPS." *Id.*

<sup>39</sup> The [EXECUTIVE] should nominate members to the CAB at least six months before the second group of building OWNERS submit their first round of benchmarking data in [2026]. This allows the CAB to form in time to advise on the selection of members of the BPIB.



be extended six days after the day on which the Legislature reconvenes.

4.2. **CAB Responsibilities.** The CAB shall:

- 4.2.1. advise on the selection of members of the BUILDING PERFORMANCE IMPROVEMENT BOARD (BPIB);
- 4.2.2. advise on writing rules to implement this ordinance and complementary programs and policies;
- 4.2.3. recommend metrics and data to track the impact of this ordinance on FRONTLINE COMMUNITIES and ensure that all government agencies involved do not infringe upon the rights of FRONTLINE COMMUNITIES;
- 4.2.4. develop a plan to allocate the BUILDING PERFORMANCE FUND public investments to improve the performance of COVERED BUILDINGS and ensure that those investments benefit FRONTLINE COMMUNITIES; the CAB shall reevaluate the plan annually;
- 4.2.5. host, in partnership with the BPIB and the DEPARTMENT, Community Accountability Meetings to gather input regarding the design and implementation of the performance standards and complementary programs;
- 4.2.6. conduct, with the DEPARTMENT, broad outreach to communities of color, low-income populations, and other representatives of FRONTLINE COMMUNITIES to solicit participation in Community Accountability Meetings;
- 4.2.7. review rules proposed by the DEPARTMENT to implement this ordinance to assure that they will benefit FRONTLINE COMMUNITIES;
- 4.2.8. perform other responsibilities that the CAB deems important to its mission.<sup>40</sup>

4.3. **CAB Representation and Membership.** The CAB shall include more than [X] representatives of FRONTLINE COMMUNITIES and experts in areas related to racial and social equity. At least [X] members of the CAB shall be residents of [jurisdiction].<sup>41</sup>

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<sup>40</sup> Based on IMT Short BPS § 3.2.

<sup>41</sup> Based on IMT Short BPS § 3.1.

- 4.4. **CAB Funds.** [\$] shall be budgeted annually to the CAB to commission research and hire experts to advise and assist in the implementation of this ordinance.<sup>42</sup>
- 4.5. **Community Accountability Meetings.** Community Accountability Meetings held in-person shall be scheduled in central locations with food and childcare provided, as needed.<sup>43</sup> Virtual meetings shall be scheduled in a way that supports member participation.<sup>44</sup>
- 5. **BUILDING PERFORMANCE IMPROVEMENT BOARD (BPIB)**
  - 5.1. **BPIB Member Nomination.** The [EXECUTIVE] shall consider CAB recommendations and nominate the members of the BPIB by [date].<sup>45</sup> Board members shall each take office upon confirmation by a majority of the Legislature. If one or more nominees are neither confirmed nor refused confirmation within [60] days of their nomination, they shall take office on the 61st day. If the [60]-day period ends during a recess of the Legislature, the period shall be extended six days after the day on which the Legislature reconvenes.<sup>46</sup>
  - 5.2. **BPIB Responsibilities.** The BPIB shall:
    - 5.2.1. consult with the CAB to design and recommend to the DEPARTMENT rules for holding agencies accountable for progress against the goals of this ordinance;
    - 5.2.2. advise the DEPARTMENT on implementation of this ordinance.

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<sup>42</sup> IMT Short BPS § 3.3.

<sup>43</sup> Based on IMT Short BPS § 4.7.

<sup>44</sup> IMT Short BPS § 4.7. “Community Accountability Meetings should take place at an appropriate time to allow for as many members of the community to attend as possible, regardless of whether the meeting is held in-person, virtually, or in a hybrid setting. If the meeting is held virtually or in a hybrid format, there should be options to attend via audio only. Meetings should be logged and a recording made publicly available, to allow community members who could not attend a chance to review discussions.” *Id.*, Discussion.

<sup>45</sup> The [EXECUTIVE] should nominate members to the BPIB at least six months before the final category of building OWNERS submit their first round of benchmarking data in [2027]. This allows the BPIB to form in time to review at least two years of benchmarking data before it recommends PERFORMANCE METRIC(S) and FINAL PERFORMANCE STANDARDS. *See* Summary of IMT’s Model Ordinance for a Building Performance Standard, Inst. for Mkt. Transformation 11 (2021), available at <https://www.imt.org/wp-content/uploads/2021/01/IMT-BPS-Model-Ordinance-Summary-January-2021-1-1.pdf>.

<sup>46</sup> IMT Short BPS § 4.1.

- 5.2.3. recommend PERFORMANCE METRIC(S) and FINAL PERFORMANCE STANDARDS for each PROPERTY TYPE to the DEPARTMENT by [date];<sup>47</sup>
- 5.2.4. review submitted Building Performance Action Plans (BPAPs) as requested by the DEPARTMENT and make recommendations for changes, approval or denial by the DEPARTMENT within [30] days of submission;
- 5.2.5. review BPAPs upon an appeal by the OWNER of a COVERED PROPERTY whose BPAP application has been rejected by the DEPARTMENT, in accordance with Section 21.3;
- 5.2.6. recommend procedures for exemptions, extensions, and adjustments pursuant to Section 15;
- 5.2.7. perform other responsibilities that the BPIB deems important to its mission.<sup>48</sup>
- 5.3. **BPIB Representation.** The BPIB shall broadly represent affected stakeholders. The BPIB shall consist of [X] members.<sup>49</sup>
- 5.4. **BPIB Membership.** At least [X] members of the BPIB shall be residents of [jurisdiction]. The BPIB shall include representatives, or their designees, from the following entities and professions:<sup>50</sup>
  - 5.4.1. the DIRECTOR of the DEPARTMENT;
  - 5.4.2. local UTILITY;
  - 5.4.3. provider of ENERGY efficiency, building resilience or renewable ENERGY services or consulting;
  - 5.4.4. affordable housing OWNER or operator;
  - 5.4.5. affordable housing TENANT;
  - 5.4.6. labor union representing workers who operate or service COVERED BUILDINGS;
  - 5.4.7. technical building design professional;
  - 5.4.8. engineer;

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<sup>47</sup> The BPIB should recommend PERFORMANCE METRIC(S) and FINAL PERFORMANCE STANDARDS after assessing two years of benchmarking data. *See* Summary of IMT's Model Ordinance for a Building Performance Standard, Inst. for Mkt. Transformation 11 (2021), available at <https://www.imt.org/wp-content/uploads/2021/01/IMT-BPS-Model-Ordinance-Summary-January-2021-1-1.pdf>.

<sup>48</sup> IMT Short BPS § 4.2. "The intention is that this ordinance will use the BPIB as the sole venue for appeal and will reference and utilize the jurisdiction's pre-existing standard appeal process rules. If the jurisdiction's laws prevent the BPIB from serving as the sole venue for appeal, then the BPIB should not serve an appellate role." *Id.*

<sup>49</sup> Based on IMT Short BPS § 4.3.

<sup>50</sup> Based on IMT Short BPS § 4.4.

- 5.4.9. facility operations professional;
- 5.4.10. nonprofit dedicated to climate action, resiliency, public health, green building, economic development, or building decarbonization;
- 5.4.11. nonprofit dedicated to racial equity or environmental justice;
- 5.4.12. multifamily building OWNER or operator; and
- 5.4.13. nonresidential building OWNER or operator.
- 5.5. **Department Support.** DEPARTMENT staff shall support the BPIB.<sup>51</sup>
- 5.6. **BPIB Funds.** [\$] shall be budgeted annually to the BPIB to commission research and hire experts to advise and assist on the implementation of this ordinance.<sup>52</sup>

## 6. BOARD RULES

- 6.1. **Appointment Terms.** All appointments to the COMMUNITY ACCOUNTABILITY BOARD and BUILDING PERFORMANCE IMPROVEMENT BOARD shall be for a term of [X] years.<sup>53</sup>
- 6.2. **Term Expiration.** Board members shall be permitted to serve after their terms have expired until reappointed or replaced by a new appointee.<sup>54</sup>
- 6.3. **Compensation.** The DEPARTMENT must fairly compensate CAB and BPIB members. The DEPARTMENT must provide stipends to cover the cost of childcare and information technology needs as determined by the CAB.<sup>55</sup>
- 6.4. **Meeting Requirements.** Equitable engagement is important for these groups. Meetings shall take place at collectively agreed times, dates and physical or virtual locations. Meetings shall have appropriate amenities, including meals.<sup>56</sup>

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<sup>51</sup> IMT Short BPS § 4.5.

<sup>52</sup> IMT Short BPS § 4.6.

<sup>53</sup> Based on IMT Short BPS § 7.1.

<sup>54</sup> Based on IMT Short BPS § 7.2.

<sup>55</sup> Based on IMT Short BPS § 7.3.

<sup>56</sup> Based on IMT Short BPS § 7.4.

# Benchmarking

## 7. COLLECTING AND ENTERING BENCHMARKING DATA

- 7.1. **Collecting and Entering Benchmarking Data.** The OWNER of a COVERED PROPERTY must annually collect and enter into the BENCHMARKING TOOL all AGGREGATED-WHOLE BUILDING DATA data needed to BENCHMARK the entire property for the previous calendar year (January 1 to December 31), in a manner that conforms to latest guidance for the BENCHMARKING TOOL.<sup>57</sup>
- 7.2. **Compiling Benchmarking Data.** The OWNER shall compile AGGREGATED WHOLE-BUILDING DATA for the COVERED PROPERTY's ENERGY and water use by:
  - 7.2.1. obtaining AGGREGATED WHOLE-BUILDING DATA from a UTILITY,<sup>58</sup>
  - 7.2.2. collecting data from all TENANTS, and/or
  - 7.2.3. reading a master meter.<sup>59</sup>
- 7.3. **Requesting Benchmarking Data.** If the OWNER of a COVERED PROPERTY does not have access to aggregated whole-building ENERGY and water data, the OWNER must request AGGREGATED WHOLE-BUILDING DATA from each UTILITY that provides ENERGY or water service to the COVERED PROPERTY. If a UTILITY does not provide aggregated whole-building ENERGY or water data, the OWNER of a COVERED PROPERTY must request ENERGY and water data from TENANTS as provided in Sections 7.4 to 7.7.<sup>60</sup>
- 7.4. **Tenant-Provided Data.** Within 30 days of the OWNER's request, nonresidential TENANTS in a COVERED PROPERTY must give the OWNER all information that is necessary to comply with this ordinance and cannot be obtained by the OWNER otherwise.<sup>61</sup>

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<sup>57</sup> Based on CEP Improving Performance § B.1.

<sup>58</sup> Based on CEP Improving Performance § B.1. "Ideally, the local UTILITY will be set up to upload AGGREGATED WHOLE-BUILDING DATA to the OWNER's account on a regular, recurring basis after the initial set-up is completed. See the City ENERGY Project resource, Engage with Utilities to Implement ENERGY Performance Policies." *Id.*, Discussion.

<sup>59</sup> Based on CEP Improving Performance § B.1.

<sup>60</sup> Based on CEP Improving Performance § B.2.

<sup>61</sup> Based on CEP Improving Performance § B.3. "This provision refers to both ENERGY consumption and operational characteristics (e.g. number of employees or computers) that an OWNER may not be able to easily determine. In practice, this provision should have limited applicability. OWNERS of buildings with TENANTS often have difficulty benchmarking because they may not know all of the

- 7.5. **Tenant Vacancy.** If the OWNER of a COVERED PROPERTY receives notice that a nonresidential TENANT intends to vacate a SPACE in the property, and utilities do not provide aggregated whole-building ENERGY and water data for the COVERED PROPERTY, then the OWNER must request information relating to the TENANT's ENERGY and water use for any period of occupancy relevant to the OWNER's obligation to BENCHMARK. The TENANT must give the information to the OWNER of the COVERED PROPERTY within 30 days of a request by the OWNER.<sup>62</sup>
- 7.6. **Data Usage.** Nothing in this ordinance shall be construed to permit a COVERED PROPERTY OWNER to use TENANT ENERGY or water usage data for purposes other than complying with this ordinance, nor shall this ordinance be construed to excuse a property OWNER from complying with federal or state laws governing direct access to TENANT UTILITY data from the responsible UTILITY.<sup>63</sup>
- 7.7. **Ownership Transfer.** When a COVERED PROPERTY changes ownership, the previous OWNER must promptly provide the new OWNER with all information needed to BENCHMARK for the period during which the previous OWNER was in possession of the COVERED PROPERTY.<sup>64</sup>

## 8. BENCHMARKING SUBMISSIONS

- 8.1. **When to Make a Benchmarking Submission.** The OWNER of each COVERED PROPERTY must electronically submit a BENCHMARKING SUBMISSION to the DIRECTOR each year by the date specified in Section 9.<sup>65</sup>
- 8.2. **What to Include in a Benchmarking Submission.** The BENCHMARKING SUBMISSION must include the information in

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SPACE-use characteristics of their TENANT spaces and, if their TENANTS are individually metered, they won't have access to their ENERGY consumption. This provision requires commercial TENANTS to provide the property OWNER with the ENERGY consumption and SPACE use characteristics required to BENCHMARK." *Id.*, Discussion.

<sup>62</sup> Based on CEP Improving Performance § B.4.

<sup>63</sup> Based on CEP Improving Performance § B.5.

<sup>64</sup> CEP Improving Performance § B.6.

<sup>65</sup> Based on CEP Improving Performance § C.1. "The benchmarking data for each COVERED PROPERTY must be electronically submitted to the jurisdiction using the ENERGY STAR PORTFOLIO MANAGER. Each jurisdiction must select the data fields from the Portfolio Manager that they would like to collect and create a custom reporting template that includes these field definitions. OWNERS will then be able to select the jurisdiction's template from a dropdown menu within the Portfolio Manager and submit their data to the DIRECTOR." *Id.*, Discussion.

Section 2.28 for the calendar year (January 1 to December 31) before the submission date.<sup>66</sup>

- 8.3. **Correcting Before Submission.** The OWNER must run all automated data quality checker functions available within the BENCHMARKING TOOL and verify that all data has been accurately entered into the tool. The OWNER must correct all missing or incorrect information as identified by the data quality checker prior to submitting the BENCHMARKING SUBMISSION to the DIRECTOR.<sup>67</sup>
- 8.4. **Correcting after Submission.** If the OWNER learns after submission that any information in a BENCHMARKING SUBMISSION is missing or incorrect, the OWNER must:
  - 8.4.1. revise the information reported in the BENCHMARKING TOOL, and
  - 8.4.2. provide the DIRECTOR with a corrected BENCHMARKING SUBMISSION within 30 days of learning of the missing or incorrect information.<sup>68</sup>
- 8.5. **[Benchmarking Data Maintained by a Utility.** Any UTILITY which provides ENERGY or water services to a COVERED PROPERTY must maintain the AGGREGATED WHOLE-BUILDING DATA for each property for at least the most recent 24 months. The data must be kept in an electronic format capable of being uploaded to the BENCHMARKING TOOL.]<sup>69</sup>

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<sup>66</sup> Based on CEP Improving Performance § C.2. “The data fields that can be collected in the ENERGY STAR PORTFOLIO MANAGER are continually updated and it is difficult to predict which fields will ultimately be of greatest value to the market and to researchers. Therefore, the listing of fields to be collected each year may be defined through a separate rulemaking process to maintain flexibility.” *Id.*, Discussion.

<sup>67</sup> Based on CEP Improving Performance § C.4. “The individual submitting the benchmarking report must run the data quality checker and correct any errors before submitting their report. The ENERGY STAR PORTFOLIO MANAGER includes a number of automated checks, which can identify possible typos, incorrect meter readings, missing information, incorrect units of measure, and other common data entry problems. Although the data quality checker is an automated function, it must be manually started by the user.” *Id.*, Discussion.

<sup>68</sup> Based on CEP Improving Performance § C.5.

<sup>69</sup> Based on CEP Improving Performance § C.6. “Utilities must maintain historical AGGREGATED WHOLE-BUILDING DATA for each COVERED PROPERTY within their service territories. However, the requirement to maintain historical AGGREGATED WHOLE-BUILDING DATA is enforceable only for jurisdictions with the authority to regulate utilities, such as municipally owned utilities.” *Id.*, Discussion.

## 9. BENCHMARKING SCHEDULE

The initial BENCHMARKING SUBMISSION for each COVERED PROPERTY must be submitted in accordance with the schedule in the following table. Subsequent BENCHMARKING SUBMISSIONs for each COVERED PROPERTY must be submitted by [May 1] of each year thereafter.<sup>70</sup>

### COVERED CITY PROPERTY

Property Type	Property Size	Initial Submission Date
Non-Residential	≥ [50k] sq. ft.	May 1, 2024
	≥ [25k] sq. ft.	May 1, 2025
Residential	≥ [50k] sq. ft.	May 1, 2025
	≥ [25k] sq. ft.	May 1, 2026

### COVERED NON-CITY PROPERTY

Property Type	Property Size	Initial Submission Date
Non-Residential	≥ [50k] sq. ft.	May 1, 2025
	≥ [25k] sq. ft.	May 1, 2026
Residential	≥ [50k] sq. ft.	May 1, 2026
	≥ [25k] sq. ft.	May 1, 2027

## 10. BENCHMARKING EXEMPTIONS AND TIME EXTENSIONS

### 10.1. Covered City Property Exemptions. A COVERED CITY

PROPERTY is exempt from benchmarking for the current reporting year if the DIRECTOR determines that the COVERED PROPERTY:

- 10.1.1. did not have a Certificate of Occupancy or temporary Certificate of Occupancy for that full year;

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<sup>70</sup> This table is a model that can be adjusted by the implementing jurisdiction. This approach staggers when properties become eligible for the benchmarking requirements to ease the transition to benchmarking in the first few years of its application. Based on CEP Improving Performance § D.2.



- 10.1.2. was issued a demolition permit for the entire building during that year, provided that demolition work commenced and legal occupancy was no longer possible prior to the end of that year;
  - 10.1.3. did not receive ENERGY or water UTILITY services for at least 30 days during that year;
  - 10.1.4. had an average physical occupancy rate of less than [50 percent] over that year; or
  - 10.1.5. presents unique circumstances, so that strict compliance with this ordinance would not be in the public interest.<sup>71</sup>
- 10.2. **Covered Non-City Property Exemptions.** A COVERED NON-CITY PROPERTY is exempt from benchmarking for the current reporting year if the COVERED NON-CITY PROPERTY:
- 10.2.1. meets any of the exemptions for a COVERED CITY PROPERTY;
  - 10.2.2. would experience undue hardship due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant;
  - 10.2.3. is under FINANCIAL HARDSHIP; or
  - 10.2.4. uses more than [50%] of GROSS FLOOR AREA for residential purposes; and:
    - 10.2.4.1. more than [four] meters are associated with the COVERED PROPERTY; and
    - 10.2.4.2. the OWNER is not able to obtain AGGREGATED WHOLE-BUILDING DATA; and
    - 10.2.4.3. the serving electric UTILITY does not provide access to AGGREGATED WHOLE-BUILDING DATA. Once AGGREGATED WHOLE-BUILDING DATA is available from the UTILITY, as determined by the DIRECTOR, the property is no longer exempt. The OWNER of the property must submit an initial BENCHMARKING SUBMISSION in the first required reporting year after AGGREGATED WHOLE-BUILDING DATA is available.<sup>72</sup>

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<sup>71</sup> Based on CEP Improving Performance § E.1. "The final exemption is intended to give the DIRECTOR discretion to exempt "sensitive" facilities, such as those related to public security or crisis management. These are potential terrorist targets that could be compromised if certain information about their operations is publicly disclosed." *Id.*, Discussion.

<sup>72</sup> Based on CEP Improving Performance § E.2. "The list of exemptions included is a fairly exhaustive listing of the types of exemptions that have been considered by other jurisdictions. Only those exemptions from this list that are appropriate for local conditions, as based on input from stakeholders, should be included. Properties that are facing FINANCIAL HARDSHIP would likely

- 10.3. **Benchmarking Exemption Requests.** An OWNER requesting an exemption from benchmarking shall submit to the DIRECTOR, 60 days before a BENCHMARKING SUBMISSION is due, any documentation reasonably necessary to substantiate the request or otherwise assist the DIRECTOR in the exemption determination. Any exemption granted shall be limited to the BENCHMARKING SUBMISSION for which the request was made and does not extend to past or future submittals.<sup>73</sup>
- 10.4. **Benchmarking Time Extension Requests.** An OWNER may apply for a time extension by [April 1] to complete and submit a BENCHMARKING SUBMISSION. An OWNER may apply for an extension if, despite good faith efforts, they are unable to complete the report before [May 1] because a UTILITY provider, a TENANT, or both, fail to provide the OWNER with necessary information. The OWNER must submit to the DIRECTOR any documentation reasonably necessary to substantiate the request or assist the DIRECTOR's determination. For each COVERED PROPERTY, the DIRECTOR may grant up to two extensions per year of up to [30] days each.<sup>74</sup>
- 10.5. **Director's Discretion.** The DIRECTOR, in their sole discretion, may allow additional benchmarking exemptions or time extensions.
11. NOTIFICATION BY THE JURISDICTION
- 11.1. **Public Posting of Covered Properties Required to Benchmark.** By December 1 before a year in which BENCHMARKING SUBMISSIONS are due, the DIRECTOR may publicly post a list of all COVERED PROPERTIES that must submit a BENCHMARKING SUBMISSION in the coming year.<sup>75</sup>
- 11.2. **Notification to Covered Property Owners Required to Benchmark.** Between January 1 and March 1 of each year, the DIRECTOR must attempt to notify OWNERS of their requirement to submit a BENCHMARKING SUBMISSION.

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not be able to afford pursuing any significant ENERGY efficiency upgrades. Therefore, it is recommended that these properties be exempt from complying until such time they have the financial means to do so." *Id.*, Discussion.

<sup>73</sup> Based on CEP Improving Performance § E.3.

<sup>74</sup> Based on CEP Improving Performance § E.4.

<sup>75</sup> Based on CEP Improving Performance § N.1.

- 11.2.1. The DIRECTOR must continue notification for at least the first three years each OWNER is required to submit a BENCHMARKING SUBMISSION.
- 11.2.2. The DIRECTOR may attempt to notify by direct mail, electronically by email, or through a public posting on a web site.<sup>76</sup>
- 11.3. **Obligation of the Owner.** Failure of the DIRECTOR to notify any OWNER shall not affect the obligation of the OWNER.<sup>77</sup>
- 12. SUBMITTAL FEES
  - 12.1. **Annual Benchmarking Submission Fee.** The DEPARTMENT may charge property OWNERS, no later than [date], an Annual Benchmarking Submission Fee of [\$50] for each annual BENCHMARKING SUBMISSION submitted to the DEPARTMENT.<sup>78</sup> The OWNER must, within 30 days of notification by the DEPARTMENT, pay the Annual Benchmarking Submission Fee.

## Building Performance Standards

- 13. PERFORMANCE METRIC(S), FINAL PERFORMANCE STANDARDS AND INTERIM STANDARDS
  - 13.1. **Selecting Performance Metric(s) and Performance Standards.** No later than [date],<sup>79</sup> the DEPARTMENT, in consultation with the

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<sup>76</sup> CEP Improving Performance § N.2.

<sup>77</sup> Based on CEP Improving Performance § N.4. “Although the jurisdiction should make a reasonable effort to attempt to notify all property OWNERS of their obligations under this ordinance, the ordinance should clearly state that even if an OWNER does not receive formal notification because, for example, the jurisdiction did not have their current contact information, the legal requirements are still in force.” *Id.*, Discussion.

<sup>78</sup> CEP Improving Performance § R.1. “This provision authorizes the DIRECTOR to charge a filing fee for each submission of benchmarking information, which the jurisdiction could use to cover administrative costs. Note that Portfolio Manager is not set up to handle the electronic collection of fees, so collecting a fee would require the jurisdiction to establish and manage a separate process. To date very few jurisdictions have assessed a fee for submission of the benchmarking report, so this provision will often be deleted.” *Id.*, Discussion.

<sup>79</sup> Most jurisdictions will benefit from at least one year of benchmarking data for each PERFORMANCE METRIC for all PROPERTY TYPE(S) before setting performance standards. *Summary of IMT’s Model Ordinance for a Building Performance Standard 11* (2021), available at <https://www.imt.org/wp-content/uploads/2021/01/IMT-BPS-Model-Ordinance-Summary-January-2021-1-1.pdf>. Therefore, the chosen date should be subsequent to the last initial BENCHMARKING SUBMISSION under Section 9. The date May 1, 2028 is recommended because it gives the BPIB one year to select PERFORMANCE METRIC(S) and calculate INTERIM and FINAL PERFORMANCE

CAB and BPIB, shall select PERFORMANCE METRIC(S) and set a FINAL PERFORMANCE STANDARD for each PROPERTY TYPE for each of the relevant PERFORMANCE METRIC(S).<sup>80</sup>

- 13.2. **Final Performance Standards.** The DEPARTMENT shall set FINAL PERFORMANCE STANDARDS that shall collectively cause the aggregate attributable to all COVERED BUILDINGS to be reduced by at least the following percentages by [2045]:
  - 13.2.1. site ENERGY usage - [x%]
  - 13.2.2. onsite and district thermal greenhouse gas emissions - [x%]
  - 13.2.3. water usage – [x%]
  - 13.2.4. coincident peak electric demand – [x%]<sup>81</sup>
- 13.3. **Ventilation Performance Standard.** No later than [date],<sup>82</sup> the DEPARTMENT shall set a FINAL PERFORMANCE STANDARD for ventilation.<sup>83</sup>
- 13.4. **More Demanding Performance Standards for Newer Properties.** The DEPARTMENT may set more demanding INTERIM and FINAL PERFORMANCE STANDARDS for COVERED PROPERTIES that receive their first construction permit after [date].<sup>84</sup>
- 13.5. **Covered Properties with Multiple Property Type(s).** Unless otherwise directed by the DEPARTMENT, the FINAL PERFORMANCE STANDARDS for any COVERED PROPERTY containing multiple PROPERTY TYPE(S) shall be calculated pro rata

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STANDARDS for each PROPERTY TYPE. *See id.* (explaining that most jurisdictions will need to give their technical committee one year to make recommendations before standards are implemented). However, if data is already available for some of the metrics, jurisdictions should consider adopting BPS sooner for those metrics, while clarifying in the ordinance that other standards will be implemented later. *Id.*

<sup>80</sup> IMT Short BPS § 5.1.

<sup>81</sup> IMT Short BPS § 5.2. “Many jurisdictions will choose not to include some of the above PERFORMANCE METRIC(S) in their BPS. In deciding which and how many metrics to use, each jurisdiction will have to balance the benefits of including a metric against its costs and additional complexity. Another consideration is the value of having a single ordinance that includes a comprehensive and holistic solution for buildings versus a more piecemeal approach requiring the passage of multiple laws or ordinances over time.” *Id.*, Discussion.

<sup>82</sup> When selecting this date, jurisdictions should consider that most jurisdictions will benefit from at least one year of ventilation benchmarking data before setting the ventilation FINAL PERFORMANCE STANDARD. *See generally* Summary of IMT’s Model Ordinance for a Building Performance Standard 11 (2021), available at <https://www.imt.org/wp-content/uploads/2021/01/IMT-BPS-Model-Ordinance-Summary-January-2021-1-1.pdf>.

<sup>83</sup> Based on IMT Short BPS § 5.3.

<sup>84</sup> IMT Short BPS § 5.4.

based on the square footage of each PROPERTY TYPE within the COVERED PROPERTY.<sup>85</sup>

13.6. **Interim Performance Standard(s).** As of [date] and at the end of every [60-month] period thereafter,<sup>86</sup> each COVERED PROPERTY must demonstrate progress toward each applicable FINAL PERFORMANCE STANDARD by achieving the INTERIM PERFORMANCE STANDARD(s) set by the DEPARTMENT for the COVERED PROPERTY.<sup>87</sup>

13.7. **Calculating Interim Performance Standard(s).** The DEPARTMENT shall calculate each INTERIM PERFORMANCE STANDARD for each COVERED PROPERTY using a straight-line trajectory, from the COVERED PROPERTY's baseline performance for each PERFORMANCE METRIC to the FINAL PERFORMANCE STANDARD for that PERFORMANCE METRIC so that each calculated PERFORMANCE METRIC shall improve in equal increments during each [60-month] period.<sup>88</sup>

13.7.1. **Exception:** The DEPARTMENT may use other means to calculate INTERIM PERFORMANCE STANDARD(S) for ventilation and other PERFORMANCE METRIC(S) for which it deems the straight-line trajectory approach ill suited.<sup>89</sup>

#### 14. BUILDING PERFORMANCE ACTION PLANS (BPAP)

14.1. **Proposing a BPAB to the Director.** A COVERED PROPERTY OWNER may propose a BPAP to the DIRECTOR if the OWNER believes the property cannot reasonably meet at least one of the applicable INTERIM or FINAL PERFORMANCE STANDARDS.<sup>90</sup>

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<sup>85</sup> Based on IMT Short BPS § 5.5.

<sup>86</sup> For the first INTERIM PERFORMANCE STANDARD compliance date, jurisdictions should consider selecting a date that is five years from the date the DEPARTMENT publishes the INTERIM PERFORMANCE STANDARDS. *See Summary of IMT's Model Ordinance for a Building Performance Standard 7* (2021), available at <https://www.imt.org/wp-content/uploads/2021/01/IMT-BPS-Model-Ordinance-Summary-January-2021-1-1.pdf> (recommending that jurisdictions use five-year intervals for INTERIM PERFORMANCE STANDARDS, consistent with the straight-line trajectory approach).

<sup>87</sup> IMT Short BPS § 5.6.

<sup>88</sup> Based on IMT Short BPS § 5.7.

<sup>89</sup> IMT Short BPS § 5.8.

<sup>90</sup> Based on IMT Short BPS § 8.1. It is recommended that the DIRECTOR promulgate rules and deadlines governing BPAPs at least one year before each COVERED PROPERTY is first required to achieve the INTERIM PERFORMANCE STANDARD(s) set by the DEPARTMENT. *Id.* at § 13.6.

- 14.2. **Promulgating Rules.** No later than [date], the DIRECTOR must promulgate rules and deadlines governing BPAPs, including whether the DEPARTMENT must publish BPAPs.<sup>91</sup>
- 14.3. **Conditions of Compliance.** A COVERED PROPERTY complies with this ordinance as long as:
- 14.3.1. the DIRECTOR approves a BPAP for the COVERED PROPERTY, and
  - 14.3.2. the terms of the BPAP are fulfilled on a timely basis.<sup>92</sup>
- 14.4. **Binding Agreement.** The BPAP is a binding agreement between the COVERED PROPERTY OWNER and the DIRECTOR.<sup>93</sup>
15. **BUILDING PERFORMANCE STANDARDS EXTENSIONS, ADJUSTMENTS, AND EXEMPTIONS**
- 15.1. **Covered Property Extensions, Adjustments and Exemptions.** The DIRECTOR may grant an OWNER's request for an extension, adjustment or exemption to one or more INTERIM or FINAL PERFORMANCE STANDARD(S) for a COVERED PROPERTY if the DIRECTOR determines that the COVERED PROPERTY:
- 15.1.1. was issued a demolition permit or demolition is planned that will prevent achievement of the next INTERIM PERFORMANCE STANDARD(S);
  - 15.1.2. did not have a certificate of occupancy or temporary certificate of occupancy for all twelve months of the BASELINE YEAR prior to the INTERIM PERFORMANCE STANDARD(S) compliance schedule;
  - 15.1.3. is in FINANCIAL HARDSHIP; or
  - 15.1.4. presents unique circumstances, so that strict compliance with this ordinance would cause FINANCIAL HARDSHIP or not be in the public interest.<sup>94</sup>
- 15.2. **Request Form and Timing.** The OWNER must submit a request for an extension, adjustment or exemption under Section 15.1, together with documentation, in a form prescribed by the DIRECTOR, at least [x days] prior to the relevant deadline.<sup>95</sup>

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<sup>91</sup> Based on IMT Short BPS § 8.2.

<sup>92</sup> Based on IMT Short BPS § 8.3.

<sup>93</sup> Based on IMT Short BPS § 8.4.

<sup>94</sup> Based on IMT Short BPS § 9.1.

<sup>95</sup> Based on IMT Short BPS § 9.1.

# General Provisions

## 16. TECHNICAL AND FINANCIAL ASSISTANCE TO BUILDING OWNERS

- 16.1. **Deep Renovation Task Force.** In consultation with the CAB, the [EXECUTIVE] shall convene a deep renovation task force. The task force shall create a combined funding and technical assistance package for OWNERS lacking the financial, operational, or technical capacity to meet INTERIM or FINAL PERFORMANCE STANDARDS.<sup>96</sup>

## 17. ANNUAL REPORTING AND DATA SHARING

- 17.1. **Publishing Shared Benchmarking Information.** The DIRECTOR must annually make available on a publicly accessible website the SHARED BENCHMARKING INFORMATION for the previous calendar year for each COVERED PROPERTY.<sup>97</sup> SHARED BENCHMARKING INFORMATION for a COVERED PROPERTY shall first be made available to the public the year after the property's first BENCHMARKING SUBMISSION.
- 17.2. **Publishing Comprehensive Benchmarking Data.** Beginning no later than [date], and every year after, the DIRECTOR must make available on a publicly accessible website an annual report on the benchmarking of all COVERED PROPERTIES. The report shall include a summary of ENERGY and water consumption statistics, and an assessment of compliance rates, accuracy and issues affecting accuracy, changes across the AGGREGATED WHOLE-BUILDING DATA for all COVERED PROPERTIES within the [jurisdiction] over time, and trends observed.<sup>98</sup>

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<sup>96</sup> Based on IMT Short BPS § 10.1.

<sup>97</sup> Based on CEP Improving Performance §§ D.3 - D.4. "The annual publication of benchmarking information for each COVERED PROPERTY begins after the second year of reporting to the jurisdiction. This delay provides COVERED PROPERTY OWNERS with a one-year window to improve their property's ENERGY performance before it becomes public and allows the jurisdiction to identify methods to improve data quality and compliance, if necessary." *Id.* § D.4., Discussion.

<sup>98</sup> Based on CEP Improving Performance § P.1. "The annual BENCHMARKING SUBMISSION should be more detailed during the following years: (1) the first year that a COVERED PROPERTY OWNER is required to report; and (2) roughly every five years after the first submission. During other years, the benchmarking report may be a very high-level summary of two to five pages. However, there are a handful of key metrics, such as compliance rates, total ENERGY and water consumed, and total GhG emissions, that should be determined and publicly posted each year. The purpose of annually posting key metrics demonstrates continuity and positive progress from the policy. See IMT's report, Analyzing Benchmarking Data, for further information." *Id.*, Discussion.

- 17.3. **Publishing Non-Anonymized Benchmarking Data.** The DIRECTOR may provide non-anonymized benchmarking data to any UTILITY serving a COVERED PROPERTY or to any government-managed ENERGY efficiency or management program, provided that:
- 17.3.1. the data will be used only for purposes of offering programs, services, and incentives related to ENERGY and water efficiency and management, and
  - 17.3.2. the DIRECTOR has first obtained the COVERED PROPERTY OWNER's written or electronic permission to share the data with the UTILITY or ENERGY efficiency and/or management program.<sup>99</sup>
- 17.4. **Publishing Benchmarking Data with Electronic Permission.** The OWNER of a COVERED PROPERTY may electronically grant permission to publish benchmarking data. After the OWNER grants this permission, the DIRECTOR need not obtain permission to share data from COVERED PROPERTY'S future BENCHMARKING SUBMISSIONS.<sup>100</sup>
- 17.5. **Publishing Building Performance Standards Data.** Beginning in [date], and every three years thereafter, the DIRECTOR must make available on a publicly accessible website a report on the building performance standards for all COVERED PROPERTIES, including but not limited to compliance rates, trends observed, and recommendations on how to increase ENERGY and water conservation measures or improve the implementation of this ordinance.<sup>101</sup>
- 17.6. **Publishing Benchmarking and Building Performance Standards Data to Third Parties.** The DIRECTOR may disclose data from benchmarking and building performance standard submissions to a third party for academic or other non-commercial research purposes provided that such data is anonymized.<sup>102</sup>
- 17.7. **Excluding Benchmarking and Building Performance Standards Data from Publishing.** The DIRECTOR may determine

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<sup>99</sup> Based on CEP Improving Performance § O.1.

<sup>100</sup> Based on CEP Improving Performance § O.1. "Ideally, the OWNER's electronic permission may be collected through an online check-box where they acknowledge they have read the terms and conditions that govern public data sharing for BENCHMARKING SUBMISSIONS. In that situation, the jurisdiction must provide an option for COVERED PROPERTY OWNERS to choose to opt out of granting future permission to share data from future BENCHMARKING SUBMISSIONS." *Id.*, Discussion.

<sup>101</sup> Based on CEP Improving Performance § P.2.

<sup>102</sup> Based on CEP Improving Performance § O.2.



whether to exclude any benchmarking shared summary data from publishing because it is not in the public interest.<sup>103</sup>

- 17.8. **Combined Energy and Water Efficiency Report.** Nothing in this ordinance shall prevent the DIRECTOR from including all benchmarking and building performance standards data in a combined annual ENERGY and water efficiency report covering the progress of all of the jurisdiction's ENERGY efficiency ordinances and programs.<sup>104</sup>

## 18. RULEMAKING

- 18.1. **Rule Promulgation.** The DEPARTMENT may promulgate and revise rules necessary to implement this ordinance.
- 18.2. **Consultation with CAB and BPIB.** The DEPARTMENT must consult with the CAB and BPIB before proposing a new rule.
- 18.3. **Public Comment.** The public must have the opportunity to comment for no less than [60 days] on a proposed rule.<sup>105</sup> The DEPARTMENT must deliver the comments to the CAB and BPIB promptly.
- 18.4. **CAB and BPIB Involvement.** The CAB and BPIB may submit public comments for and vote against proposed rules. If two thirds of either the CAB or BPIB vote against a proposed rule, then the rule will not take effect, and the DEPARTMENT shall revise the rule with input from the CAB and BPIB.<sup>106</sup>
- 18.5. **Final and Effective Rules.** If neither two thirds of the CAB nor two thirds of the BPIB vote against a proposed rule, then the proposed rule becomes final and effective [30 days] after delivery of public comments to CAB and BPIB.<sup>107</sup>

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<sup>103</sup> Based on CEP Improving Performance § D.5. "The DIRECTOR has the authority to address specific, definable stakeholder concerns regarding data privacy." *Id.*, Discussion.

<sup>104</sup> Based on CEP Improving Performance § P.3. "The jurisdiction must analyze the progress of benchmarking and building performance standards and mine the data for important trends that could help inform future policies or programs. This type of jurisdiction-wide analysis can provide useful feedback for jurisdictional governments on the implementation, administration and impact of these ENERGY efficiency initiatives. There may be a single overall City Energy Efficiency Report which covers benchmarking and building performance standards and all other related ordinances and initiatives. The purpose of a single report is to avoid duplication and to demonstrate the interrelationships between the efforts in a combined analysis." *Id.*, Discussion.

<sup>105</sup> Based on IMT Short BPS § 6.1.

<sup>106</sup> Based on IMT Short BPS § 6.1 and § 6.3.

<sup>107</sup> Based on IMT Short BPS § 6.3.

- 18.6. **Rule Revisions.** Revised rules are subject to the procedures in Sections 18.2 to 18.5, except that the DEPARTMENT may shorten the comment period to no less than [30] days.<sup>108</sup>

19. BUILDING PERFORMANCE FUND

- 19.1. **Establishment of the Building Performance Fund.** The [DIRECTOR] must establish the BUILDING PERFORMANCE FUND by [date].<sup>109</sup>
- 19.2. **Purpose of the Building Performance Fund.** The BUILDING PERFORMANCE FUND is a non-lapsing fund which shall be used solely for the purposes stated in this ordinance.<sup>110</sup>
- 19.3. **Depositing Funds.** All funds collected from payment of benchmarking penalties and ACPs must be deposited in the BUILDING PERFORMANCE FUND.<sup>111</sup>
- 19.4. **Additional Funds.** Funds from other sources may also be deposited in the BUILDING PERFORMANCE FUND.<sup>112</sup>
- 19.5. **Funds Continually Available.** All funds deposited in the BUILDING PERFORMANCE FUND, and any interest earned, must be continually available for the uses and purposes set forth in this ordinance without regard to fiscal year limitation. Funds deposited, and interest earned, in the BUILDING PERFORMANCE FUND must not revert to the unrestricted fund balance of the General Fund at the end of a fiscal year, or at any other time.<sup>113</sup>
- 19.6. **Allocation of Funds.** In accordance with the plan developed by CAB under Section 4.2.4,
- 19.6.1. at least [x%] of benchmarking penalties, ACPs, and any other funds collected under this ordinance must be used to support performance improvements in privately-owned properties within the [jurisdiction]; of that amount, the DEPARTMENT must spend at least [x%] to improve the regulated performance of

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<sup>108</sup> Based on IMT Short BPS § 6.4.

<sup>109</sup> It is recommended that the DIRECTOR establish the BUILDING PERFORMANCE FUND at least one year before each COVERED PROPERTY is first required to make a BENCHMARKING SUBMISSION to the DIRECTOR.

<sup>110</sup> Based on IMT Short BPS § 11.4.

<sup>111</sup> Based on IMT Short BPS § 11.5.

<sup>112</sup> Based on IMT Short BPS § 11.7.

<sup>113</sup> Based on IMT Short BPS § 11.6.

COVERED PROPERTIES serving FRONTLINE COMMUNITIES; and<sup>114</sup>

- 19.6.2. the remainder of benchmarking penalties, ACPs, and other funds collected under this ordinance must be allocated to improve the performance of public properties within [jurisdiction] or to support [jurisdiction]’s administration of this ordinance and related educational activities.<sup>115</sup>

## 20. VIOLATIONS AND ENFORCEMENT

### 20.1. **Benchmarking Enforcement**

- 20.1.1. **Failure to Report Benchmarking Information.** If the DIRECTOR determines that an OWNER has failed to report benchmarking information as required under this ordinance, the DIRECTOR may:<sup>116</sup>

- 20.1.1.1. first, issue a written warning for the violation;
- 20.1.1.2. second, issue a notice of violation with a penalty of up to \$500 if initial or updated benchmarking information is not reported within 30 days of issuing the written warning; and
- 20.1.1.3. third, issue additional penalties of up to \$500 every three months if initial or updated benchmarking information is not reported within 90 days of issuing the notice of violation.<sup>117</sup>

- 20.1.2. **Intentionally Submitting False or Incomplete Information.** The DIRECTOR may issue a notice of violation with a penalty of up to \$1,000 if the DIRECTOR determines that the OWNER has intentionally submitted false or incomplete benchmarking information or has misrepresented the information. Each year of non-compliance is a separate offense punishable by a penalty of up to \$1,000.<sup>118</sup>

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<sup>114</sup> Based on IMT Short BPS § 11.8. “The purpose of allocating the funds collected under this ordinance to FRONTLINE COMMUNITIES is to ease the burden of compliance for these properties. FRONTLINE COMMUNITIES may include properties such as affordable multifamily buildings located in areas with a concentration of low-income or minority residents or buildings that have a history of insufficient public and private investment.” *Id.*, Discussion.

<sup>115</sup> Based on IMT Short BPS § 11.8.

<sup>116</sup> The jurisdiction may substitute its own enforcement procedures for those in this section.

<sup>117</sup> Based on CEP Improving Performance § S.2.

<sup>118</sup> Based on CEP Improving Performance § S.2.

- 20.1.3. **Repeat Violations.** The DIRECTOR may issue a \$500 penalty, in addition to any other penalties under this section, for a violation by an OWNER who violated this section within the past two years.<sup>119</sup>
- 20.2. **Performance Standards Enforcement**
- 20.2.1. **Failure to Meet Performance Standards.** An OWNER whose COVERED PROPERTY fails to meet an INTERIM or FINAL PERFORMANCE STANDARD must make an ALTERNATIVE COMPLIANCE PAYMENT (ACP) no later than [30 days] after receiving a notice of violation from the DIRECTOR.<sup>120</sup>
- 20.2.2. **Rules for Alternative Compliance Payments.** No later than [date],<sup>121</sup> the DIRECTOR must promulgate rules to determine required ACPs for COVERED PROPERTIES; however, ACPs shall proportionally reflect:
- 20.2.2.1. the total number of INTERIM and FINAL PERFORMANCE STANDARDS which a COVERED PROPERTY has failed to achieve,
  - 20.2.2.2. the assessed value of the COVERED PROPERTY, and
  - 20.2.2.3. the magnitude of non-compliance under each PERFORMANCE METRIC.<sup>122</sup>
- 20.2.3. **Alternative Compliance Payments to Ensure Compliance.** The DIRECTOR shall set ACPs at levels that ensure it will be economically preferable to the preponderance of OWNERS to achieve all standards rather than paying ACPs.<sup>123</sup>
- 20.2.4. **Maximum for Alternative Compliance Payments.** Each year, for each PERFORMANCE METRIC for each COVERED PROPERTY, the ACP shall not exceed [0.5% of the assessed value] of the COVERED PROPERTY.<sup>124</sup>

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<sup>119</sup> Based on CEP Improving Performance § S.2. “Since consultants can charge \$1,000–\$1,500 to BENCHMARK, the total penalty that an OWNER can incur must be set high enough to exceed that value and discourage non-compliance.” *Id.*, Discussion.

<sup>120</sup> IMT Short BPS § 11.1.

<sup>121</sup> It is recommended that jurisdictions promulgate rules determining ACPs at least one year prior to the first INTERIM PERFORMANCE STANDARD compliance date to provide property OWNERS with sufficient notice of the penalties for non-compliance.

<sup>122</sup> Based on IMT Short BPS § 11.3.

<sup>123</sup> Based on IMT Long BPS § 12.2.

<sup>124</sup> IMT Short BPS § 11.2.

20.2.4.1. **Exception:** If a property's assessed value is significantly below its fair market value,<sup>125</sup> the DIRECTOR may set ACPs that exceed [.5% of the assessed value] to account for this disparity.<sup>126</sup>

20.3. **General Enforcement**

20.3.1. **Failure to Comply with Ordinance.** An entity or person violates this ordinance when they fail to comply with the requirements of this ordinance or misrepresent any material fact in a document prepared for or shared under this ordinance.<sup>127</sup>

20.3.2. **Civil Enforcement Action.** Nothing in this ordinance shall obligate the DEPARTMENT or DIRECTOR to issue a warning or notice of violation before initiating a civil enforcement action.<sup>128</sup>

20.3.3. **Withholding Building Certifications.** The DIRECTOR may withhold the [Certificate of Occupancy, Building Structural and/or Building Electrical recertification] for a COVERED PROPERTY until the OWNER complies with this ordinance.<sup>129</sup>

20.3.4. **Adjusting Penalties for Inflation.** The DIRECTOR may adjust penalty amounts in this subsection to account for inflation.

20.3.5. **Delegating Authority to Department Employees.** The DIRECTOR may delegate to employees within the DEPARTMENT authority to issue notices of violation and impose penalties under Sections 20.1 and 20.2.

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<sup>125</sup> The Director could define through rulemaking the phrase “significantly below fair market value.”

<sup>126</sup> Based on IMT Short BPS § 11.2. Most jurisdictions contain properties with assessed values that are much lower than their true value. These properties are typically owned by tax-exempt entities. *Id.*, Discussion.

<sup>127</sup> Based on CEP Improving Performance § S.1. “The actual penalties that a jurisdiction is able to assess, and the process by which it can do so, will be determined by other portions of the jurisdiction’s codes. Therefore, the jurisdiction’s attorney will have significant input in determining the compliance and enforcement provisions of this ordinance.” *Id.*, Discussion.

<sup>128</sup> Based on CEP Improving Performance § T.2.

<sup>129</sup> Based on CEP Improving Performance § T.3.

## 21. APPEALS<sup>130</sup>

- 21.1. **Benchmarking Appeals.** The OWNER of a COVERED PROPERTY may appeal to the BPIB a notice of a violation, monetary penalty, or any other penalty issued by the DIRECTOR.<sup>131</sup> An appeal must be made in writing to the DIRECTOR and must specify the grounds for appeal.<sup>132</sup> An appeal must be brought within [30 calendar days] of receiving a notice of violation, monetary penalty, or any other penalty.<sup>133</sup>
- 21.2. **Alternative Compliance Payment Appeals.** The OWNER of a COVERED PROPERTY may appeal to the BPIB any ACPs imposed by the DIRECTOR within [30 calendar days] of receiving notice of the ACP. An appeal must be made in writing to the DIRECTOR and must specify the grounds for appeal.<sup>134</sup>
- 21.3. **Building Performance Action Plan Appeals.** The OWNER of a COVERED PROPERTY may appeal to the BPIB the DEPARTMENT's denial of a BPAP. A written notice of appeal must be filed with the DIRECTOR within [30 calendar days] of the DEPARTMENT rendering a decision on the BPAP. The notice of appeal must specify the grounds for appeal.<sup>135</sup>
- 21.4. **Director Promptly Forwards Appeals to the BPIB.** The DIRECTOR must immediately forward to the BPIB a copy of a notice of appeal and all supporting documents.<sup>136</sup>
- 21.5. **Building Performance Improvement Board**
  - 21.5.1. **Jurisdiction.** The BPIB has jurisdiction to hear and decide appeals when the OWNER of a COVERED PROPERTY alleges that the DIRECTOR or DEPARTMENT made an error in

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<sup>130</sup> IMT, in discussing § 4.2 of their Short Model BPS, stated: “The BPIB is intended to be the sole venue for any appeal under this ordinance. The jurisdiction may substitute its own appeal procedures for those in this section. If the jurisdiction’s laws prevent the BPIB from serving as the sole venue for appeal, then the BPIB should not serve in an appellate role.”

<sup>131</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 12-19(a) (2023).

<sup>132</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 12-19(d) (2023).

<sup>133</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 12-19(a) (2023).

<sup>134</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 12-19(d) (2023).

<sup>135</sup> Based on SAINT LOUIS, Mo., CITY CODE § 25.05.020 (2023).

<sup>136</sup> Based on SAINT LOUIS, Mo., CITY CODE § 25.05.020 (2023).

imposing a penalty or ACP or denying a BPAP under this ordinance.<sup>137</sup>

- 21.5.2. **Automatic Stay.** Filing an appeal shall automatically stay all enforcement and other proceedings directly related to the subject of the appeal. The stay shall last until the BPIB renders a final decision.<sup>138</sup>
- 21.5.3. **Recusal.** When an appeal is made to the BPIB, the DIRECTOR must recuse themselves from rendering a decision on the appeal.
- 21.5.4. **Decision-Making.** In reviewing a penalty, ACP, or denial of a BPAP, the BPIB shall consider the notice of appeal, supporting documentation, the requirements of this ordinance, and regulations promulgated under this ordinance.<sup>139</sup>
- 21.5.5. **Notice of Decision.** The BPIB must provide the OWNER of a COVERED PROPERTY a written response within [30 calendar days] of rendering a decision on the appeal. A decision by the BPIB will be final and binding upon the DIRECTOR and the DEPARTMENT.<sup>140</sup>

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<sup>137</sup> Based on SAINT LOUIS, Mo., CITY CODE § 25.05.010 (2023).

<sup>138</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 12-19(e) (2023).

<sup>139</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 10-143(d)(2) (2023).

<sup>140</sup> Based on DENVER, Colo., REVISED MUNICIPAL CODE OF THE CITY AND COUNTY § 12-19(j) (2023).