

CITY-COUNTY GENERAL ORDINANCE NO._____, 2021
PROPOSAL NO._____, 2021

PROPOSAL FOR A GENERAL ORDINANCE amending the Revised Code to add a new chapter to Title III, Public Health and Welfare, to wit: Chapter 710, Energy Benchmarking and Transparency.

WHEREAS, the Consolidated City of Indianapolis and Marion County is committed to taking steps to mitigate and adapt our community to climate change to ensure a healthy and prosperous community for all our residents now and in the future; and

WHEREAS, in 2018, the City launched Thrive Indianapolis, the first sustainability and resilience action plan in our city's history, which was developed through an extensive community engagement process and sets out the goals for our city in the coming decades to address the effects of climate change; and

WHEREAS, in furtherance of the Thrive Indianapolis action plan, the city desires to establish an energy and water benchmarking, reporting and transparency requirement for certain buildings within its jurisdiction to incentivize the city, the county and other property owners to improve the use of energy and water in buildings to reduce costs and to foster a cleaner and healthier environment; and

WHEREAS, improvements to energy efficiency will serve to spur economic investment through reduced operating costs, increased asset values and improved worker productivity; and

WHEREAS, energy efficient buildings will consume less power, resulting in fewer greenhouse gas emissions and improved air quality; and

WHEREAS, reduced energy costs will create an efficient building stock and maintain affordability for tenants and businesses; now, therefore:

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Title III of the Revised Code of the Consolidated City and County, Indianapolis/Marion County, Indiana, Public Health and Welfare, is hereby amended by adding a new chapter, Chapter 710, Energy Benchmarking and Transparency, to read as follows:

Sec. 710-101. – Purpose and Policy.

The purpose and intent of this chapter is to establish an energy and water benchmarking, reporting and transparency requirement for certain buildings to incentivize the city, the county and other property owners to improve the use of energy and water in buildings to reduce costs and to foster a cleaner and healthier environment, to spur economic investments and to create an efficient and affordable building stock.

Sec. 710-102. – Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

Administrator means the director of the city's office of sustainability, or his/her designee.

Aggregated whole-building data means energy or water data that has been summed for an entire property, which may include a single occupant or a group of separately metered tenants.

Anonymized data means energy or water data that does not reveal names, addresses or any other information that would identify an individual or business.

Benchmarking (or benchmark) means to input and submit the total energy and water consumed for a property for a calendar year and other descriptive information for such property as 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 administrator.

Benchmarking submission means a subset of:

- (a) information input into the benchmarking tool; and
- (b) benchmarking information generated by the benchmarking tool, as determined by the administrator.

Benchmarking tool means the U.S. Environmental Protection Agency's ENERGY STAR® Portfolio Manager, or any additional or alternative tool adopted by the administrator, used to track and assess the energy and water use of certain properties relative to similar properties.

Building management system means a computer-based system that monitors and controls a property's mechanical and electrical equipment, such as HVAC, lighting, power, water, fire suppression and security systems.

City-owned property means a property owned, leased, or managed by the city, any agency thereof, or the Marion County Building Authority, such that the city or the authority regularly pays all or part of the annual energy and water bills for the property.

Compliance means that the owner of a covered property has carried out all applicable duties outlined in this chapter, which includes entering data into the benchmarking tool and reporting it to the administrator.

Condominium means a property that combines separate ownership of individual units with common ownership of other elements, such as common areas.

Covered city property means a property that:

- (a) is city-owned property over fifty thousand square feet 50,000 square feet of gross floor area, beginning with 2022 data and thereafter; and
- (b) is city-owned property over twenty-five thousand square feet 25,000 square feet of gross floor area, beginning with 2023 data and thereafter.

Covered non-city property means a property, other than a covered city property, that:

- (a) has a gross floor area of over 100,000 square feet beginning in 2023-and thereafter; and

(b) has a gross floor area of over 50,000 square feet beginning in 2024 and thereafter.

Covered property means any covered city property or covered non-city property; provided, however, the following properties shall be excluded from the definition and are not subject to this chapter:

- (a) single family, duplex, triplex and fourplex residential homes and related accessory structures, or any other residential building with less than four (4) units; and
- (b) properties classified as industrial per designated Standard Industrial Classification (SIC) codes 20 through 39;

Data Quality Checker means the function in the ENERGY STAR Portfolio Manager that runs a set of basic data checks on properties to help identify possible data entry error and to determine whether a building differs from typical operational patterns.

Energy means electricity, natural gas, steam, or other product sold by a utility to a customer which is the owner or occupant of a property, or renewable electricity generation on the property, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses of a property, as recorded in the benchmarking tool.

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.

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.

EPA means the U.S. Environmental Protection Agency.

Financial hardship means:

- (a) a covered property with property taxes and/or special assessments due and owing in arrears resulting in the property's inclusion on the Marion County tax lien sale list within the prior two (2) years; or
- (b) a covered property under the control of a court-appointed receiver;
- (c) a covered property owned by a financial institution or other lender which took title to the property due to default of a mortgage, lien, or other security interest against the property through a deed in lieu of foreclosure or court judgment; or
- (d) a covered property subject to one (1) or more mortgages or other security interests, the holder of the most senior of which has given written notice to the owner that it is in default.

Gross floor area means the total property area, measured between the outside surface 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.

Non-compliance means that the owner of a covered property has not carried out all applicable duties outlined in this chapter, which includes entering data into the benchmarking tool and reporting it to the administrator or has not otherwise obtained an exemption from compliance pursuant to this chapter.

Owner means any of the following:

- (a) one (1) or more individuals or entities in whose name title to a property is held;
- (b) the board of the owners' association, in the case of a condominium;
- (c) 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) the board of directors, in the case of a cooperative apartment corporation; or
- (e) an agent authorized to act on behalf of any of the above.

Property means any of the following:

- (a) a single building;
- (b) one (1) or more buildings held in the condominium form of ownership and governed by a single board of managers or a master association; or
- (c) a campus of two (2) or more contiguous buildings which are owned and operated by the same party, have a single shared primary function, and are:
 - (1) behind a common utility meter or served by common mechanical/electrical systems (such as, by way of illustration and not of limitation, 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
 - (2) used primarily for one of the following functions:
 - (i) K-12 school;
 - (ii) hospital;
 - (iii) hotel;
 - (iv) multifamily housing; or
 - (v) senior care community.

Shared benchmarking information means information generated by the benchmarking tool and descriptive information about a covered property, including its physical and operational characteristics, which is shared with the public. Shared benchmarking information, as defined by the ENERGY STAR Portfolio Manager glossary, shall include, but need not be limited to:

(a) Descriptive information, including:

- (1) property address;
- (2) primary use;
- (3) gross floor area;
- (4) number of years the property has been ENERGY STAR® Certified and the last approval date, if applicable; and
- (5) individual or entity responsible for the benchmarking submission.

(b) Output information, including:

- (1) site and source energy use intensity;
- (2) weather normalized site and source energy use intensity;
- (3) the ENERGY STAR score, where available;
- (4) total annual greenhouse gas emissions;
- (5) indoor water use and water use intensity (consumption per gross square foot);
- (6) total water use;
- (7) the ENERGY STAR water score, where available; and
- (8) general comments section, if needed, to explain the building's ENERGY STAR scores.

(c) Whether the owner is in compliance or non-compliance.

Space means an area within a building enclosed by floor to ceiling walls, partitions, windows and doors.

Tenant means a person or entity occupying or holding possession of a property, or a part thereof, with the consent of the owner.

Utility means an entity that distributes and/or sells natural gas, electricity, water, or thermal energy services for covered property.

Sec. 710-103. – Applicability.

- (a) This chapter is applicable to the owner of each covered property, as well as the tenants thereof, subject to any exceptions set forth in this chapter.
- (b) This chapter is applicable to each utility to the extent that each utility is highly encouraged to:

- (1) develop and maintain the capability to determine aggregated whole-building data for each covered property that it serves in an electronic format capable of being uploaded into the benchmarking tool for at minimum the most recent 24 months; and
- (2) cooperate with the owners of covered properties in providing such data and information as is possible for purposes of benchmarking under this chapter.

Sec. 710-104. – Collecting and Entering Benchmarking Data; Recordkeeping.

- (a) On or before June 1 of each calendar year the owner of each covered property shall collect and enter all data needed to benchmark the entire property for the previous calendar year into the benchmarking tool in a manner that conforms to latest EPA guidance for use of the tool, based on aggregated whole-building data for the covered property's energy and water use.
- (b) Aggregated whole-building data shall be compiled using one or more of the following methods:
 - (1) Obtaining aggregated whole-building data from a utility.
 - (2) Collecting data from all tenants.
 - (3) Reading a master meter.
- (c) If the owner does not have access to aggregated whole-building data for energy and water usage, the owner shall request aggregated whole-building data from each utility that provides energy or water service to the property. If a utility does not provide aggregated whole-building data for energy or water usage, the owner shall request energy and water data from tenants of the covered property.
 - (1) Each nonresidential tenant of a covered property shall, within 30 days of a request by the owner and in a form to be determined by the administrator, provide all information that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this ordinance.
 - (2) When the owner receives notice that a nonresidential tenant intends to vacate a space within the covered property, the owner shall request data relating to such tenant's energy and water use for any period of occupancy relevant to the owner's obligation to benchmark pursuant to this chapter. Such tenant shall report such information to the owner, in a form to be determined by the administrator, within 30 days of a request by the owner.
 - (3) If a tenant fails or refuses to provide energy and water data requested by the owner, the owner must submit documentation to the administrator of the reasons why the owner is not able to acquire aggregated whole-building data and may apply for an exemption under section 710-107 of this chapter.
 - (4) Nothing in this chapter shall be construed to permit an owner to use tenant energy usage data for purposes other than compliance with this chapter.

- (5) Nothing in this chapter shall be construed to excuse an owner from complying with federal or state laws governing direct access to tenant utility data from the responsible utility.
- (d) When a covered property changes ownership, the previous owner shall provide the new owner with all energy and water usage data and covered property descriptive information for the period during which the previous owner was in possession of the property needed for the new owner to comply with this chapter.
- (e) The owner shall run all data quality checker functions available within the benchmarking tool and shall verify that all data has been accurately entered into the tool. The owner shall correct all missing or incorrect information as identified by the data quality checker prior to submitting a benchmarking report to the administrator.
- (f) Owners shall maintain records as the administrator determines is necessary for carrying out the purposes of this ordinance, including but not limited to the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of five (5) years. At the request of the administrator, such records shall be made available for inspection and audit by the administrator, at no cost to the city.

Sec. 710-105. – Benchmarking Submissions.

- (a) On or before June 1 of each calendar year, the owner of each covered property shall make a benchmarking submission in an electronic format to the administrator, which shall consist of an energy and water benchmarking report including, at minimum, shared benchmarking information generated by the benchmarking tool based upon the data entered pursuant to section 710-104 of this chapter.
- (b) If an owner learns that any information reported as part of a benchmarking submission is inaccurate or incomplete, within 30 days of learning of the inaccuracy or incompleteness, the owner shall amend the information reported within the benchmarking tool and shall provide the administrator with an updated benchmarking submission.
- (c) An owner may make a written request to the administrator, in such form and with such supporting documentation as may be requested by the administrator, at least 30 days prior to the date on which a benchmarking submission is due for an extension of time to make a benchmarking submission if, despite good faith efforts, the owner is unable to complete the submission on time due to the failure of either a utility provider or a tenant (or both) to provide the owner with information needed to complete the submission. The administrator may grant no more than two (2) extensions of no more than 30 days each to the owner of a covered property in a calendar year.

Sec. 710-106. – Benchmarking Implementation Schedule.

- (a) The benchmarking submissions required by Sec. 710-104 shall be initially filed in accordance with the following schedule:

Benchmarking Implementation Phased-In Schedule					
Phase 1: 2021	Phase 2: 2022	Phase 3: 2023	Phase 4: 2024		Final Transparency Phases
Voluntary benchmarking submissions for all covered property	Covered city property 50,000 square feet of gross floor area or greater: Benchmarking submission mandatory	Covered city property 25,000 square feet of gross floor area or greater: Benchmarking submission mandatory		Benchmarking data for covered properties in Phases 1 and 2 will be made transparent.	Benchmarking data for covered properties in Phase 3 will be made transparent in 2025. Benchmarking data for covered properties in Phase 4 will be made transparent in 2026.
	Covered non-city property: Benchmarking submission voluntary	Covered non-city property 100,000 square feet of gross floor area or greater: Benchmarking submission mandatory	Covered non-city property 50,000 square feet of gross floor area or greater: Benchmarking submission mandatory		

- (b) By December 1 of each year prior to a year in which benchmarking submissions are due, the administrator may publicly post a list of all covered properties that must provide a benchmarking submission to the administrator during the following year.
- (c) Between January 1 and March 1 of each year, for at least the first three (3) years during which an owner is required to provide a benchmarking submission, the administrator shall attempt to notify those owners of their obligation to benchmark via direct mail, electronically via email, or through a public posting on a web site.
- (d) Failure of the administrator to publicly post a list of all covered properties that must provide a benchmarking submission to the administrator during the following year or to notify any owner in accordance with this section shall not relieve such owner of its obligation to comply with this chapter.

Sec. 710-107. – Benchmarking Transparency.

- (a) The administrator shall, beginning in accordance with the schedule set forth in section 710-106(a) and annually thereafter, make shared benchmarking information available on a publicly accessible website.
- (b) Beginning December 1, 2025 and on or before the first business day of December of each calendar year thereafter, the administrator shall 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, an assessment of compliance rates, accuracy and issues affecting accuracy, changes across the covered

properties portfolio over time, and trends observed. All data included in the annual benchmarking report shall be anonymized data. The administrator may include the information required in the annual benchmarking report as a standalone report or in a combined annual energy and water efficiency report covering the progress of all of the city's energy efficiency ordinances and programs, at the administrator's discretion.

- (c) The administrator may provide non-anonymized data from benchmarking submissions to any utility serving a covered property or to any federal, state, county, or city-managed energy efficiency or management program, provided that the data will be used only for purposes of offering programs, services and incentives related to energy and water efficiency and management, and provided that the administrator has first obtained the written consent of the owner of a covered property to share the data with the utility or energy efficiency and/or management program. Where the owner's permission can be granted electronically through acceptance of a default option, the city shall provide a clearly delineated option for owners of covered properties to choose to opt out of granting such consent automatically. The administrator may provide anonymized data to a utility without the prior consent of an owner.
- (d) The administrator may disclose non-anonymized data from benchmarking submissions to a third party for academic or other non-commercial research purposes.

Sec. 710-108. – Benchmarking Exemptions.

- (a) The owner of a covered city property may request an exemption from making a benchmarking submission for any given calendar year if the owner submits a written request to the administrator, in such form and with such supporting documentation as may be requested by the administrator, at least 60 days prior to the date on which a benchmarking submission is due for that year establishing that the covered city property met one (1) or more of the following conditions during the calendar year for which an exemption is being requested:
 - (1) A wrecking permit for the entire building was issued, demolition work has begun, and legal occupancy of the building was no longer possible prior to end of that year;
 - (2) The covered city property did not receive energy or water utility services for at least 30 days during that year;
 - (3) The covered city property had an average physical occupancy rate of less than 50 percent over the course of that year; or
 - (4) Due to special circumstances unique to the covered city property, strict compliance with provisions of this chapter would not be in the public interest.

The administrator shall grant an exemption if the owner provides documentation to demonstrate the conditions set forth in subsections (1), (2) and (3). The administrator shall have the discretion whether to grant an exemption under subsection (4).

- (b) The owner of a covered non-city property may request an exemption from making a benchmarking submission for any given calendar year if the owner submits a written request to the administrator, in such form and with such supporting documentation as may be requested by the administrator, at least 60 days prior to the date on which a

benchmarking submission is due establishing that the covered non-city property has met one (1) or more of the following conditions during the calendar year for which an exemption is being requested:

- (1) Any of the conditions set forth in section 710-107(a)(1) – (3) apply to the covered non-city property.
- (2) The owner of the covered non-city property is unable to obtain the data as provided for in section 710-104(c)(3);
- (3) The covered non-city property is under financial hardship;
- (4) The covered non-city property has a gross floor area more than 50% of which is used for residential purposes, has more than four (4) energy/water meters, the owner is not able to obtain aggregated whole-building data, and the utilities serving the property does not provide access to aggregated whole-building data; or
- (5) Special conditions unique to the covered non-city property which were not caused by the actions of the owner exist such that strict compliance with this chapter would cause the owner undue hardship.

The administrator shall grant an exemption if the owner provides documentation to demonstrate the conditions set forth in subsections (1), (2), (3) and (4). The administrator shall have the discretion whether to grant an exemption under subsection (5).

Sec. 710-109. – Enforcement.

- (a) The failure by owner to make a benchmarking submission as required by this chapter shall constitute a violation of the Code. An owner's first and second violations shall be subject to an admission of violation and payment of the designated civil penalty through the ordinance violations bureau in accordance with sections 103-51 and 103-52 of the Code. All subsequent violations shall be subject to the enforcement procedures provided for in section 103-3 and 103-5 of the Code.
- (b) The penalties allowed under subsection (a) may not be imposed until after:
 - (1) The administrator has issued a written notice of violation to the owner or the owner's designee by personal service or by first class United States Mail, postage prepaid;
 - (2) Passage of thirty (30) days, which must be stated in the notice, for the violation to be cured; and
 - (3) Failure of the violation to be cured within the time stated in the notice.
- (c) In addition to civil penalties, the administrator may seek injunctive relief to enforce the provisions of this chapter.
- (d) All penalties collected for violation of this chapter shall be deposited in the Energy and Water Efficiency Fund created under section 710-111.

Sec. 710-110. – Rules.

The board of public works is empowered to adopt and enforce rules and regulations supplementing this chapter which are reasonably necessary to make effective the provisions thereof and to supply further details, not inconsistent therewith, in the administration and enforcement of this chapter.

Sec. 710-111. – Energy and Water Efficiency Fund.

- (a) There is hereby created a special fund, to be designated as the Energy and Water Efficiency Fund, which shall be a continuing, non-reverting fund, with all balances remaining therein at the end of the year, and such balances shall not revert to the city or county general funds. The controller shall deposit in this fund any fees, penalties, grants or other monies collected in relation to benchmarking under this chapter or received in connection with energy and water efficiency efforts and programs.
- (b) Funds from the Energy and Water Efficiency Fund may be appropriated to carry out the purpose and intent of this chapter, including the operations of the administrator, the education of owners and the public about benchmarking and energy efficiency, and to assist with the implementation of energy and water efficiency programs.

SECTION 2. Section 103-52 of the Revised Code of the Consolidated City and County, Indianapolis/Marion County, Indiana, Schedule of Code provisions and penalties, is hereby amended by adding the language that is underlined, to read as follows:

Sec.103-52. - Schedule of Code Provisions and Penalties.

Code Section	Subject Matter	Civil Penalty
<u>710-104(a)</u>	<u>Failure to make benchmarking submission – first offense</u>	<u>\$100.00</u>
<u>710-104(a)</u>	<u>Failure to make benchmarking submission – second offense</u>	<u>\$250.00</u>

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council adopting this ordinance. To this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Indiana Code § 36-3-4-14.

The foregoing ordinance was passed by the City-County council this ____ day of _____, 2021, at _____ p.m.

ATTEST:

Vop Osili
President, City-County Council

SaRita Hughes
Clerk, City-County Council

Presented by me to the Mayor this ____ day of _____, 2021, at 10:00 a.m.

SaRita Hughes
Clerk, City-County Council

Approved and signed by me this ____ day of _____, 2021.

Joseph H. Hogsett, Mayor