

Chapter 4118 BUILDING ENERGY PERFORMANCE STANDARD

4118.01 Purpose.

The purpose of this chapter is to improve building operational performance, increase occupant comfort, conserve energy, and reduce operating costs of buildings for the equitable benefit of the residents of Columbus.

4118.02 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless context indicates otherwise. All other definitions of this title shall apply. If there is a conflict between the definitions contained herein and those of C.C. 4101, the definitions contained herein shall apply to this chapter.

1. "Baseline Performance" means, the Normalized Site EUI for each Covered City Property or Covered Non-City Property in the Baseline Year defined by the Department.
2. "Baseline Year" means a 12-month period selected by the Department for each Covered Property to calculate its Normalized Site EUI.
3. "Benchmarking Report" means a subset of:
 - a. Information put into the Benchmarking Tool; and
 - b. Benchmarking information generated by the Benchmarking Tool, as determined by the Director.
4. "Benchmarking Tool" means the United States Government's ENERGY STAR® Portfolio Manager® tool, or any additional or alternative tool adopted via a posted rule and regulation by the Director, used to track and assess the energy and water use of certain properties relative to similar properties.
5. "Campus" means a collection of two or more co-located buildings that function as a single property with a single shared primary function, meaning they collectively serve a common purpose. For the purpose of this definition, the presence of public rights-of-way shall not destroy contiguity of land area.
6. "Compliance Period" means the 5-year cycle in which a Property's compliance with this ordinance is evaluated, with evaluation of performance being measured in the final year of each Compliance Period. The schedule of Compliance Periods shall be as follows, and will continue every five years after 2051 as authorized by the Department:
 - a. January 1, 2028 to December 31, 2033, with compliance being evaluated based on 2033 energy data;
 - b. January 1, 2034 to December 31, 2039, with compliance being evaluated based on 2039 energy data;
 - c. January 1, 2040 to December 31, 2045, with compliance being evaluated based on 2045 energy data;
 - d. January 1, 2046 to December 31, 2051, with compliance being evaluated based on 2051 energy data.
7. "Condominium" means a Property that combines separate ownership of individual units with common ownership of other elements such as common areas.
8. "Covered City Property" means a Property that:

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- a. Exceeds 25,000 square feet in Gross Floor Area; and
 - b. Is owned by the City; or
 - c. Such that the City regularly pays all or the majority of the annual energy and/or water bills.
 9. "Covered Non-City Property" means a Property, other than a Covered City Property, that exceeds 50,000 square feet in Gross Floor Area.
 10. "Covered Property" means any Covered City Property or Covered Non-City Property.
 - a. Single family, duplex, and triplex residential homes and related accessory structures, or any other residential building with less than four units, are not considered to be Covered Properties and are not subject to the requirements of this chapter.
 11. "Final Performance Standard" means the numeric value of a Normalized Site EUI target, which Covered Properties shall achieve by 2051 and will be reevaluated after 2051.
 12. "Financial Distress" of a Covered Property means that a Covered Property:
 - a. 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
 - b. Has a court-appointed receiver in for any reason in accordance with R.C. 2735.01; or
 - c. Is owned by a financial institution through default by the borrower or in lieu of foreclosure; or
 - d. Has an active forbearance agreement between Owner and a financial institution; or
 - e. Has a senior mortgage subject to a notice of default that is uncured beyond 90 days.
 13. "Gross Floor Area" means the total Property's area, measured between the outside surfaces of the exterior walls of the building(s). This includes all areas inside the building(s) including but not limited to lobbies, Tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms.
 14. "Interim Performance Standard" means the numeric value of a Normalized Site EUI target which Covered Properties shall achieve by a fixed date every five years from January 1, 2028.
 15. "Normalized Site Energy" means the Site Energy Use by the Covered Property normalized for weather and other characteristics within the limits of the capabilities of the Benchmarking Tool and normalized for other factors at the discretion of the Department.
 16. "Normalized Site Energy Use Intensity (EUI)" means the Normalized Site Energy divided by the Gross Floor Area of the Covered Property as calculated by the Benchmarking Tool.
 17. "Owner" means any of the following:
 - a. An individual or entity possessing title to a Property;
 - b. The board of the owners' association, in the case of a Condominium;
 - c. The board of directors, in the case of a cooperative apartment corporation; or the master association, in the case of a Condominium where the powers of an owners' association are exercised by or delegated to a master association;
 - d. An agent authorized to act on behalf of any of the above.
 18. "Property" means any of the following:
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- a. A single building;
 - b. One or more buildings held in the Condominium form of ownership, and governed by a board of managers; or
 - c. A Campus of two or more buildings which are owned and operated by the same party, have a single shared primary function, and are:
 - i. Behind a common Utility meter or are served by a common mechanical/electrical system (such as a chilled water loop) which would prevent the Owner from being able to easily determine the energy use attributable to each of the individual buildings; or
 - ii. Used primarily for one of the following functions:
 - 1. K-12 school
 - 2. Hospital
 - 3. Hotel
 - 4. Multifamily housing
 - 5. Senior care community
19. "Property Type" means a category of Covered Properties subject to the same Interim and Final Performance Standard, 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 Property Types to be identical to ENERGY STAR® Property Types.
20. "Renewable Energy" means electricity generated from a source that is not depleted when used.
21. "Site Energy Use" means electricity, natural gas, steam, or other product sold by a Utility to a customer of a Property, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses as recorded in the Benchmarking Tool on an annual basis.
22. "Site Energy Use intensity (EUI)" means the Site Energy Use divided by the Gross Floor Area of the Covered Property as calculated by the Benchmarking Tool.
23. "Tenant" means a person or entity occupying or holding possession of a building, or part of a building or premises, pursuant to a rental or lease agreement.
24. "Utility" means an entity that distributes and/or sells natural gas, electric, water, or thermal energy services for buildings.

4118.03 Property Types

- 1) The Director shall promulgate rules and regulations establishing Property Types such that every Covered Property shall fall within a Property Type.
- 2) All Covered Properties of the same Property Type shall be subject to the same Final Performance Standard.

4118.04 Target Setting

- 1) The Department shall set a Final Normalized Site EUI Performance Standard for each Property Type.

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- 2) The Final Performance Standard shall be no lower than the 50th percentile Normalized Site EUI for buildings of each Property Type.
 - 3) The Department has the authority to evaluate and modify Interim and Final Performance Standard for covered properties after January 1, 2034.
 - 4) Unless otherwise directed by the Department, the Final Performance Standard for any Covered Property containing multiple Property Types shall be calculated on a pro rata basis based on the square footage of each Property Type within the Covered Property, in accordance with the ENERGY STAR® method of pro rata calculation.
 - 5) The Department shall calculate each Interim Performance Standard for each Covered Property using a straight-line trajectory from the Covered Property's Baseline Performance to the Final Performance Standard such that the calculated Normalized Site EUI shall improve in equal increments during each 5-year Compliance Period.
 - 6) The Department shall establish data verification requirements for each five-year Compliance Period.

4118.05 Building Performance Action Plans

1. Building Performance Action Plans.

If, due to unusual circumstances, an Owner believes that a Covered Property cannot reasonably meet an Interim or Final Performance Standard, then the Owner may propose a Building Performance Action Plan (hereinafter, "BPAP") to the Department for the Department's approval using the Building Performance Action Plan Form. The Department shall establish a BPAP form for Campus' and Properties whose primary use is manufacturing or other industrial purposes. The Department has the authority to establish more forms as determined necessary. The BPAP shall include, at a minimum,

- a. Basic information about the Covered Property including building Owner name, Property address, and a designated point of contact;
- b. Description of unusual circumstances that prevent the building from reasonably complying with Interim or Final Performance Standard;
- c. A physical description of the Covered Property;
- d. An inventory of all major energy using equipment including their age, efficiency, fuel type, designed performance, and capacity as indicated on the nameplate;
- e. Recommendations, including engineering calculations, for proposed performance of the Covered Property; and
- f. A timeline by which proposed improvements will be achieved.

As part of a BPAP application, an Owner may propose additional services and benefits to the community; the Department shall consider the value of such proposals.

The Department shall establish rules and deadlines governing BPAPs, including regarding whether the Department shall publish some or all of the BPAPs and criteria for such publication decisions.

Once a BPAP for a Covered Property is approved by the Department, then the Covered Property shall be in compliance with this ordinance so long as the terms of the BPAP are fulfilled on a timely basis. The BPAP may establish provisions to cure any noncompliance with this chapter; if these are not included in the BPAP, then normal enforcement provisions of this ordinance shall apply. The BPAP constitutes a binding agreement between the Owner of the Covered Property and the Department and shall be referenced in an attachment to the deed to the Covered Property at the office of the Recorder of Deeds.

When seeking to sell a Property, the Owner of any Covered Property, or any portion of a Covered Property, subject to a BPAP shall include a reference to the BPAP in any listings, notices, advertisements of sale, term sheets, or contracts of sale.

2. **4118.06 Renewable Energy Allowance**

- a. The Renewable Energy allowance is intended to reward building Owners for investing in onsite Renewable Energy by crediting a portion of electricity generated from onsite Renewable Energy systems, whether used onsite or exported back to the grid. The Director shall establish rules and regulations regarding how the allowance contributes to compliance.
- b. Owners of covered buildings must follow the guidance of the Benchmarking Tool to report Renewable Energy produced by the onsite Renewable Energy system. To receive a Renewable Energy allowance, inputs must include:
 - i. grid energy sent to the building;
 - ii. total Renewable Energy generated on site;
 - iii. Renewable Energy used on site; and
 - iv. any Renewable Energy generated on site and exported back to the grid.
- c. Entering net-grid delivered electricity alone is not sufficient to calculate a Renewable Energy allowance.

4118.07 Building Energy Performance Schedule

1. The Owner of a Covered Property shall ensure that the Property has met the Interim or Final Performance Standard or completed the necessary actions outlined in their Building Performance Action Plan by December 31st of the final year of each Compliance Period for each Covered Property.
2. The Owner of a Covered Property shall ensure all documentation is generated, completed, and submitted to verify their compliance either through the Benchmarking Report or the required documentation outlined in their approved Building Performance Action Plan by June 1 of the year following the final year of each Compliance Cycle for each Covered Property. The first deadline of compliance verification will be June 1, 2034.

4118.08 Extensions, Adjustments and Exemptions

The Department may grant an extension, adjustment or exemption to an Interim or Final Performance Standard on a Covered Property whose Owner submits a request, together with documentation, in a form prescribed by the Department, at least 180 days prior to any Interim or Final Performance Standard submission deadline.

1. A Covered Property that meets one or more of the following conditions may apply for an exemption from Building Performance Standard requirements if:
 - a. The Property Certificate of Occupancy or temporary Certificate of Occupancy has been issued for less than three years prior to the current Compliance Cycle deadline; or
 - b. If the Property is scheduled to be demolished within three years of a compliance deadline for any compliance interval. However, if the Property is not demolished within three years of the exemption approval, the building Owner shall comply with all subsequent requirements of this chapter.

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- c. If the Owner is unable to obtain whole-building energy data where a specific Tenant's authorization for data release was required. Documentation is shown that an Owner has requested consent to obtain energy data from Tenants and they have refused.
 - d. And other reasons subject to Director's rules that cause the Owner to be unable to comply with the requirements of this chapter.
 - 2. A Covered Property that meets one or more of the following conditions may apply for an extension or adjustment from Building Performance Standard requirements if:
 - a. The Property is under Financial Distress; or
 - b. The Department determines that strict compliance with provisions of this ordinance would cause Financial Distress or would not be in the public interest due to:
 - i. Major renovations or special circumstances specific to the Covered Property and not based on a condition caused by actions of the Owner
 - c. The Property had an average physical occupancy rate of less than 50 percent three years prior to the Baseline Year or over the previous Compliance Cycle.
 - d. The Property is subject to affordable housing refinancing timelines or low-income housing tax credit availability timelines that do not align with Interim or Final Performance Standard deadlines as applicable.

Any Owner requesting such an extension, adjustment, or exemption shall provide the Department with any and all documentation requested to substantiate the request or otherwise assist the Department in the extension, adjustment, or exemption determination. If the Department learns that an extension, adjustment, or exemption was granted based on materially inaccurate submissions, then the Department may revoke or modify the extension, adjustment or exemption.

4118.09 Maintenance of Records.

- 1.) Each Owner shall maintain records as the Department deems necessary for carrying out the purposes of this ordinance, including, but not limited to, energy and water bills and reports or forms received from tenants and/or utilities, BPAPs, and records demonstrating compliance with Interim or Final Performance Standards. Such records shall be preserved for a period of five years. At the request of the Department, such records shall be made available for inspection and audit by the Department.
- 2.) When a Covered Property is sold, the records shall be given to the new Owner.
- 3.) The Department reserves the right to review records as it deems necessary to evaluate the efficacy of this ordinance. Records shall be provided to the Director upon request.

4118.10 Violations and Enforcement.

- 1.) The Director may issue an order directing compliance, may assess a civil penalty, or impose any sanction or sanctions authorized by this section, for one or more of the following reasons:
 - a. Failing to comply with the requirements of this section or ordinance, any rule or order adopted under this section, consent agreement, or order of the Building Commission relating to the enforcement of this section;
 - b. Providing incorrect, misleading, incomplete, or materially untrue information in a document required to be prepared or shared by this ordinance;

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- c. Failing to perform or report the initial building performance information or updated building performance information within 30 days of the date specified in section 4118.07 Building Energy Performance Schedule;
- 2.) All civil penalties ordered in in this chapter will be determined per the Building Performance Standards Sections of the Combined Development Related Fee Schedule and adopted via a Director's Rule.
 - 3.) Any person adversely affected by an order of the Department of this Section may appeal to the Columbus Building Commission within 30 days of notice, pursuant to City Code Chapter 4107.

4118.11 Rules.

The Director may adopt such rules and regulations as deemed necessary to carry out the provisions of this chapter.

4118.12 Severability

The provisions of this Building Energy Performance Standard are considered to be severable; and if a court of competent jurisdiction holds a provision or part of a provision unconstitutional, that decision will not automatically invalidate the remainder of a provision or any other provision or part thereof.