



AGENDA ITEM COVER PAGE

File ID: #8727

Ordinance

Second Reading

Sponsored by: Ken Russell, Commissioner

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, TITLED "BUILDINGS," TO ADD A NEW ARTICLE XII, TITLED "BUILDING ENERGY AND WATER CONSUMPTION BENCHMARKING", REQUIRING BUILDINGS OVER 20,000 SQUARE FEET OF GROSS FLOOR AREA TO PERFORM AND REPORT ANNUAL ENERGY AND WATER BENCHMARKING TO THE CITY OF MIAMI; PROVIDING FOR EXEMPTION OF CERTAIN BUILDING TYPES; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.



City of Miami

Legislation

Ordinance

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Final Action Date:

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WHEREAS, the City of Miami ("City") desires to raise awareness of energy performance through information and transparency with a goal of unlocking energy and cost savings opportunities and health benefits for the City's businesses and residents; and

WHEREAS, benchmarking of energy and water consumption is part of committed actions in the Resilient305 Unified Strategy with Miami-Dade County and the City of Miami Beach as well as in the City's Miami Forever Climate Ready strategy which was launched in January 2020; and

WHEREAS, the City's 2018 Greenhouse Gas Emission Inventory revealed fifty-two percent (52%) of greenhouse gas emissions are from buildings; and

WHEREAS, a relatively small number of large buildings often account for a considerable portion of a city's energy use; and

WHEREAS, annual benchmarking of energy and water consumption helps building owners, property managers, and facilities' staff establish energy performance baselines, monitor performance over time, guide actions to cut waste, and verify energy and water savings from investments as well as mitigates carbon emissions; and

WHEREAS, benchmarking data provides summary information about public and private buildings, documenting trends in energy and water performance; and

WHEREAS, benchmarking allows for a data-based approach to analyzing future energy needs, where improvements can be made, and how to reduce costs; and

WHEREAS, more than thirty (30) major United States cities and counties, including New York, Chicago, Atlanta, Boulder, and Kansas City, have adopted similar requirements, thus demonstrating the acceptability, legality, and feasibility of such requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. Chapter 10 of the Code of the City of Miami, Florida, as amended, is further amended in the following particulars.¹

“CHAPTER 10

BUILDINGS

* * *

ARTICLE XII. BUILDING ENERGY AND WATER
CONSUMPTION BENCHMARKING AND RETUNING

Sec. 10-147. Building Energy and Water Consumption Benchmarking and Retuning Ordinance.

Intent. This Article shall be known and may be cited as the City of Miami's ("City") Building Energy and Water Consumption Benchmarking and Retuning Ordinance and is intended to allow a data-based approach to analyze future energy needs, improve future usages, eliminate waste, and reduce costs.

Sec. 10-148. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this Article, have the meanings indicated in this Section:

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.

Base Building Systems mean the systems or subsystems of a building that use or distribute energy, water, impact energy, and/or water consumption, including, but not limited to the building's envelope as well as its HVAC systems, conveying systems, electrical and lighting systems, on-site generation systems, domestic hot water systems, water distribution systems, plumbing fixtures and other water-using equipment, and landscape irrigation systems and water features, including fountains and excluding systems or subsystems that operate industrial applications or processes or any systems or subsystems in a multifamily residential building appurtenant only to the specific dwelling unit for which the occupant of that unit bears responsibility for its maintenance and such usage is measured by a meter or submeter.

Benchmark means to input and submit the total energy and water consumed for a property for the previous 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 Director.

Benchmarking Submission means a subset of information input into the Benchmarking Tool and Benchmarking information generated by the Benchmarking Tool as determined by the Director.

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

¹ Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

Covered Private Property means a property, other than a covered City property, or any property owned or operated by Miami-Dade County, the State of Florida, or the Federal government with a building or buildings that exceed 20,000 square feet of Gross Floor Area.

Covered Public Property means a property with a building or buildings that exceed 20,000 square feet of Gross Floor Area and is owned, leased, or managed by the City and where the City regularly pays all or part of the annual energy and/or water bills.

Covered Property means any Covered Public Property or Covered Private Property except for any property with a single-family home or duplex, a solely residential multi-family building of five (5) units or less, or any building with an industrial use per designated Standard Industrial Classification (SIC) codes 20 through 39.

Department means the City's Building Department.

Director means the Director of the Department or designee.

Energy 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.

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.

ENERGY STAR® Portfolio Manager means the tool developed and maintained by the EPA to track and assess the relative energy performance of buildings.

Financial Hardship (of a property) means that a property:

1. Had arrears of property taxes or special assessments that resulted in the issuance of a tax certificate against the property within the prior two (2) years;
2. Has a court appointed receiver in control of the asset due to financial distress;
3. Is owned by a financial institution through default by the borrower;
4. Has been acquired by a deed in lieu of foreclosure; or
5. Has a senior mortgage subject to a notice of default.

Gross Floor Area means Floor Area as defined in Article I, Section 1.2 of Ordinance No. 13114, the Zoning Ordinance of the City of Miami, Florida, as amended ("Miami 21 Code"), or as defined in any successor Zoning Ordinance.

Shared Benchmarking Information means information generated by the Benchmarking Tool and descriptive information about the physical property and its operational characteristics, which is shared with the public. The information, as defined by the ENERGY STAR® Portfolio Manager glossary, includes, but is not limited to, descriptive information such as the property's address, primary use, Gross Floor Area, number of floors, number of years the property has been ENERGY STAR® Certified, and the last approval date, if applicable, as well as energy-related output information such as site and source energy use intensity, weather normalized site and source energy use intensity, the ENERGY STAR® score (where available), total annual greenhouse gas emissions, monthly energy use by fuel type, indoor water use and water use intensity (consumption per gross square foot), outdoor water use (where available), total water use, the property's ENERGY STAR® Water Score (where available), and any other general comments required to explain said ENERGY STAR® Scores.

System or Subsystem means a building assembly made up of various components that serve a specific function including but not limited to exterior walls, windows, doors, roofs, ceilings, floors, lighting, piping, ductwork, insulation, Heating, Ventilation, and Air Conditioning (“HVAC”) system equipment or components, electrical appliances, and plumbing appliances.

Utility means an entity that distributes and/or sells natural gas, electric, water, or thermal energy services for buildings.

Sec. 10-149. Applicability.

This Ordinance shall apply to all new and existing Covered Properties in accordance with the initial compliance timetable set forth in Section 10-138 of the City Code so long as the Benchmarking Tool as selected by the Director remains free to use by members of the general public.

Sec. 10-150. Procedures.

The owner of each Covered Property shall collect and enter data for the previous calendar year into the Benchmarking Tool. Unless otherwise defined in this Ordinance, the owner of each Covered Property shall input all data into the Benchmarking Tool in a manner that conforms to latest guidance provided by the EPA for use of the Benchmarking Tool. Whole-building utility data for the property’s energy water and energy use shall be compiled using one or more of the following methods:

- (a) Obtaining Aggregated, Whole-Building Data from a utility company;
- (b) Collecting data from all tenants for nonresidential properties; or
- (c) Reading a master meter.

If the owner of a Covered Property does not otherwise have access to whole-building energy and water data, such property owner shall request Aggregated, Whole-Building Data from each utility that provides energy or water service to the property and that has made aggregated utility data available to owners before the reporting date of that calendar year. When a Utility does not provide whole-building energy or water data, the owner of a nonresidential Covered Property shall request energy and water data from tenants or occupants.

Each non-residential tenant located in a Covered Property shall, within thirty (30) days of a request by the owner and in a form to be determined by the Director, 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.

When the owner of a Covered Property receives notice that a nonresidential tenant intends to vacate a space within such property and the Utilities do not provide Aggregated, Whole-Building Data, the owner shall request information relating to such tenant’s energy and water use for any period of occupancy relevant to the owner’s obligation to Benchmark.

When a Covered Property changes ownership, the previous owner shall provide the new owner with all information needed to Benchmark for the period during which the previous owner was in possession of the property.

Sec. 10-151. Duty to Report Benchmarking.

For every Covered Property subject to this Chapter, the owner shall annually submit to the Director an energy and water Benchmarking report in an electronic format as established by the Director by the date specified in Section 10-152 of the City Code.

The information included in the annual Energy and Water Benchmarking Report shall include, at a minimum, the Shared Benchmarking Information for the previous calendar year.

The owner of each Covered Property shall enter data into the Benchmarking Tool so that the energy and water Benchmarking report shall be based on an assessment in the Benchmarking Tool of the aggregated total energy and water consumed by the whole property for the entire calendar year being reported.

Before submitting a Benchmarking Submission, the owner shall run all automated data quality checker functions available within the Benchmarking Tool and shall verify that all data has been accurately entered into the Benchmarking Tool. In order for the Benchmarking report to be considered in compliance with this Ordinance, the owner shall correct all missing or incorrect information as identified by the Benchmarking Tool prior to submitting the Benchmarking report to the Director.

Where the current owner learns that any information reported as part of the Benchmarking Submission is inaccurate or incomplete, the owner shall amend the information so reported within the Benchmarking Tool and shall provide the Director with an updated Benchmarking Submission within thirty (30) days of learning of the inaccuracy.

Sec. 10-152. Benchmarking Requirements.

- (a) The owner of a Covered Property shall ensure that for each such property, a Benchmarking report is generated, completed, and submitted to the Director annually.
- (b) The Benchmarking reports for each Covered Property shall be due by the dates as defined in the following table. Subsequent Benchmarking reports for each Covered Property shall be due by June 30 of each year thereafter.

Table 1.

<u>Size (Gross Floor Area)</u>	<u>Initial Compliance Required by:</u>
<u>Buildings 200,000 square feet or larger</u>	<u>June 30, 2023</u>
<u>Buildings between 100,000 square feet and 199,999 square feet</u>	<u>October 1, 2023</u>
<u>Buildings between 50,000 and 99,999 square feet</u>	<u>October 1, 2024</u>
<u>Buildings between 20,000 and 49,999 square feet</u>	<u>October 1, 2025</u>

Sec. 10-153. Benchmarking Exemptions.

- (a) Benchmarking is not required for a Covered Public Property for the current reporting year if the owner submits documentation to the Director establishing that the property has met one of the following conditions:
 - 1. The property does not have a Certificate of Occupancy or Temporary Certificate of Occupancy for all 12 months of the calendar year being Benchmarked;

2. A demolition permit for the entire building was issued for the calendar year being Benchmarked, provided that demolition work has commenced and legal occupancy was no longer possible prior to end of that year;
 3. The property did not receive energy or water services for the entire calendar year to be Benchmarked; or
 4. The Covered Property had average physical occupancy of less than fifty percent (50%) throughout the calendar year for which Benchmarking is required.
- (b) Benchmarking is not required for a Covered Private Property for the current reporting year if an owner submits documentation with the Director in such form and with such evidence as required by the Director establishing that the property has met one of the following conditions:
1. It meets any of the exemptions defined for a Covered Public Property;
 2. The Director determines that due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this Ordinance would cause undue hardship or would not be in the public's best interest;
 3. The owner notifies the Director that the property is under Financial Hardship and provides proof of the same; or
 4. The Covered Property may be exempted from electricity Benchmarking if more than fifty percent (50%) of Gross Floor Area is used for residential purposes and:
 - i. The property is not master metered or the owner does not have access to master meters or other means to obtain whole-building electricity data; and
 - ii. The serving electric utility does not provide data aggregation services or access to whole-building utility data. Once such services are available from the Utility as determined by the Director, such properties will no longer be exempt from Benchmarking requirements and shall file initial Benchmarking reports in the first required reporting year following such data availability.
 5. If over 25% of the dwelling units within the property qualify as affordable housing, the property owner or representative may request an exemption.
- (b) Any entity or owner requesting an exemption from Benchmarking shall submit an Annual Benchmarking Exemption Request form to the Director by April 1 in the year for which the exemption is being requested. Any exemption granted will be limited to the Benchmarking Submission for which the request was made and does not extend to past or future submittals.
- (c) For each reporting year in which an owner files a request for an exemption, the Director shall determine whether that exemption is approved. Appeal of a determination that a property is not exempt shall be made within fifteen (15) days of such determination to a review committee comprised of the Director of the Departments of Resilience and Public Works (or the Supervisor of Plats in lieu thereof), Zoning, and Planning, the Director, and an Assistant City Manager as designated by the City Manager. The review committee, acting by majority vote, shall either affirm the Director's denial or reverse his/her denial and grant the requested exemption.

Sec. 10-154. Energy and Water Retuning Requirements.

- (a) The owner of each Covered Property 50,000 sq. ft. or above shall ensure that retuning is performed on the Base Building Systems of each such property in accordance with the schedule requirements of Section 10-156 to ensure that Base Building Systems are maintained, cleaned, and repaired.

- (b) Retuning shall be performed by or under the supervision of a qualified retuning professional in accordance with industry standard practices including ASHRAE Guideline 1.2 Commissioning Process for Existing Systems and Assemblies, ASHRAE Standard 0.2 Commissioning Process for Existing Systems and Assemblies, and other standards as may be defined by the Director.
- (c) The owner shall correct, through low-cost adjustments and minor repairs to the property's energy and water systems, all deficiencies identified by the retuning professional as having a simple payback of three (3) years or less. However, a retuning measure is not required if such retuning measure would necessitate a building permit other than an electrical or plumbing permit.
- (d) The cost estimates for recommended improvements to Covered Properties that are regulated by any City, County, State, or federal law regulating landmarks and historic buildings shall include all additional costs necessary for the proposed retuning work to comply with such law.
- (e) Unless otherwise restricted by statute or contract, tenants shall allow property owners reasonable access to systems and Utility information, if necessary, to comply with the terms of this Ordinance.

Sec. 10-155. Energy and Water Retuning Reports.

- (a) For each Covered Property, a retuning professional shall complete, physically or digitally sign, and electronically submit an on-line Retuning Report on behalf of the property owner in accordance with the schedule requirements of Section 10-156.
- (b) Before submitting the Retuning Report, the qualified retuning professional shall verify that the energy and water consumption reported in the annual Benchmarking reports for the five (5) previous years are accurate. If found to be inaccurate, the qualified professional must identify inaccuracies in the reports and ensure that the data entered in the Benchmarking Tool and reported to the Director is updated prior to submitting the retuning report so that it reflects correct historical electricity and water consumption data.

Sec. 10-156. Retuning Schedule.

- (a) The owner of a Covered Property shall ensure that for each such property retuning is performed, a retuning report is completed and submitted to the Director once every five (5) years with a start date commencing per Table 2.
- (b) The retuning reports for each Covered Property shall be due prior to December 30 of the Calendar Year shown in Table 2 as determined by the building's square footage.

Table 2.

<u>Size</u>	<u>Retuning</u>
<u>Buildings 200,000 square feet or larger</u>	<u>December 1, 2028 and every five (5) years thereafter</u>

<u>Buildings between 100,000 and 199,000 square feet</u>	<u>December 1, 2029 and every five (5) years thereafter</u>
<u>Buildings between 50,000 and 99,999 square feet</u>	<u>December 1, 2030 and every five (5) years thereafter</u>
<u>Buildings between 20,000 and 49,999 square feet</u>	<u>Optional</u>

- (c) An owner may apply for an extension of time to file a retuning report if, despite such owner's good faith efforts documented in such application, the owner is unable to complete the required retuning prior to the scheduled due date for such report. The Director may grant no more than one (1) such extension for no more than one (1) year.
- (d) The owner of a property that is in Financial Hardship may apply for and be granted annual extensions of time to file a retuning report.
- (e) Extensions granted pursuant to this Section shall not extend the scheduled due dates for subsequent retuning reports. The property owner acknowledges that by requesting and receiving an extension, the period of time before the property's next compliance date will be less than the typical schedule.

Sec. 10-157. Retuning Exemption.

- (a) A retuning report is not required for a Covered Property for the current reporting cycle if a qualified professional submits documentation to the Department in such form and with such certifications as required by the Director establishing that the property has met one (1) of the following conditions:
 1. The property is exempt from Benchmarking requirements pursuant to the provisions of Section 10-153.
 2. The initial Certificate of Occupancy for the property was issued less than five (5) years prior to the date when the first retuning would otherwise be due.
 3. The property has undergone substantial rehabilitation, as certified by a registered design professional, within the five-year period prior to the Calendar Year in which a retuning is due such that at the commencement of such Calendar Year, all of the Base Building Systems of such property are in compliance with energy conservation and efficiency codes of the State, County, and City as applicable, and any State, County, and City Codes impacting water consumption in existence at the time this Ordinance takes effect.
- (b) The energy portion of the retuning is not required for the current reporting cycle if a qualified professional submits documentation with the Department in such form and with such certifications as required by the Director. For each reporting cycle, the Department shall determine whether an exemption under this Subsection applies to a property. Appeal of a determination that a property is not exempt shall be made according to the procedures set forth by the Director.

Sec. 10-158– Permit Fee Credit

- a. All Covered Properties that are in good standing with submitting Benchmarking Submissions, retuning reports, and have not been found in violation of either Benchmarking Submissions as required by Section 10-152 or retuning reporting as required by Section 10-155 within the past five (5) calendar years shall be granted a maximum one-time credit per building, up to the amount provided in Table 3, for permit fees related to direct costs incurred for Benchmarking or retuning purposes pursuant to this Chapter. A property that has been found to have any code violations shall not qualify.

Table 3.

<u>Size</u>	<u>Maximum Credit of Building-Efficiency Related Permit Fees</u>
<u>Buildings 500,000 square or larger</u>	<u>Up to \$25,000.00</u>
<u>Buildings between 100,000 and 499,999 square feet</u>	<u>\$10,000.00</u>
<u>Buildings between 20,000 and 99,999 square feet</u>	<u>\$5,000.00</u>

Sec. 10-159. Sharing of Data.

- (a) The Director shall make available on a publicly accessible website the Shared Benchmarking Information as defined in Section 10-148 for the previous Calendar Year for each Covered Property.
- (b) The Shared Benchmarking Information for each Covered Property shall be made available to the public beginning one (1) year after each such property is first required to submit a Benchmarking report.
- (c) The Director will determine if any Benchmarking shared summary data shall be excluded from publishing because it is not in the public's best interest.
- (d) The City may provide non-anonymized data from Benchmarking or retuning submissions to any Utility serving a Covered Property or to any federal, State, County, or City-managed Energy efficiency program, provided that the data will be used only for purposes of targeting incentives provided through energy and water efficiency programs and provided that the City has first obtained the Covered Property owner's written or electronic permission to share the data with the Utility or energy efficiency program. Where the property 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 permission.
- (e) The City may disclose any retuning data or data from Benchmarking Submissions to a third party for academic or other non-commercial research purposes provided that such data is anonymized.

- (f) All third parties receiving data from Benchmarking or retuning submissions shall sign a non-disclosure agreement with the City stipulating terms for acceptable use of the data, including assurances that such data shall not be disclosed to other entities, before receiving such data.

Sec. 10-160. Annual Report and Analysis.

- (a) The Director shall make available on a publicly accessible website and update annually the following information:
1. No later than December 1, 2023, a report on the Benchmarking of all available Covered Properties, including an assessment of accuracy and issues affecting accuracy, summary energy and water consumption statistics, trends observed, and an assessment of changes across the portfolio over time; and
 2. No later than December 1, 2024, a report on the Benchmarking of all available Covered Properties, including an assessment of compliance rates, an assessment of accuracy and issues affecting accuracy, summary energy and water consumption statistics, trends observed, and an assessment of changes across the portfolio over time.
- (b) Beginning in 2029 and every three (3) years thereafter, the Director shall make available on a publicly accessible website a report on the progress of retuning for all Covered Properties, including but not limited to, compliance rates, trends observed, correlations of Benchmarking scores and retuning measures completed, the impact of retuning on EUIs and ENERGY STAR® Scores, and recommendations on how the uptake of energy and water conservation measures could be increased or the implementation of retuning could be improved.
- (c) Nothing in this Ordinance shall prevent the Director from including all such information in a combined annual energy and water efficiency report covering the progress of all of the City's energy and water efficiency ordinances and programs.

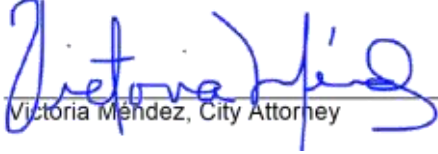
Sec. 10-161. Enforcement.

- (a) It shall be unlawful for any entity or person to fail to comply with the requirements of this Ordinance or misrepresent any material fact in a document required to be prepared or shared by this Ordinance.
- (b) If the Director determines that a property owner has failed to report Benchmarking information as required under this Ordinance or the owner has submitted incomplete or false Benchmarking information, the Director may refer the owner for enforcement as set forth in Chapter 2, Article X of the City Code, titled "Code Enforcement," and may be brought for further proceedings before the Code Enforcement Board. A property owner in violation of this Article may be fined \$250.00 per day for a first-time offense or \$500.00 per day for a repeat violation of this Article. The City may also avail itself of any other legal remedy available and the use of one enforcement option shall not preclude the use of another.
- (c) No violation shall be issued for non-compliance or failure to submit to the Director a Benchmarking report until one year from the first compliance date for Benchmarking reports as defined in Section 10-152."

Section 5. If any section, part of a section, paragraph, clause, phrase, or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 6. This Ordinance shall become effective immediately upon its adoption and signature of the Mayor.²

APPROVED AS TO FORM AND CORRECTNESS:


Victoria Mendez, City Attorney 4/13/2021

² This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.