

Date June 3, 2019

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 2- 923, 26-1, 26-2, 26-3 and 26-101, and by adding and enacting new Article IX. Energy and Water Use Benchmarking of Chapter 26 Buildings and Building Regulations, relating to energy and water use benchmarking for certain properties in the city",

which was considered and voted upon for the first time under Roll Call No. 19-0669 of April 22, 2019, and considered and voted upon for the second time under Roll Call No. 19- 0820 of May 20, 2019, again presented. **(Council Communication No. 19-265)**

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 2- 923, 26-1, 26-2, 26-3 and 26-101, and by adding and enacting new Article IX. Energy and Water Use Benchmarking of Chapter 26 Buildings and Building Regulations, relating to energy and water use benchmarking for certain properties in the city.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 2-923, 26-1, 26-2, 26-3 and 26-101, and by adding and enacting new Article IX. Energy and Water Use Benchmarking of Chapter 26 Buildings and Building Regulations, relating to energy and water use benchmarking for certain properties in the city.

Sec. 2-923. Duties of community development director.

The community development director shall be responsible in the community development department for the following:

- (1) The enforcement of vector, sanitation, housing, zoning, building, electrical, plumbing, mechanical, and steam power equipment codes and the issuance of all permits and the inspection of all work done under the provisions of such codes and the safety inspection of all premises.
- (2) Planning activities.
- (3) Providing assistance to the city plan and zoning commission in accordance with section 82-40 of this Code.
- (4) Housing rehabilitation, housing counseling and loan services.
- (5) The administration and enforcement of energy and water use benchmarking.

Sec. 26-1. Title.

This chapter shall consist of the building code, energy code, electrical code, mechanical code and fuel gas code, plumbing code, and steam power equipment code, all of which shall be referred to collectively as the "building codes" or "this chapter." This chapter shall also regulate sign and billboard structures and energy and water use benchmarking for certain properties in the city. A person who performs or is in the business of performing the work or activities regulated by this chapter may be referred to as a "contractor."

Sec. 26-2. Purpose.

The purpose of this chapter is to provide for the protection and improvement of the public health, ~~and~~ safety and welfare by: creation of a permit and development division, a building and fire code board of appeals and a board of power engineering examiners; adoption of building codes; enforcement of penalties for the violation of the building codes; ~~and repealing repeal of~~ conflicting ordinances; and assessment of energy and water use of properties.

Sec. 26-3. Interpretation.

Article I consists of general provisions applicable to all articles. Articles II through ~~VIII IX~~ contain specific provisions pertaining to particular trades and activities. In the event of a conflict with article I, the specific provisions of articles II through ~~VIII IX~~ shall control.

Sec. 26-101. Powers and duties of building official.

- (a) *Generally.* Any reference in this article to the building official shall include the building official's designees and inspection staff. The general powers and duties of the building official shall be as follows:
- (1) Enforce all the provisions of this chapter exclusive of article IX.
 - (2) Be accountable for the issuance of permits and inspections of work.
 - (3) Serve as city staff and advisor to the building and fire code board of appeals and to the board of power engineer examiners.
 - (4) Render interpretations of the building codes and adopt and enforce rules and regulations supplemental to such codes as the building official may deem necessary in order to clarify the application of the provisions of such codes. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of the applicable code.
 - (5) Determine value or valuation under any of the provisions of the building codes.
 - (6) Appoint staff members and delegate duties to those staff members.
- (b) *Reports and records.* The building official shall
- (1) Provide the director of community development and the city manager, not less than once per year a summary of the building official's recommendations as to desirable amendments to the building codes.
 - (2) Keep a permanent, accurate account of all fees and other monies collected and received under the codes assigned to the building official for enforcement, the names of the persons upon whose account the fees were paid, the date and amount thereof, together with the location of the building or premises to which they relate.
 - (3) Keep a record of the issuance of permits, inspections made, and other official work performed in accordance with this chapter.
 - (4) Keep records of building and fire code board of appeals meetings, hearings, rulings, and other matters performed in accordance with this chapter.
 - (5) Keep records of board of power engineer examiners meetings, hearings, rulings, and other matters performed in accordance with this chapter.
- (c) *Specific powers*
- (1) Whenever any condition exists that is in violation of the codes or creates a danger to health and safety, the building official may until further notice:
 - a. Order any work stopped.
 - b. Order changes to any work to correct an unsafe or illegal condition.
 - c. Order discontinuation of any utilities supplying the premises.
 - d. Order vacation of any premises.

The building official shall give notice of such action to individuals in control of the premises, and may prescribe a period of time to comply with such notice based on the urgency of the situation.

- (2) Whenever necessary to make an inspection to enforce any of the provisions of the building codes or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the building official may enter such building or premises at all reasonable times to inspect the building or premises or to perform any duty imposed upon the building official by the building code. However, if such building or premises is occupied, the building official shall first present proper credentials and request entry. If such entry is refused, the building official shall have recourse to every remedy provided by law to secure entry. When the building official shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as provided in this subsection, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to the such codes.
 - (3) The building official shall have the authority to remove or cause the removal of covering, finishes, or other obstruction which may prevent the proper inspection of work or equipment.
- (d) *Emergencies and public nuisances.* Whenever the building official determines that a public nuisance exists which constitutes an emergency requiring immediate abatement, the city may perform any emergency action necessary to abate the nuisance without prior notice or hearing.
- (e) *Cooperation of other officials and officers.* The building official may request and shall receive so far as is required, in the discharge of the building official's duties, the assistance and cooperation of other officials of this jurisdiction.
- (f) *Conflict of Interest.* Neither the building official nor any of the inspectors shall engage in any work for hire regulated by that individual, either directly or indirectly, nor shall the official or any of the inspectors have any financial interest in any firm engaged in such trade or business in the city at any time while employed by the city.
- (g) *Liability.*
- (1) Neither the city nor any employee is liable for damages to a person or property as a result of any act or failure to act in the enforcement of the building codes, unless the act of enforcement constitutes false arrest.
 - (2) The building codes shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any equipment or structure regulated by such codes for damage to a person or property caused by its defects, nor shall the city or any city employee be held as assuming any such liability because of the inspections authorized by such codes or any approvals issued under such codes.

ARTICLE IX.

ENERGY AND WATER USE BENCHMARKING AND PERFORMANCE IMPROVEMENT

Sec. 26-900. Purpose.

The purpose of this article is to preserve and improve the safety, health, welfare, comfort and convenience of city residents by advancing energy efficiency and reducing greenhouse gas emissions as outlined in and in furtherance of the Guide DSM: Strategic Plan 2015-2030 adopted by the city council in 2015 and the Plan DSM: Creating Our Tomorrow plan as an amendment to the city's comprehensive

plan adopted by the city council in 2016. The terms and provisions of this article shall serve as a vital component in reaching the goals set forth in the adopted plans to reduce greenhouse gas emissions, to reduce energy consumption in City-owned buildings, and to foster a sustainable local economy through environmentally sound building practices and energy efficiency.

Sec. 26-901. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section unless context indicates otherwise:

Aggregated whole-building data means energy use or water use 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 data that does not reveal names, addresses or any other information that would identify a person or business.

Audit means a systematic evaluation process to identify appropriate modifications and improvements of a covered property base building systems for energy and/or water distribution and use, including proposed alterations to and installation of new equipment for such systems, insulation installation or other generally recognized energy and water efficiency technologies to optimize energy and water use performance and achieve energy and water savings for the covered property.

Base building systems means the systems or subsystems of a building that use or distribute energy and/or water and/or impact energy and/or water consumption, including:

- (1) The building envelope;
- (2) The heating, ventilating, and air conditioning (HVAC) systems;
- (3) Energy conveying systems;
- (4) Electrical and lighting systems;
- (5) On-site energy generation systems;
- (6) Domestic hot water systems;
- (7) Water distribution systems;
- (8) Plumbing fixtures and other water use equipment; and
- (9) Landscape irrigation systems and water features, including fountains.

Except base building systems does not include:

- (1) Systems or subsystems within a leased premises or an apartment established pursuant to Iowa Code Chapters 499A or 499B that are owned or fully maintained and for which all energy and/or water bills are paid for pursuant to separate meter or sub-meter by the person who has ownership or possessory interest in the leased premises or apartment.
- (2) Systems or subsystems used in conjunction with industrial applications or processes.

Benchmarking means to input and submit the total energy and water consumed as part of integral building operations for a covered property and to input and submit additional descriptive information for such covered property required by the benchmarking tool for each calendar year.

Benchmarking tool means the United States Environmental Protection Agency Energy Star portfolio manager, or such additional or alternative tool adopted by the city, used to track and assess the energy and water consumption of a covered property relative to properties with similar characteristics which, at a minimum, provides an Energy Star score and measures energy use intensity, water use intensity and emissions.

City covered property means a covered property that is entirely owned or leased by the city.

Covered property means any property that exceeds 25,000 square feet in total building gross floor area except covered property does not include property:

- (1) Classified for assessment purposes as residential real estate;
- (2) Classified for assessment purposes as multi-residential real estate containing fewer than five dwelling units;
- (3) Classified for assessment purposes as industrial real estate;

- (4) Owned or leased by the federal, state or county governments or the municipal housing agency for the city;
- (5) Utilized primarily for an elementary and/or secondary school;
- (6) Utilized primarily for religious assembly;
- (7) Of a type not meeting the underlying public purposes of this article, as determined by the director.

Director means the community development director or his or her designees.

Energy means electricity, gas, steam, or other product sold by a utility to a public or private customer, 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 portfolio manager.

Energy Star score means the numeric rating generated by the Energy Star portfolio manager tool developed and maintained by the United States Environmental Protection Agency as a measurement of a property's relative energy performance and efficiency.

Energy use intensity means the energy use per square foot of gross floor area for the calendar year calculated by total year kBtu divided by total square footage.

Gross floor area means the total area, included within the exterior walls of a building, including lobbies, leased premises, common areas, shared use rooms, restrooms, elevator shafts, stairwells, mechanical equipment areas, basements and storage rooms.

Owner means any of the following:

- (1) An owner as defined in section 1-2 of this Code;
- (2) A tenant in the case of a property subject to a triple net lease between an owner and a single tenant;
- (3) The council of co-owners for property subject to a declaration recorded pursuant to Iowa Code Chapter 499B;
- (4) The board of directors for property subject to articles filed pursuant to Iowa Code Chapter 499A; or
- (5) An agent authorized to act on behalf of any of the above.

Property means any of the following:

- (1) A single building;
- (2) Two or more buildings subject to the same declaration recorded pursuant to Iowa Code Chapter 499B or subject to the same articles filed pursuant to Iowa Code Chapter 499A;
or
- (3) A campus of two or more buildings which are owned and operated by the same person, have a shared primary function, and:
 - a. Utilize a common electric utility meter or utilize common base building systems which prevent the owner from determining the energy use attributable to each of the individual buildings; and/or
 - b. Are used primarily for one of the following:
 1. College or university.
 2. Hospital
 3. Hotel or motel
 4. Office
 5. Retail sales
 6. Household living
 7. Group living.

Retuning means a systematic process for optimizing building performance through the assessment, identification and correction of deficiencies of the base building systems for energy and/or water distribution and use of the covered property, including repairs of defects, cleaning, adjustments of valves, sensors, controls or programmed set points, and changes in operational practices.

Tenant means a person occupying leased premises in a building under a rental or lease agreement;

Utility means MidAmerican Energy Company, city water works or such other entity that distributes and sells gas, electric energy, water, or thermal energy services for public and private use.

Water use intensity means the water use from all water sources and from all indoor water sources per square foot of gross floor area for the calendar year calculated by total year water use from all sources divided by total square footage and calculated by total year metered indoor use divided by total square footage.

Sec. 26-902. Benchmarking Data Collection.

- (a) Each year the owner of a covered property shall collect and enter data on the energy and water consumption of the covered property during the prior calendar year into the benchmarking tool in a manner that conforms to latest guidance provided by the United States Environmental Protection Agency. The data entered into the benchmarking tool shall provide for an assessment of the aggregated total energy and water consumed for all the covered property for the entire prior calendar year for incorporation in the energy and water benchmarking report. Data for the covered property's energy use and water use shall be compiled using the following methods that apply to the property: a) obtaining aggregated whole-building data from each utility; b) collecting data from all nonresidential tenants; and/or c) reading a master meter.
- (b) If the owner of a covered property does not have access to aggregated whole-building data on energy use and water use, the owner shall request such aggregated whole-building data for the covered property from each utility. If aggregated whole-building data is not provided by the utilities, the owner of the covered property shall exercise all lease rights, in compliance with applicable federal and state laws, to request energy use and water use data from its nonresidential tenants exclusively for benchmarking data collection purposes in accordance with subsections (c) and (d) of this section.
- (c) Each nonresidential tenant with leased premises in a covered property shall, within 30 days of a written request by the owner and in the form approved by the director, allow reasonable access to base building systems and provide all information regarding its energy use and water use that cannot otherwise be acquired by the owner from the utilities and is needed by the owner to comply with the benchmarking data collection requirements of this article.
- (d) When a nonresidential tenant intends to vacate its leased premises in a covered property, the tenant shall within 30 days of a written request by the owner and in the form approved by the director, provide all information regarding its energy and water use that cannot otherwise be acquired by the owner from the utilities and is needed by the owner to comply with the benchmarking data collection requirements of this article.

Section 26-903. Benchmarking Reporting.

- (a) The owner of a covered property shall annually submit to the city electronically an energy and water benchmarking report for the prior calendar year containing the benchmarking information required by the director in such form and content determined by the director, by the reporting due dates specified in section 26-904. A submittal fee in the amount set in the schedule of fees adopted by the city council by resolution will be charged to the owner of the covered property for a benchmarking report that is submitted to the city and filed more than 30 days after the applicable reporting due date.
- (b) Prior to submitting the benchmarking report to the city, the owner of the covered property shall run all automated data quality checker functions within the benchmarking tool, and shall verify that all data has been accurately inputted. The owner shall correct all missing or incorrect

information identified by the automated data quality checker prior to submitting the benchmarking report to the city.

- (c) When the owner of the covered property becomes aware that any information in the submitted benchmarking report is inaccurate or incomplete, the owner shall enter corrective and supplemental information in the benchmarking tool, and shall provide to the city an amended benchmarking report within 30 days.

Sec. 26-904. Benchmarking Reporting Schedule.

- (a) The owner of a covered property shall ensure that a benchmarking report of the covered property for the prior calendar year is generated, completed and submitted to the city annually.
- (b) The initial benchmarking report for each covered property shall be submitted in accordance with the schedule set out in the following table. Subsequent benchmarking reports for each covered property shall be due by May 1 of each year thereafter.

<u>Property</u>	<u>Initial Reporting Due Date</u>
<u>City covered properties</u>	<u>June 1, 2019 (for 2018)</u>
<u>Covered properties other than city covered properties</u>	<u>May 1, 2020 (for 2019)</u>

- (c) The city shall make available on the city's internet website the shared benchmarking information for the prior calendar year for each covered property, listed by address.
- (d) The shared benchmarking information for each city covered property shall first be made available on the city's internet website commencing on July 1, 2020 and the shared benchmarking information for each covered property other than a city covered property shall first be made available on the city's internet website commencing on July 1, 2024.
- (1) The shared benchmarking information for a covered property with an Energy Star score of 75 or higher and an Energy Star water score of 75 or higher shall not be included on the city's internet website if such request is made by the owner of the covered property submitted to the director.
- (2) The shared benchmarking information for a covered property with an Energy Star score of lower than 75 or an Energy Star water score lower than 75 shall not be included on the city's internet website if the owner of the covered property has commenced and makes satisfactory progress toward the completion of performance improvement action approved by the director, including retuning of the base building systems for or impacting energy distribution and/or water distribution for the covered property or conducting an energy audit and/or water audit for the covered property.

Sec. 26-905. Benchmarking Exemptions.

- (a) Benchmarking is not required for a city covered property for any calendar year if the covered property is subject to any of the following circumstances:
- (1) The covered property did not have a certificate of occupancy for the entire calendar year;
- (2) A demolition permit was issued for the covered property and occupancy of the covered property was vacated during the calendar year;
- (3) The covered property did not receive energy or water utility services for a cumulative 30 days or more during the calendar year; or
- (4) The covered property had average daily occupancy of no more than one person during the calendar year.

- (b) Benchmarking is not required for a covered property other than a city covered property for any calendar year if the owner, prior to March 1 succeeding the calendar year, submits to the director an exemption request and supporting documentation in such form and with such certifications as required by the director to establish to the reasonable satisfaction of the director that the covered property is subject to any of the following circumstances:
- (1) The covered property is subject to any of the circumstances set out in subsections (a) (1)-(4) of this section;
 - (2) The covered property is subject to financial stress during the calendar year as may be demonstrated by calendar year covered property expenses significantly exceeding calendar year covered property revenues, the covered property is sold at tax sale under Iowa Code Chapter 446, the covered property is subject to foreclosure or forfeiture proceedings initiated under Iowa Code Chapters 654 or 656, or the covered property is otherwise under court appointed receivership;
 - (3) Due to unique features, functions or uses of the covered property, compliance with the benchmarking requirements will cause undue hardship to the owner, will reveal owner proprietary information or trade secrets recognized and protected as such by law, or will not further the underlying public purposes of this article, as determined by the director;
 - (4) The covered property is classified for assessment purposes as multi-residential real estate, more than four energy utility meters are associated with the covered property, the electric utility does not provide access to aggregated whole-building data for the covered property and the owner does not have access to other reasonable means to obtain such aggregated whole-building data.
 - (5) The covered property has obtained Leadership in Energy and Environmental Design (LEED) certification from the U.S. Green Building council (USGBC).
 - (6) The covered property is classified for assessment purposes as multi-residential real estate and constructed within five years prior to the calendar year as evidenced by a certificate of occupancy for the completed construction.
- (c) The decisions of the director on whether a covered property qualifies for exemption to benchmarking pursuant to this section may be appealed by any person affected by the decisions pursuant to the administrative appeal process set forth in Chapter 3 of this Code.

Sec. 26-906. Sharing of Data.

- (a) If an owner of a covered property in good-faith reasonably determines that any portion of its benchmarking reports submitted to the city constitute a confidential record under Iowa Code Chapter 22 or federal law, the owner may submit a confidentiality request to the city identifying the portion requested to be kept confidential. The burden will be on the owner to make such confidentiality request and justify application of a confidentiality exception by citation to applicable law. In the absence of a court order or final order or decision of the Iowa Public Information Board, the city may, but is not required to, protect the claimed confidential records contained in such reports from release to the public for examination.
- (b) Provided the city has received written permission from the owner of a covered property, the city may provide non-anonymized data from benchmarking reports submitted to the city to any utility serving the covered property or to any federal, state, county or city managed energy efficiency or management program for purposes of offering programs, services, and incentives related to energy use and water use efficiency and management for the covered property.
- (c) The city may make available anonymized data from benchmarking reports to an entity for academic, non-commercial research or other purposes in furtherance of the underlying public purposes of this article.

Sec. 26-907. Annual Report and Analysis.

The city shall make available on the city's internet website annual reports on the benchmarking of all covered properties in the city compiled by the director which reports shall include data, statistics and analysis in furtherance of the underlying public purposes of this article.

Sec. 26-908. Notice of violations--Administrative penalties.

- (a) The director is authorized to issue a notice of violation imposing an administrative penalty upon any person who fails to perform an act required by this article or who commits an act prohibited by this article.
- (b) The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.
- (c) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the owner of a covered property by the director. Service of the notice may be by regular mail or delivery in person. Penalties shall be paid in full within thirty (30) days of the issuance of the notice.
- (d) The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in section 26-909, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the director determines that immediate prosecution pursuant to ~~misdemeanor~~ or municipal infraction prosecution pursuant to section 1-15 is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this article. The director shall maintain a record of all violations, administrative penalties charged or other enforcement actions taken.

Sec. 26-909. Criminal and civil Civil penalties.

- (a) Any person who fails to perform an act required by this article or who commits an act prohibited by this article or who resists the enforcement of any section of this article shall be guilty of a ~~misdemeanor punishable by fine~~ as provided by section 1-15 of this Code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.
- (b) The city is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the city files a ~~misdemeanor citation~~, notice of administrative penalty, and/or files a municipal infraction for the same violation of this article.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Lawrence R. McDowell
Deputy City Attorney