

MONTGOMERY COUNTY CODE

Chapter 18A. Environmental Sustainability.

Article 6. Building Energy Use Benchmarking.

Sec. 18A-38A. Intent.

The intent of this Article is to:

- (a) Implement recommendations of the 2009 Climate Protection Plan (EEC-2), 2013 Commercial Building Energy Efficiency study (Chapter 3.2), and support efforts of the Office of Sustainability to increase energy efficiency and reduce greenhouse gas emission in the private sector and County buildings;
- (b) Engage the commercial building sector with building energy information crucial to adopting energy conservation and efficiency opportunities;
- (c) Spur market transformation by making building performance transparent for the building and tenant market, allowing more accurate evaluation of energy costs and creating a competitive market for energy efficiency buildings;
- (d) Strengthen the local economy by encouraging more efficient business operations and providing new opportunities for local businesses that provide energy conservation and efficiency services; and
- (e) Recognize building owners that have made investments to improve their building energy performance and expand in-house capacity for energy management.

Sec. 18A-38B. Definitions.

In this Article, the following words have the meanings indicated:

Benchmark means to track and input a building's energy consumption data and other relevant building information for 12 consecutive months, as required by the benchmarking tool, to quantify the building's energy use.

Benchmarking tool means the website-based software, commonly known as ENERGY STAR Portfolio Manager, or any successor system, developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy use of buildings nationwide.

Certificate of use and occupancy means the certificate issued by the Director that allows a building to be occupied and used.

County building means any building owned by the County, or any group of buildings owned by the County that have the same property identification number, that equals or exceeds 50,000 in total building square footage.

Covered building means any County building, Group 1 covered building, or Group 2 covered building. *Covered building* does not include any building with more than 10% of total building square footage which is used for

- (1) public assembly in a building without walls;
- (2) warehousing;
- (3) self storage; or
- (4) a use classified as manufacturing and industrial or transportation, communication, and utilities.

Data center means a space designed and equipped to meet the needs of high density computing equipment such as server racks, used for data storage and processing, as defined by the benchmarking tool.

Department means the Department of Environmental Protection.

Director means the Director of the Department or the Director's designee.

Energy performance score or *ENERGY STAR score* means the numerical score produced by the benchmarking tool, or any successor score, that assesses a building's energy performance compared to similar buildings, based on source energy use, operating characteristics, and geographic location.

Energy use intensity or *EUI* means a numeric value calculated by the benchmarking tool that represents the energy consumed by a building relative to its size.

Group 1 covered building means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 250,000 in total building square footage.

Group 2 covered building means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 50,000 square feet gross floor area but is less than 250,000 in total building square footage.

Recognized data verifier means a Professional Engineer or a Registered Architect, or another trained individual whose professional license or building energy training program credential is recognized by the Director.

Reported benchmarking information means the descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool regarding the building's energy consumption and efficiency.

Reported benchmarking information includes the building identification number, address, gross floor area, energy performance score, energy use intensity, and annual greenhouse gas emissions.

Residential occupancy means the occupancy of dwelling units in any building that includes one or more dwellings. (2014 L.M.C., ch. 6, § 1.)

Total building square footage means the sum of the gross horizontal area of the several floors of a building or structure measured from the exterior faces of the exterior walls or from the center line of party walls. In a covered but unenclosed area, such as a set of gasoline pumps or a drive-through area, gross floor area means the covered area. *Total building square footage* does not include any:

- (1) basement or attic area with a headroom less than 7 feet 6 inches;
- (2) area devoted to unenclosed mechanical, heating, air conditioning, or ventilating equipment;
- (3) parking structure; or
- (4) accessory structure to a residential building.

Sec. 18A-39. Energy use benchmarking.

(a) *County buildings.* No later than June 1, 2015, and every June 1 thereafter, the County must benchmark County buildings for the previous calendar year and report the benchmarking information to the Department.

(b) *Group 1 covered buildings.* No later than June 1, 2016, and every June 1 thereafter, the owner of any Group 1 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(c) *Group 2 covered buildings.* No later than June 1, 2017, and every June 1 thereafter, the owner of any Group 2 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(d) *Waiver.* The Director may waive the requirements of this Section if the owner of a covered building documents, in a form required by regulation, that the building:

- (1) is in financial distress, defined as a building that:
 - (A) is the subject of a tax lien sale or public auction due to property tax arrearages;
 - (B) is controlled by a court appointed receiver; or
 - (C) was recently acquired by a deed in lieu of foreclosure;
- (2) had average physical occupancy of less than 50% throughout the calendar year for which benchmarking is required; or
- (3) is new construction and received its certificate of use and occupancy during the calendar year for which benchmarking is required. (2014 L.M.C., ch. 6, § 1.)

Sec. 18A-40. Data Verification.

(a) *Verification required.* Before the first benchmarking deadline required by Section 18A-39, and before each third benchmarking deadline thereafter, the owner of each covered building must assure that reported benchmarking information for that year is verified by a recognized data verifier. The verification must be a signed statement by a recognized data verifier attesting to the accuracy of the information. If the Director requests, the owner of a covered building must produce the statement available for the most recent year in which verification was required.

(b) *Alternative Verification Path.* The Director may waive the verification requirement under this Section if the owner can demonstrate that the building has achieved ENERGY STAR Certification for at least 6 months of the year being benchmarked. (2014 L.M.C., ch. 6, § 1.)

Sec. 18A-41. Solicitation of compliance information from tenants.

(a) *Solicitation of information from tenant.* An owner of a covered building must request relevant information from any tenant in a covered building no later than March 1 of each year in which benchmarking is required by Section 18A-39. If the owner receives notice that a tenant intends to vacate a unit which is subject to this Section, the owner must request the information within 10 days after receiving the notice to vacate.

(b) *Tenant response.* Within 30 days after receiving a request for information from the building owner, each tenant of a unit in a covered building must provide the building owner with all information that the owner cannot otherwise acquire that is necessary to comply with this Article.

(c) *Failure of tenant to provide information.*

(1) If any tenant does not provide the information required under this Section to the owner of a covered building, that fact does not relieve the owner of the obligation to benchmark the building under Section 18A-39, using all information otherwise available to the owner.

(2) If a tenant of a unit in a covered building does not provide information to the owner of the building under this Section, the Director must consider the owner to be in compliance with Section 18A-39 if:

(A) the owner shows that the owner requested the tenant to provide the information under this Section; and

(B) the owner benchmarked the building under Section 18A-39, using all information otherwise available to the owner. (2014 L.M.C., ch. 6, § 1.)

Sec. 18A-42. Annual report; disclosure of benchmarking information.

(a) *Annual report required.* By October 1 of each year, the Director must submit a benchmarking report to the County Executive and County Council. The report must review and evaluate energy efficiency in covered buildings, including:

(1) summary statistics on the most recent reported energy benchmarking information, including information on the completeness and level of data quality of the building energy data being reported by building type per the benchmarking tool;

(2) discussion of any energy efficiency trends, cost savings, and job creation resulting from energy efficiency improvements; and

(3) for County buildings:

(A) the scores of County buildings benchmarked; and

(B) whether the Director recommends any energy efficiency improvements for specific buildings.

(b) *Disclosure of benchmarking information.* The Director must make reported benchmarking information readily available to the public, including on the open data website created under Section 2-154, and the Director may exempt information from disclosure only to the extent that disclosure is prohibited under federal or state law.

(c) *Exceptions to disclosure.* To the extent allowable under state law, the Director must not make the following readily available to the public:

(1) any individually-attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark; and

(2) any individually-attributable reported benchmarking information relating to a covered building that contains a data center, or television studio, that together exceeds 10% of the total building square footage of the individual building until the Director finds that the benchmarking tool can make adequate adjustments for these facilities. When the Director finds that the benchmarking tool can make adequate adjustments, the Director must report this data in the annual report. (2014 L.M.C., ch. 6, § 1.)

Sec. 18A-43. Regulations; penalties.

(a) The County Executive may issue Method (2) regulations to administer this Article.

(b) Any violation of this Article is a Class A violation. (2014 L.M.C., ch. 6, § 1.)

Editor's note - As of April 19, 2016, the online Montgomery County Code had not updated Chapter 18A to reflect the November 2015 amendments. The above version includes Chapter 18A, Article 6 as outlined in Bill 2-14 and amended by Bill 35-15.