

ARTICLE XI. - BUILDING BENCHMARKING AND PERFORMANCE

Sec. 12-201.- Purpose and applicability.

~~(a)~~ (a) — The purpose of this Article is to establish ~~a Building Energy benchmarking and Water Scoring Program~~ performance programs that ~~requires~~ require owners of ~~existing covered~~ buildings ("Covered Buildings") to benchmark building energy and water performance, and ~~makes such building performance information publicly available, in the interest of increasing~~ increase transparency and access to community building information, ~~as outlined in §12-203.~~

~~(1)~~ Improve and enhanced coordination and efficiencies among City energy increase commercial building performance efficiency programs through building performance standards as outlined in §12-204 and §12-205 with the option of selecting one of two compliance pathways: Meeting site EUI targets outlined in Table 1; or achieving a minimum standard percent reduction as outlined in §12-205. Attainment of these requirements shall be demonstrated through annual benchmarking reports as outlined in §12-204(j).

~~(2)~~ Building Benchmarking and partner organizations Performance Standards are powerful tools to improve building performance and reduce energy use across public, nonprofit, and private sectors. Fort Collins. In alignment with the City's community-developed and council-adopted, Our Climate Future plan, benchmarking and performance programs are critical to reduce greenhouse gas emissions. As of 2025, buildings in Fort Collins accounted for over two thirds of our local greenhouse gas emissions. Improving building efficiency reduces greenhouse gas emissions and costs for owners and rate payers. It can also increase occupancy and tenant retention, improve health, safety, and comfort of occupants.

~~(b)~~

~~(3)~~ The provisions of this Article shall:

~~(1)~~

~~a.~~ Apply to any ~~person~~ building owner who owns a ~~Covered Building~~ covered building or is a registered agent of an entity owning a ~~Covered Building~~ covered building within the City limits; and

~~(2)~~

~~b.~~ Apply to aggregated utility usage data reported in a statistical format; including ENERGY STAR® score.

~~(c)~~

~~(4)~~ This Article shall not apply to Fort Collins Utilities customer financial data or other data protected from disclosure under ~~§ 26-26~~ of this Code, unless requested in writing by the utility customer.

~~(d)~~ (5) This Article applies to privately owned covered buildings as defined in §12-202 and in C.R.S. § 25-7-142.

(6) Benchmarking requirements shall apply to water use beginning on July 1, 2027.

Sec. 12-202. - Definitions.

The following words, terms, and phrases, when used in this Article, shall have the meaning ascribed to them in this section. Words, terms, and phrases defined in the rules, regulations, policies and procedures adopted by the City Manager shall have the meaning set forth therein:

Baseline year means a calendar year of benchmarking reported data that building owner of a covered building selects to comply with standard percent reduction within one of these three (3) calendar years: 2023, 2024, or 2025.

Benchmarking shall mean means annually measuring a Covered Building's energy covered building's performance using the ENERGY STAR® Portfolio Manager® tool, or other City-approved tool.

~~Covered building shall mean any building or group of adjacent~~ Building means any single structure utilized or intended for supporting or sheltering any occupancy, except if a single structure contains two or more individually metered units operating independently that have stand-alone heating, cooling, hot water, and other mechanical systems, and no shared interior common areas. Building also means two (2) or more structures utilized or intended for supporting or sheltering any occupancy that:

- (1) Is serviced by a common energy meter;
- (2) has a common heating or cooling system;
- (3) share interior common areas; or
- (4) whose configuration otherwise prevents an accurate determination of the energy consumption attributable to each individual structure.

Building performance standards (BPS) means the performance targets that a covered building must meet to achieve the energy requirements as outlined in §12-204.

Exception: For the purposes of compliance with building performance standards in §12-204, multifamily residential, buildings in the City of Fort Collins with a under ten thousand (10,000) square feet total Gross Floor Area that is, and buildings constructed in compliance with the 2024 International Energy Conservation Code (IECC) or subsequent codes are excluded. These buildings will still need to comply with benchmarking requirements in §12-203.

Campus means a collection of two or more buildings that are owned and operated by the same building owner, have a shared purpose and function as a single property.

Covered building means a commercial or multifamily building comprising a gross floor area of five thousand (5,000) square feet or larger and is a commercial covered building as more that is occupied by a single occupant or a group of tenants.

Exception: Excludes public buildings, aside from City-owned buildings, and buildings used fifty (50) percent or more for industrial or agricultural processes, as such activities are defined by ENERGY STAR® Portfolio Manager® or Commercial Building Energy Consumption Survey (CBECS) published by the United States Energy Information Administration (EIA). Covered buildings include apartment and condominium buildings three stories or more in height above grade and representing multifamily structures defined by a typical R-2 occupancy by the International Building Code, tool or other City-approved tool.

Energy Efficiency Program shall mean the administrative program funded by the City of Fort Collins Utilities providing rebate and incentive money for energy efficiency upgrades for new construction and existing commercial buildings.

ENERGY STAR® Portfolio Manager® shall mean means the online tool created by the US Environmental Protection Agency used to measure and track a building's energy use, water consumption, waste diversion and greenhouse gas emissions.

Energy use intensity or (EUI shall mean) means a building's total amount of energy use for all fuel types used by a building, expressed as energy per square foot per year as a function of its size and other characteristics. A whole building's EUI is typically measured in thousands of BTU per square foot per year (kBtu/ft²/yr).

Final performance standard means the numeric site EUI target or standard percentage reduction target the covered buildings shall achieve during the 2035 calendar year and thereafter as reported in the ENERGY STAR® Portfolio Manager® tool or other City-approved tool as outlined in §12-205.

Gross floor area or (GFA) shall mean the total building area, as measured from the outside surface of each exterior wall of the building, including above-grade and below-grade space.

Interim performance standard means the numeric site EUI target or standard percentage reduction target the covered buildings shall achieve during the 2031 calendar year as reported in the benchmarking tool.

kBtu means thousand British thermal units.

Mixed-use building means a building that contains two or more property types.

Multifamily building means, for the purposes of this Article, a covered building that includes apartments and condominium buildings three stories or more in height above grade and representing multifamily structures defined by a typical R-2 occupancy by the

International Building Code. Individual multifamily buildings within a complex are benchmarked together as a campus. (If any building within the campus is three [3] stories or more above grade, the whole complex is covered together and reports as one single entity if the total square footage, measured between the principal exterior surfaces of the enclosing fixed walls of a building, as defined in the ENERGY STAR® Portfolio Manager® definitions, of all buildings combined is at least five thousand [5,000] square feet.).

Occupancy ~~shall mean~~ means the percentage of a property's gross floor area that is occupied and operational.

Owner ~~shall mean~~ means the person or entity, including common interest ownership groups having a legal or equitable interest in real property and the associated asset features of a covered building during the calendar year in which benchmarking ~~is or~~ building performance standards as required ~~under~~ in §12-203(b)(1), ~~and §12-204.~~

Property financial distress means the property owned by the building owner is experiencing at least one of the following conditions:

- (1) The property has been included on the City's, Larimer County's annual tax lien sale list within the previous two years;
- (2) The property is an asset subject to a court-appointed receiver that controls the asset due to financial stress;
- (3) The property is owned by a financial institution as a result of a default by a borrower;
- (4) The property has been acquired by a deed in lieu of foreclosure; or
- (5) The property is the subject of a senior mortgage subject to a notice of default.

Property type means the building property use type that the building owner selects in the ENERGY STAR® Portfolio Manager® tool as listed in §12-205.

Public building ~~shall mean~~ means a covered building owned by:

- (1) The state;
- (2) A local government;
- (3) A district or special district regulated under Title 32 of the Colorado Revised Statutes;
- (4) A state institution of higher education;
- (5) A private institution of higher education as defined in C.R.S §23-18-102(9);
- (6) A school district created pursuant to Article 30, Title 22 of the Colorado Revised Statutes; and
- (7) A charter school authorized pursuant to Part 1 of Article 30.5, Title 22 of the Colorado Revised Statutes.

Renewable energy means electricity generated from a source that is not depleted when used.

~~Reporting or report shall mean~~ reports means the data submitted each year via the ENERGY STAR® Portfolio Manager® tool or other City-approved tool using ~~a template~~templates and submission ~~link~~links to be distributed and publicized by the City of Fort Collins. All information expressly denoted as mandatory by either ENERGY STAR® Portfolio Manager® or the City shall be included in the submission. Energy and water shall be separately reported.

Site energy-use intensity or Site EUI means a measurement of a building's site energy use relative to the building's size, calculated by dividing the total net energy the building consumes in one year by the building's gross floor area, excluding any parking garage, and that is reported in thousands of British thermal units per square foot per year.

Standard percent reduction means the minimum required percentage reduction as defined in §12-205 (b).

Unoccupied means a building without occupants or tenants other than security, maintenance staff, or construction workers during a construction or renovation project.

~~Water use intensity or (WUI shall mean)~~ means a building's water use expressed as all water sources divided by the building square feet (not including parking or irrigated area). A whole building's WUI is typically expressed in gallons per square foot per year (gal/ft²/yr).

Weather-normalized means a method for modifying the measured building energy use in a specific weather year to energy use under normal weather conditions.

Sec. 12-203. - Building energy benchmarking and ~~water score~~ reporting.

~~(a)~~ —

~~Reporting properties.~~ Owners Building owners of commercial and multifamily covered buildings, including City-owned covered buildings, with a gross floor area equal to or greater than five thousand (5,000) square feet, shall ~~begin benchmarking~~benchmark building energy and water usage through ENERGY STAR® Portfolio Manager® ~~starting June 1, 2022~~or other City-approved tool, and follow an annual reporting cycle thereafter:

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~~(b)~~ (1) *Ongoing compliance.* Each covered building owner will report on an annual basis, as follows:

~~(1)~~ a. *Benchmarking.* The ~~Owner~~building owner shall provide the information necessary to benchmark energy and water usage as defined in ~~§ 12-202~~ §12-202 for the previous calendar year, such that reported data encompasses January 1 to December 31 of the prior calendar year~~—.~~

~~(2)~~

b. *Reporting.* For every building subject to this Article, the ~~Owner~~building owner shall annually submit to the City ~~an~~ energy and water benchmarking ~~report~~reports according to the schedule set forth herein. The

~~report~~reports shall be based on data entered into ENERGY STAR® Portfolio Manager® or other City-approved tool reflecting the energy and water performance information for the whole building during the full calendar year reported. The report shall, at minimum, include the building address, facility gross square footage, property type, and the individual or entity responsible for submitting the benchmarking ~~report.~~ reports.

(3)

c. Transparency. Reported benchmarking information and data obtained from reports submitted pursuant to this Article, including ENERGY STAR® score, ~~(if available),~~ Energy Use Intensity, and Water Use Intensity, shall be available to the public, consistent with City open data policies, as adopted in Resolution No. 2017-014 and as amended from time to time.

Sec. 12-204.~~(c) — - Building Performance Standards. The City Manager will promulgate rules consistent with §12-207 and pursuant to capital expansion projects, facilities master plan and design standards for City-owned buildings~~**performance standards.**

~~(a) Properties covered by December 31, 2022, establishing building performance standards. Building owners of covered buildings with a gross floor area equal to or greater than ten thousand (10,000) square feet, shall comply with building performance standards as outlined in this Article.~~

~~(b) Benchmarking. Building owners of covered buildings shall continue to achieve a reduction in building provide the information necessary to benchmark energy use of seven percent (7%) by 2026, compared to 2021 and water usage as required in §12-203.~~

~~(c) In general. Building owners of covered buildings shall demonstrate compliance with the building performance standards during the 2031 interim target year and 2035 final target year, through benchmarking reports showing the prior year performance shall be submitted no later than June 1, 2032, and June 1, 2036. The 2035 compliance targets must be maintained each subsequent year until ordinance language is changed.~~

~~(d) Interim targets. Interim targets will be uniquely assigned to each building to reflect a midpoint between 2025 reported benchmarked use and 2035 target use based on a straight line from the building's 2025 reported energy use to their final target EUI. If 2025 benchmarked data is not available, interim targets included in §12-205 will be used until accurate benchmarking data are submitted, at which point it will be assigned based on building use.~~

~~(e) Change in ownership. Responsibility to comply shall not be affected by changes in ownership or owner/tenant lease agreements. Approved adjustments will be reevaluated upon change in ownership.~~

~~(f) Changes in property type. If a covered building's property type changes the established target will be changed to the new property type.~~

(g) *Renewable energy.* Renewable energy generated on-site, as measured in kWh, will be credited towards energy use, lowering the target EUI.

(h) *Transparency.* The City shall publish each building's final and interim building standards and the buildings' performance against those standards on an annual basis.

(i) *Building performance standards in City-owned buildings.* City-owned building energy performance will be included in annual reports submitted to City Council as required in ~~§12-208.~~ §12-203, and City-owned covered buildings will be subject to building performance standards requirements defined in this Article.

(j) *Demonstrating building compliance.*

~~(1) **Sec. 12-204. Data verification; records retention.**~~

(a) ~~Owners are required to submit accurate and complete data as defined in this Article and of covered buildings shall use the~~ ENERGY STAR® Portfolio Manager® ~~How to Get Utility Data into Portfolio Manager® and by using the data quality checker tool within ENERGY STAR® Portfolio Manager® for each Covered Building in their portfolio or other City-approved tool, to demonstrate~~ .

~~(b) ~~Owners shall maintain the following records for a period of at least three years, and shall make such records available for inspection during business hours upon reasonable notice from the City:-~~~~

~~(1) ENERGY STAR® Portfolio Manager® account data;~~

~~a. In the compliance benchmarking report due on June 1, 2032, a demonstration that the covered building has met the interim site EUI target or standard percent reduction for calendar year 2031.~~

~~b. In the compliance benchmarking report due on June 1, 2036, a demonstration that the covered building has met the site EUI target or standard percent reduction for calendar year 2035.~~

(2) *Each covered building must maintain compliance with the final building performance standards each subsequent year until ordinance language is changed.*

(k) *State covered buildings.* For buildings that are also covered by the State of Colorado building performance standards requirements as defined in 5 CCR 1001-32, those buildings shall be deemed in compliance with the Fort Collins requirements if the State of Colorado has determined they are in compliance with the State requirements.

(l) *Disclosure upon sale.* The owner of a covered building shall disclose the covered building's compliance status in documentation concerning the sale of the covered building to all prospective buyers prior to the sale of the building, including all performance targets, any approved alternate compliance pathways, and any penalties assessed.

- (m) Data Verification. Covered buildings must submit third-party data verification for benchmarking
- ~~(2) — Proof of tenant data requests for~~ of baseline, interim, and final target years at the City's request.

Section 12-205. - Performance metrics.

(a) Building owners of covered buildings must reduce energy or space use through one of the following building performance standards compliance pathways:

- (1) Meet the site EUI targets included in Table 1 by demonstrating that the building's weather normalized site EUI during the interim and final target calendar years are less than or equal to the applicable site EUI targets; or
- (2) Meet the standard percent reduction.

(b) Standard percent reduction: Instead of achieving the site EUI targets in Table 1, a covered building owner may opt to comply by achieving and maintaining the standard reduction target based on their covered building's weather-normalized site EUI as compared to the covered building's baseline year. Under this compliance pathway, the covered building must:

- (1) In 2031, achieve and maintain a standard percent reduction of twelve (12) percent in comparison to the covered building's benchmarked baseline weather-normalized site EUI.
- (2) In 2035, achieve and maintain a standard percent reduction of twenty-five (25) percent in comparison to the covered building's benchmarked baseline weather-normalized site EUI.

(c) attribute Establishing baseline EUI.

(1) Building owners who will use the standard reduction pathway must report to City which year they will use as baseline through a City-approved form. If building owners do not select a baseline year, the City will assign the year with the highest weather normalized site EUI.

(2) For existing covered buildings where no baseline data is available, the City will establish reasonable baseline data based on benchmarking data for that covered building from any separately metered tenants; and other years if available, or on the average reported use for that property type if historical benchmarking data is not available.

(3) Any back-up information substantiating the energy data and space use attribute information entered into the ENERGY STAR® Portfolio Manager®.

(3) For new covered buildings, the baseline data shall be the predicted weather normalized site EUI for that covered building if one was submitted as part of energy code compliance. If no predicted EUI is available, program administrators will establish a reasonable baseline based on the average reported use for that property type.

Table 1: Building Performance Targets by Property Type

Property Type	Interim Site EUI	Final Site EUI
<u>Adult Education</u>	<u>85</u>	<u>77</u>
<u>Ambulatory Surgical Center</u>	<u>117</u>	<u>105</u>
<u>Aquarium</u>	<u>122</u>	<u>112</u>
<u>Automobile Dealership</u>	<u>78</u>	<u>71</u>
<u>Bank Branch</u>	<u>91</u>	<u>82</u>
<u>Bar/Nightclub</u>	<u>264</u>	<u>249</u>
<u>Barracks</u>	<u>103</u>	<u>96</u>
<u>Bowling Alley</u>	<u>64</u>	<u>57</u>
<u>Casino</u>	<u>122</u>	<u>112</u>
<u>College/University</u>	<u>103</u>	<u>93</u>
<u>Convenience Store with Gas Station</u>	<u>262</u>	<u>237</u>
<u>Convenience Store without Gas Station</u>	<u>262</u>	<u>237</u>
<u>Convention Center</u>	<u>122</u>	<u>112</u>
<u>Courthouse</u>	<u>94</u>	<u>84</u>
<u>Data Center</u>	<u>Note i</u>	<u>Note i</u>
<u>Distribution Center</u>	<u>60</u>	<u>54</u>
<u>Drinking Water Treatment & Distribution</u>	<u>147</u>	<u>131</u>
<u>Enclosed Mall</u>	<u>130</u>	<u>119</u>
<u>Energy/Power Station</u>	<u>147</u>	<u>131</u>
<u>Fast Food Restaurant</u>	<u>264</u>	<u>249</u>
<u>Financial Office</u>	<u>63</u>	<u>56</u>
<u>Fire Station</u>	<u>68</u>	<u>62</u>
<u>Fitness Center/Health Club/Gym</u>	<u>68</u>	<u>61</u>
<u>Food Sales</u>	<u>262</u>	<u>237</u>
<u>Food Service</u>	<u>264</u>	<u>249</u>
<u>Hospital (General Medical & Surgical) (Excluded)</u>	<u>191</u>	<u>173</u>
<u>Hotel</u>	<u>71</u>	<u>65</u>
<u>Ice/Curling Rink</u>	<u>122</u>	<u>112</u>
<u>Indoor Arena</u>	<u>44</u>	<u>40</u>
<u>K-12 School (Excluded)</u>	<u>53</u>	<u>48</u>
<u>Laboratory</u>	<u>240</u>	<u>215</u>
<u>Library</u>	<u>70</u>	<u>63</u>
<u>Lifestyle Center</u>	<u>106</u>	<u>96</u>
<u>Mailing Center/Post Office</u>	<u>93</u>	<u>83</u>
<u>Manufacturing/Industrial Plant (Excluded)</u>	<u>87</u>	<u>79</u>

<u>Property Type</u>	<u>Interim Site EUI</u>	<u>Final Site EUI</u>
<u>Medical Office</u>	<u>63</u>	<u>56</u>
<u>Mixed Use Property</u>	<u>Note ii</u>	<u>Note ii</u>
<u>Movie Theater</u>	<u>102</u>	<u>92</u>
<u>Multifamily Housing (Excluded)</u>	<u>47</u>	<u>43</u>
<u>Museum</u>	<u>77</u>	<u>69</u>
<u>Non-Refrigerated Warehouse</u>	<u>40</u>	<u>36</u>
<u>Office</u>	<u>63</u>	<u>56</u>
<u>Other</u>	<u>73</u>	<u>66</u>
<u>Other – Education</u>	<u>85</u>	<u>77</u>
<u>Other – Entertainment/Public Assembly</u>	<u>61</u>	<u>55</u>
<u>Other – Lodging/Residential</u>	<u>75</u>	<u>69</u>
<u>Other – Mall</u>	<u>79</u>	<u>72</u>
<u>Other – Public Services</u>	<u>94</u>	<u>84</u>
<u>Other – Recreation</u>	<u>122</u>	<u>112</u>
<u>Other – Restaurant/Bar</u>	<u>235</u>	<u>219</u>
<u>Other – Services</u>	<u>63</u>	<u>56</u>
<u>Other – Specialty Hospital</u>	<u>116</u>	<u>104</u>
<u>Other – Technology/Science</u>	<u>147</u>	<u>131</u>
<u>Other – Utility</u>	<u>122</u>	<u>109</u>
<u>Outpatient Rehabilitation/Physical Therapy</u>	<u>117</u>	<u>105</u>
<u>Parking</u>	<u>Note iii</u>	<u>Note iii</u>
<u>Performing Arts</u>	<u>74</u>	<u>67</u>
<u>Personal Services (Health/Beauty, Dry Cleaning, etc.)</u>	<u>93</u>	<u>83</u>
<u>Police Station</u>	<u>94</u>	<u>84</u>
<u>Pre-school/Daycare</u>	<u>62</u>	<u>56</u>
<u>Prison/Incarceration</u>	<u>94</u>	<u>84</u>
<u>Race Track</u>	<u>122</u>	<u>112</u>
<u>Refrigerated Warehouse</u>	<u>69</u>	<u>61</u>
<u>Repair Services (Vehicle, Shoe, Locksmith, etc.)</u>	<u>59</u>	<u>52</u>
<u>Residence Hall/Dormitory</u>	<u>66</u>	<u>61</u>
<u>Residential Care Facility</u>	<u>102</u>	<u>94</u>
<u>Restaurant</u>	<u>235</u>	<u>219</u>
<u>Retail Store</u>	<u>55</u>	<u>49</u>
<u>Roller Rink</u>	<u>122</u>	<u>112</u>
<u>Self-Storage Facility</u>	<u>4</u>	<u>4</u>
<u>Senior Living Community</u>	<u>74</u>	<u>68</u>
<u>Social/Meeting Hall</u>	<u>50</u>	<u>45</u>
<u>Stadium (Closed)</u>	<u>122</u>	<u>112</u>
<u>Stadium (Open)</u>	<u>122</u>	<u>112</u>
<u>Strip Mall</u>	<u>112</u>	<u>103</u>
<u>Supermarket/Grocery Store</u>	<u>164</u>	<u>148</u>

<u>Property Type</u>	<u>Interim Site EUI</u>	<u>Final Site EUI</u>
<u>Swimming Pool</u>	<u>122</u>	<u>112</u>
<u>Transportation Terminal/Station</u>	<u>122</u>	<u>112</u>
<u>Urgent Care/Clinic/Other Outpatient</u>	<u>73</u>	<u>66</u>
<u>Veterinary Office</u>	<u>89</u>	<u>80</u>
<u>Vocational School</u>	<u>85</u>	<u>77</u>
<u>Wastewater Treatment Plant</u>	<u>147</u>	<u>131</u>
<u>Wholesale Club/Supercenter</u>	<u>96</u>	<u>87</u>
<u>Worship Facility</u>	<u>39</u>	<u>35</u>
<u>Zoo</u>	<u>122</u>	<u>112</u>
<u>i. Data Centers.</u> ENERGY STAR® Portfolio Manager® provides estimates that allow buildings to identify these spaces' energy usage. The installation of a sub-meter to provide an accurate measure of data center energy data is strongly encouraged and considered a best practice. Energy use from data centers as defined by ENERGY STAR® Portfolio Manager® may be excluded from whole building data for the purposes of attaining BPS targets. <u>ii. Mixed Use Property.</u> Mixed Use properties shall report their actual space use types to determine an EUI target which will be weighted by GFA. <u>iii. Parking.</u> Using ENERGY STAR® Portfolio Manager® instructions, users with submetered parking may exclude that energy use and gross floor area from their benchmarking report. If data is not submetered, include the parking square footage in the benchmarking report and Portfolio Manager will estimate out parking's energy usage.		

Section 12.206. - Building performance standards adjustments.

(a) Adjusted Timeline.

(1) To apply for a timeline adjustment, a covered building owner must

~~**(c) Any person who fails, neglects or refuses to submit an application on a City-approved form requesting an adjusted timeline, including:**~~

- a. The specific adjusted timeline needed.
- b. Documentation of the need for the adjusted timeline.
- c. The covered building owner's plan to achieve the performance targets within the adjusted timeline.
- d. Purchase orders for necessary equipment demonstrating purchase and delivery dates, and/or any additional documentation supporting the need for an adjustment, as requested by the City.

(2) Building owners applying for an adjusted timeline must submit their application at least 30 days before December 31, 2031, for the interim performance standard, or at least 30 days before December 31, 2035, for the final performance standard.

a. Building owners will be eligible for an adjustment if they meet one or more of the following criteria:

- 1. Covered buildings undergoing a major renovation that does not align with the interim target dates but that will achieve the final target.**

2. Building owners experiencing significant supply chain or workforce delays.

3. Building owners who can demonstrate a plan to replace building heating and cooling systems at end of life where the system end of life occurs after the compliance period but within five (5) years of the final target.

4. Building owners can demonstrate that the property meets one or more of the conditions defined as property financial distress in §12-202.

5. Buildings that require updates to the electrical distribution infrastructure that cannot be completed in time to meet the building performance standard deadline.

6. Building owners that purchased a covered building within the twelve (12) month period before a required building performance standard deadline.

7. Building owners that qualify for a waiver for benchmarking during the interim and final building performance standard target years.

8. Building owners who have made a good faith effort to comply but encountered circumstances that prevented compliance through no fault of the building owner, as approved by the City Manager.

(3) If the City learns that an adjustment was granted based on materially inaccurate submissions, then the City may revoke or modify the adjustment.

(b) *Adjusted Targets.* To apply for a target adjustment, a covered building owner must submit an application on a City-approved form at least thirty (30) days before December 31, 2031, for the interim performance standard or at least thirty (30) days before December 31, 2035, for the final performance standard requesting an adjusted target, including:

(1) A third-party data verification for the previous year of benchmarking data.

(2) An energy audit completed by an approved energy auditor demonstrating improvement pathways.

a. The audit report must include the achievable weather-normalized site EUI for the building, based on the results and recommendations of the audit.

b. Energy auditors must be certified by the Association of Energy Engineers (AEE), ASHRAE, the Energy Management Association, the Building Performance Institute, or other certification approved by the City.

c. Energy auditors must certify that the results of the energy audit are **accurate and complete** ~~data as required by this Article is subject to enforcement under § 12-206 of this Code.~~

(3) Narrative detailing the building characteristics (e.g., year of construction, state, City, or federal historical status, etc.) and any functional variations that qualify for an adjustment with a plan that shall include, at a minimum:

a. description of the circumstances that prevent the building from reasonably complying;

b. a physical description of the covered property;

c. an inventory of all major energy using equipment including their age, efficiency, fuel type, designed performance, and capacity as indicated on the nameplate;

d. recommendations, including engineering calculations, for proposed performance;

e. a timeline by which proposed improvements will be achieved; and

The City may request other information from the covered building owner in order to generate a standard performance adjustment target.

(4) Building owners will be eligible for an adjustment if they meet one or more of the following criteria:

a. Building owners can demonstrate that the property meets one or more of the conditions defined as property financial distress in §12-202.

b. Building owners whose buildings have inherent and unique characteristics of the physical building that make the weather normalized site EUI target and standard percent reduction unachievable.

c. Building owners who have made a good faith effort to comply but encountered circumstances that prevented compliance through no fault of the building owner, as approved~~Sec. 12-205. -- Exemptions; variance.~~

~~(a) — Owners may apply annually to the City Manager for exemption from the benchmarking and reporting requirements of this Article and in the manner described in any rules and regulations promulgated by the City Manager.~~

(5) If the City learns that an adjustment was granted based on materially inaccurate submissions, then the City may revoke or modify the adjustment.

(6) The City Manager's determination regarding applicability of an adjustment under this section shall be final; no further administrative review or appeal to the City shall be available to an owner aggrieved by such determination.

Sec. 12-207. - Building benchmarking and building performance standards annual waivers.

(a) Each year, building owners may apply to the City Manager for a one-year waiver from the benchmarking reporting and/or building performance standards if a building will not meet its targets under §12-205. In order to apply for this waiver condition, the building owner must submit an application at least thirty (30) days before the benchmarking deadline of June 1 and thirty at least thirty (30) days before December 31, 2031, for the interim performance standard and at least thirty (30) days before December 31, 2035, for the final performance standard. The City Manager, or their delegate will review and render a decision on any application for ~~exemption or variance~~waivers from the requirements of this Article. ~~An exemption or variance may~~ Building owners' will be granted~~eligible~~ for any building that meets at least a waiver if they meet one or more of the following criteria:-

(1) The building had an average physical occupancy of less than sixty (60) percent; throughout the calendar year for which benchmarking is required, based on criteria set forth in rules, regulations, policies and procedures adopted by the City Manager;

~~(2) The building is used 50% or more for industrial or agricultural processes, as such activities are defined by ENERGY STAR® Portfolio Manager®;~~

~~(3) The Owner can demonstrate the subject building's performance information is or involves a confidential business practice, including trade secret, privileged, or confidential commercial information. To qualify for this exemption, the Owner shall specifically identify the information it believes to be confidential and provide a written statement describing the manner in which public disclosure would cause substantial harm to the Owner's competitive position in efficient energy usage alone will not be considered confidential commercial information; and~~

~~(4) The building is a "public building" as defined by §12-202.~~

~~(5) The covered building meets the criteria for a waiver from benchmarking or reporting deadlines under C.R.S. §25-7-142 (5).~~

~~(6)~~

~~(2) A demolition permit was issued or demolition is scheduled that will prevent achievement of the targets;~~

~~(3) The covered building did not have a certificate of occupancy or temporary certificate of occupancy for all twelve months of the year prior to the building performance standard target year or benchmarking compliance year;~~

~~(4) The building owners of the property can demonstrate that the property meets one or more of the conditions defined as property financial distress in §12-202;~~

~~(5) The City Manager determines that, due to special circumstances unique to the applicant's building and not based on a condition caused by actions of the applicant, strict compliance with ~~the benchmarking and reporting~~ requirements under this Article would cause undue hardship or would not be in the public interest.~~

~~(b)~~

~~(b) If a building owner receives a one-year benchmarking waiver approval, it does not exempt them from the building performance standard requirements.~~

~~(c) Any owner requesting a waiver shall provide the City any and all documentation requested to substantiate the request or otherwise assist the City in the waiver determination.~~

~~(d) If the City learns that a waiver was granted based on materially inaccurate submissions, then the City may revoke or modify the waiver.~~

~~(e) The City Manager's determination regarding applicability of ~~an exception or variance~~ a waiver under this section shall be final; no further administrative review or appeal to the City shall be available to an ~~Owner~~ owner aggrieved by such determination.~~

Sec. 12-~~208~~. - Records retention.

~~(a) Owners are required to submit accurate and complete data as defined in this Article and ENERGY STAR® Portfolio Manager® or from other City-approved benchmarking guidance.~~

~~(b) Owners shall maintain the following records for a period of at least seven years, and shall make such records available for inspection during business hours upon reasonable notice from the City:~~

~~(1) Account data from City-approved benchmarking tool.~~

(2) ~~Proof of tenant~~206- data requests for energy or space use attribute data from any separately metered tenants.

(3) Any back-up information substantiating the energy and space use attribute information entered into the ENERGY STAR® Portfolio Manager® or City-approved benchmarking tool.

(4) Demonstration of compliance with the chosen Building Performance Standards compliance pathway for Building Performance Standards covered buildings, including results from the ENERGY STAR® Portfolio Manager® or City-approved benchmarking tool.

(5) Any waiver or adjustment submissions regarding compliance status.

(6) Records of any upgrades made to comply with the building performance standards requirements (e.g., receipts, invoices).

(c) Any building owner who fails, neglects or refuses to submit accurate and complete data as required by this Article is subject to enforcement under §12-210 of this Code.

Sec. 12-209. - Implementation.

The City Manager may adopt such other rules and regulations concerning the benchmarking and ~~reporting of building performance information~~standards requirements as may be necessary to implement the provisions of this Article not in conflict with such provisions. Any adopted rules and regulations shall be clearly stated and shall become effective upon the filing of such regulations with the office of the City Clerk and the posting of a notice of the adoption of the regulations on the City's website. Such notice shall include the effective date of the regulations, and notice that the full text of the regulations is on file in the office of the City Clerk.

Sec. 12-~~207.~~210. - Violations and penalties.

(a) Any ~~person~~building owner who violates ~~§12-203 or §12-204 without an applicable exception or variance~~ §12-203 commits a civil infraction and is subject to the penalty provisions of ~~§1-15(~~ §1-15(f) of the Code. Failure to comply with benchmarking in §12-203 in any calendar year shall constitute a single violation in that calendar year.

(b) Any building owner who fails to comply with meeting the applicable interim or final site EUI target or standard percent reduction in §12-204 and §12-205 shall, severally and for each and every violation in noncompliance respectively, be liable for a civil infraction and subject to a civil penalty in the amount of up to seventy cents (\$0.70) for each required kBtu reduction that the building owner fails to achieve.

(c) For the purposes of this Article, §12-204 and §12-205, each active violation and every calendar quarter during which the violation continues shall constitute a separate violation.

(d) Unpaid fines may result in a lien on the property and shall continue at all times against the property until the amount is fully paid.

(e) Notwithstanding the citation service requirements otherwise set forth in ~~§ 19-65~~ §19-65 of the Code, citations for violations of this section will be deemed properly served when ~~delivered~~sent to the covered building owner or other responsible party by first-class mail at the last known address of said party, as reflected in the records of the City, County, or State. A copy of the citation may also be posted in a conspicuous place on the covered building.

~~Failure to comply with §12-203 or §12-204 in any calendar year shall constitute a single violation in that calendar year.~~

Sec. ~~12-208.~~ 211. - Evaluation.

The City Manager shall present an annual report to the City Council each year evaluating the ~~Building Energy and Water Scoring~~building Benchmarking Program output and outcomes.~~– and additional information on building Performance Standards as available.~~

Secs. 12-~~209~~212—12-219. - Reserved.