








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MEMORANDUM

DATE: December 28, 2020

TO: Darin Atteberry, City Manager 

THRU: Theresa Connor, Interim Utilities Executive Director 
Lisa Rosintoski, Deputy Director Utilities, Customer Connections
Cyril Vidergar, Assistant City Attorney 

FROM: John Phelan, Energy Services Senior Manager 
Kirk Longstein, Energy Services Project Manager 

RE: **Approval on the Revised Rules and Regulations for the Building Energy and Water Scoring (BEWS) Program**

Bottom line

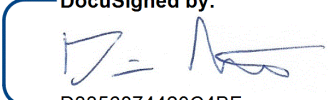
As adopted by City Council December 4, 2018, [Ordinance 2018 No. 144](#) authorizes the City Manager to approve rules and regulations, and to delegate certain actions concerning implementation of the Program. The attached rules and regulations provide revised guidance and clarity for owners of buildings covered by the Ordinance related to non-compliance, including notices, penalties, remedies and exemptions.

Background

The revised rules and regulations provide clarity for building owners required to comply with benchmarking, reporting, and transparency. Reported performance information will be publicly available through the City’s Open Data initiative. In addition to notifications, warnings, and exemptions, the Program will begin to issue notice of non-compliance and potentially citations to building owners for non-compliance within the provisions of the Ordinance, as codified at Chapter 12, Art. XI of the City Code. The City Manager may revise these administrative rules as determined necessary.

Approved

The City Manager approves the revised rules and regulations (Rev. 2) attached hereto and extends delegation of authority to the Fort Collins Utilities Energy Services Senior Manager position to manage implementation of such revised rules.

DocuSigned by:

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Darin A. Atteberry, City Manager

City Manager Rules and Regulations

Building Energy And Water Scoring

Date of Adoption: March 26, 2019

Revision: 2 (December 2020)

Issued by: City Manager

Objective:

The purpose of the rules and regulations for Building Energy and Water Scoring (BEWS) is to provide specific details and procedures for the BEWS program in alignment with Fort Collins Municipal Code Section 12-206. Nothing contained herein is intended to supersede the Fort Collins Municipal Code.

Applicability:

These rules and regulations apply to the Service Areas under management of the Utilities Executive Director.

Authorized by:

City Manager, December 2020.

Executive Summary

The City Manager rules and regulations contained herein adhere to the legal parameters and objectives established in the Fort Collins Municipal Code (“Code”) Chapter 12 Article XI and as authorized by Section 12-206. The processes and procedures contained within are based on the proven approaches established and tested by 26 jurisdictions nationwide that have adopted municipal benchmarking and transparency regulations.

The BEWS program (“Program”) is implemented by Utilities Customer Connections department staff, who provide direct support to covered building owners through the process functions referred to in this document and additional educational programming. As required by the Code, staff will provide an annual evaluation of the Program’s output and outcomes and its alignment with City strategic priorities.

ATHORITY FOR RULES

- A. Section 12-206 of the Code states the City Manager may adopt such other rules and regulations concerning the benchmarking and reporting of building performance information as may be necessary to implement the provisions of Chapter 12, Art. XI not in conflict with such provisions.
- A. The Utilities Service Area, Energy Services Division, will act as the official custodian of the data received by building owners and highlighted by § 12-203 of the Code. Staff under management of the Utilities Executive Director will review and administer the following program requirements pursuant to Code: Energy and water performance information for the whole building
 - a. Exemption requests
 - b. Non-compliance

ADDITIONAL DEFINITIONS

- B. Program definitions are included in § 12-202 of the Code. The words and phrases below further clarify the requirements outlined in Chapter 12, Art. XI.
 - a. "FC Building ID" or "Fort Collins standard ID" refers to a special type of identifier provided by the City's GIS department and used for the purposes of reporting energy performance information through the ENERGY STAR Portfolio Manager tool. This list is updated annually and available through the City's Open Data Portal.
 - b. "FC Campus ID" refers to a group of adjacent covered buildings. Each individual building is assigned an individual FC Building ID and the group of related buildings is assigned a campus ID. For example: Multifamily campus as defined by ENERGY STAR Portfolio Manager.
- C. "Covered Buildings" (i.e. subject to BEWS reporting) and property use types are determined by the dominate square footage of the use and shall include any one of the following:
 - a. A single building;
 - b. One or more buildings held in the condominium form of ownership, and governed by a single board of managers; or
 - c. A campus of two or more buildings which are owned and operated by the same party, sharing a single primary function, and which are:
 - i. Behind a common utility meter or served by a common mechanical/electrical system (such as a chilled water loop) which would prevent the owner from being able to easily determine the energy use attributable to each of the individual buildings; or
 - ii. Used primarily for one of the following functions:
 - 1. K-12 school
 - 2. Hospital
 - 3. Hotel
 - 4. Multifamily housing
 - 5. Senior care community
- D. Covered Buildings do not include attached single-family building types, including "Rowhouse" and "Townhouse".

- a. "Townhouse" or "Rowhouse" means a single-family dwelling unit having common walls between individual units, constructed in a group of two or more attached units in which each unit extends from foundation to roof.
- E. Covered Buildings do not include industrial or agricultural uses.
 - a. A building is used primarily for industrial or agricultural purposes if the building is used for the growing or assembling of goods, and a significant portion of energy consumed in the building is consumed in support of those processes, i.e. is "process load."
 - i. "Process load" is energy consumed for processes other than conditioning spaces and maintaining comfort and amenities for the occupants. It refers to energy used in the actual industrial, production, or processing of a good, commodity or other material. For example, a bottling plant or a cannabis cultivation facility would each consume significant electricity for the industrial and growing processes respectively, and therefore would fall under the "industrial or agricultural" use definition.
- F. "Condominium", as defined by the Colorado Common Interest Ownership Act, means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions.
 - a. The "Executive Board" or "Association" as outlined by the Condominium by-laws is the entity responsible for submitting an annual report to the City of Fort Collins, as outlined by § 12-203(b)(2) of the Code, which describes the BEWS program.

BENCHMARKING

- A. The building owner, as defined in the Code, ("Owner") shall input the information necessary to benchmark energy and water usage using the EPA ENERGY STAR® Portfolio Manager® (ESPM).
- B. Unless otherwise specified, starting March 1st of a reporting year, Owners of Covered Buildings must complete the following steps in the ESPM tool for each such building:
 - a. Enter energy and water use data for the whole building for the previous calendar year such that it encompasses January 1st to December 31st of the year prior to reporting.
 - b. If an Owner required to report tenant data under this section receives notice that a tenant intends to vacate a building before the end of the calendar year, the Owner must request from said tenant any necessary energy and water use or space use data from January 1st of the previous year to the date the tenant vacates the space. If an owner is unable to submit a complete report to the City due to insufficient tenant data, owners are required to submit an exemption request and include evidence of a good faith effort to obtain whole building energy and water data.
 - c. For multiple buildings on a single tax parcel and buildings on multiple tax parcels that share meters, Owners shall report energy use as follows:
 - i. Owners must report individually in the ESPM any buildings that are separately metered or sub-metered for all energy types and water use.
 - ii. Owners must report individually in the ESPM each building for which one or more types of energy are not separately metered or sub- metered. The data shall be marked as estimation.
 - d. For any building that does not fit within either of the above circumstances, or any building within a campus type that is eligible for an ESPM ENERGY STAR® score as a "campus," the Owner may report

as a “campus” in the ESPM. Additional guidance on how to benchmark a “campus” can be found at: https://www.energystar.gov/sites/default/files/tools/How%20to%20Benchmark%20a%20Campus_0.pdf

REPORTING

- A. Owners shall annually input into the ESPM tool data that accurately reflects the total energy and water consumed by each building, along with all descriptive information required by the ESPM tool, for the previous calendar year and report this information to the City in accordance with procedures found on the project website.
- B. Owners are required to submit a completed report as defined by Code to the City starting March 1st of each year for the previous year. The submission shall be through the ESPM tool using a template and submission link to be distributed and publicized by staff a minimum of three months before the submission deadline. Owners must report all information expressly denoted as mandatory by either the ESPM tool or by the City, which includes:
 - a. Building owner name or third party representative; and
 - b. Building owner or third party representative contact information, i.e. email and/or phone; and
 - c. Building address; and
 - d. Primary Property Use Type Details; and
 - e. Gross Floor area; and
 - f. Site Energy Use Intensity (“Site EUI”); and
 - g. Source Energy Use Intensity (“Source EUI”); and
 - h. Water Use Intensity (“WUI”); and
 - i. The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ESPM; and
 - j. The ESPM ENERGY STAR® score for the building, when available. An ENERGY STAR score is not required for property use types that are not eligible to receive a score as defined by ESPM.
- C. Before submitting a report, the Owner shall run all automated data quality checker functions available within the ESPM tool and shall correct all identified missing or incorrect information.
- D. If the Covered Building is not eligible to receive an ENERGY STAR score, the Owner is still required to submit a report to the City with energy and water performance information, including EUI, and WUI. City staff will review property use type details to verify if the property is unable to receive an ENERGY STAR score
- E. Submittals will be subject to a quality control review and will be rejected if data input errors are found. If errors are found, Owners will have 30 days to correct the errors and resubmit the data to the City.
- F. Nothing in these rules or regulations shall be construed to permit an Owner to use tenant utility usage data for purposes other than compliance with benchmarking report requirements. Nor shall the reporting requirements be construed to excuse Owners from compliance with federal or state laws governing access to tenant utility data.
- G. Staff will review the data submitted for data quality problems, including the following:
 - a. ESPM energy alerts
 - b. ESPM property use detail alerts
 - c. EUI outside a normal range of less than 10 or more than 400 kBtu/sf/yr

- d. WUI outside a normal range of less than 20 or more than 450 gal/sf/yr
 - e. Abnormal ENERGY STAR scores of less than 5 or greater than 95
 - f. Gross Floor Area significantly different from that in the tax assessor's records
 - g. Number of workers, operating hours, or other building use details for a specific property type that are well outside of the normal range
- H. Staff will communicate with Owners to identify and assist in resolving any errors such as those listed above before issuing warnings and citations. Any Owner who does not submit a report to the City including complete and accurate information will receive a notification of non-compliance.

TRANSPARENCY

- A. Reported benchmarking information and data obtained from Reports, including ENERGY STAR score, EUI, and WUI, shall be available to the public.
- B. The City will make the address and FC building ID of covered buildings publicly available each year through the [Open Data portal](#) to confirm participation in the program.
- C. The City will post building performance information and provide score cards to building owners so to attribute the performance information to the addresses of the building covered by Chapter 12, Art. XI. of the Code.
- D. The City will not post personally identifiable information so to reveal the personal habits of an individual.

COMPLIANCE REMEDIES; CITATIONS

- A. The BEWS program is enforceable under § 12-207 of the Code (including issuing citations and imposing monetary penalties for non-compliance). Failure to comply in any program year shall constitute a single violation in that calendar year.
 - a. Using the Schedule of Penalties below, Staff will send a Notice of Non-Compliance via mail to any Owner who does not comply with BEWS program requirements, starting 182 days following March 1 of each year;
 - b. Staff will send a Notice of Violation via first-class mail to, the last known address in the records of the City or County of any Owner who thereafter remains non-compliant 12-months following March 1 of the required reporting year
- B. The BEWS program follows the standards and requirements set forth by the Commissioned Officer policies established by the City Manager and pursuant to § 2-503(b)
- C. Voluntary Remediation. Upon receipt of a Notice of Violation, an Owner may voluntarily remedy any future penalties through the following actions:
 - a. Owners may make direct payment to Fort Collins Utilities to complete the required benchmarking and reporting outlined in §12-203 of the Code. An Owner may pursue this option by responding to the Notice of Violation within 30 days of the date appearing on the Notice and satisfying Program payment requirements in effect at such time.
 - b. Owners may seek administrative review of a Notice of Violation before formal "citation" by filing a petition for final review with the Utilities Executive Director within 60 days after the date appearing on the Notice of Violation. Owners may subsequently file an administrative appeal of

the Utilities Executive Director’s decision according to [Chapter 2, Art. VI](#) of the Code. The City Manager’s decision on such appeal shall be final.

D. Municipal Court Remediation. Penalties for non-compliance with the BEWS program not remedied voluntarily by an Owner shall follow [Chapter 19, Art. V](#) of the Code procedures for the commencement of civil infraction citation procedures and the collection of payment through the municipal court.

a. Pursuant to § [19-65 \(4\)-\(6\)](#) of the Code, Staff will attempt to serve at, or in the alternative send a Violation Citation via first-class mail to, the last known address in the records of the City or County of any Owner who remains non-compliant 12-months following March 1 of the required reporting year and does not provide voluntary remediation as described above.

b. Subsequent action through the municipal court will follow civil infraction prosecution practices then in effect, and a penalty assessment upon a finding of violation, based on the Schedule of Penalties below

E. In the absence of prompt penalty payment through either remediation option outlined above, all amounts not paid within 24 months of the date appearing on a Notice of Violation may be certified to Larimer County for the assessment of a lien on the subject building(s) covered by the Code and as otherwise ordered by the Municipal Court.

Schedule of Penalties							
March 1 (Annually)	182 days	365 days	425 days	547 days	730 days	790 days	1,095 Days
Report Deadline	Warning of 1 st non-Compliance	Notice of 1 st Violation \$1,000 penalty	Deadline to appeal 1 st Notice of Violation; Issuance of Violation Citation	Warning of 2 nd non-Compliance	Notice of 2 nd Violation \$1,000 penalty	Deadline to appeal Notice of 2 nd Violation; Issuance of Violation Citation	Larimer County Property Lien

EXEMPTIONS

A. An exemption may be granted for any building that meets at least one of the following criteria:

- a. The building was not occupied for all 12 months of the calendar year for which benchmarking is required. Occupancy is the percentage of your property’s Gross Floor Area that is occupied, operational, and including one of the following scenarios;
 - i. A demolition permit for the entire building has been issued and for which demolition work has commenced on or before the date the benchmarking report is due;
 - ii. The building is presently experiencing qualifying financial distress, as defined by any of the following:
 1. the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages;

2. the building is controlled by a court appointed receiver; or
 3. the building has been acquired by a deed in lieu of foreclosure;
 - iii. 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;
 - iv. The building is used fifty (50) percent or more for industrial or agricultural processes, as such activities are defined by ESPM;
 - v. 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. In order 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
 - vi. 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 would cause undue hardship or would not be in the public interest.
 - b. Exemption requests must be submitted annually through the City's website.
- B. Any Owner requesting an exemption from reporting requirements shall provide the City all documentation requested to substantiate the request or otherwise assist the City Staff in determining whether an exemption applies. Any exemption shall be limited to the Reporting for which the request was made and shall not extend to past or future submissions. Example supporting documentation includes but is not limited to:
- a. CAD drawings;
 - b. Architectural drawings;
 - c. Real Estate documents;
 - d. Photo documentation;
 - e. Business License;
 - f. Permit documents;
 - g. Bank documents.
- C. The City will review exemptions for the following program year that are submitted by September 1 prior to the March 1 reporting deadline; and respond to inquiries 90 days after reviewing the exemption requests received by the City by the September 1 deadline.
- D. Exemption requests are approved or denied by the Energy Services Senior Manager as delegated by the City Manager herein. Owners may file a petition for final review with the Utilities Executive Director within 60 days after the date appearing to an Exemption Request Denial. Owners may subsequently file an administrative appeal of the Utilities Executive Director's decision according to Chapter 2, Art. VI of the Code. The City Manager's decision on such appeal shall be final.
- E. The City Manager or designee may grant reasonable extensions of time upon a demonstration of technical difficulties. During the extension of time for compliance granted by the City Manager, the Owner shall provide regular (as identified in the approval of the extension request) updates to the City and provide

evidence that the Owner is making a good faith effort toward compliance. Examples of technical difficulties for which the City Manager may grant reasonable extensions of time for compliance include the following:

- a. Data upload delayed due to tenant noncooperation
- b. Building ownership change or Staff changeover resulting in loss of access to reporting tool
- c. A force majeure event, i.e., caused by a condition that was beyond the owner's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, or Internet disturbance)
- d. Other unforeseen events beyond the owner's reasonable control.