

City Council Workshop

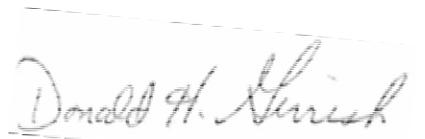
Agenda Item #2

October 12, 2016

Energy Benchmarking

In July 2015, the City Council adopted the Mill Creek Master Plan which included a number of recommendations for revisions to the City's Zoning Ordinance. Since that time the Comprehensive Plan Implementation Committee (CPIC) has been working on several amendments to Chapter 27, including a provision referred to as Energy Benchmarking. Although the Mill Creek Zoning amendments related to Land Use and Energy Benchmarking were originally developed together, they have now been separated into two stand-alone proposals following a review by the Planning Board, which voted not to recommend the benchmarking provisions.

Attached is a memo from the Planning Board addressing how Benchmarking would function, to which buildings it would apply, incentives for property owners, overall benefits, and the Board's position on the proposed ordinance amendment.



Interim City Manager

Planning Board Memorandum to the City Council

Subject: Proposed Zoning Amendments for Mill Creek Energy & Water Use Benchmarking with Transparency

PLANNING BOARD RECOMMENDATION

At its July 26th meeting the Planning Board voted 2 - 4 (Neff and Phillips for; Laidley, Carr, Misiuk, and Dowling against; Boudreau absent) on a motion to send a favorable recommendation to the City Council regarding the proposed benchmarking zoning text amendments contained in *Mill Creek Energy and Water Use Benchmarking*, June 22, 2016, based on their conformance with the Comprehensive Plan, Mill Creek Master Plan, and Climate Action Plan.

INTRODUCTION

The Mill Creek Master Plan (please see the Comprehensive Plan Committee's webpage) was adopted on July 6, 2015. Objective #3 in the Plan says, "Make Mill Creek 'greener' in both a physical and environmental sense with more greenspaces, trees, landscaping, and flowers; better connections between parks; and upgraded environmental conditions such as green, energy efficient buildings and improved stormwater management." Short-Term action step #5 of this objective states, "Develop and implement an energy and water use benchmarking program for larger, new nonresidential and multifamily buildings based on the U.S. Environmental Protection Agency's Energy Star program."

The proposed Benchmarking provisions that are part of the Mill Creek Master Plan and that previously were included in the proposed Mill Creek amendments have now been separated out as a different agenda item. They are a key part of the Mill Creek amendments as an environmental component that balances the proposed zoning intensification, but addressing them separately enabled Planning Board members to make independent recommendations.

The proposed Benchmarking provisions, as well as other supporting materials, are available on the Mill Creek Zoning Amendments page of the Comprehensive Plan Committee's section of the City's website.

A legal advertisement providing notice of the public hearings appeared in the Portland Press Herald on July 12 and July 19, 2016, and was posted in City Hall. In addition, the proposed amendments and supporting materials were posted on the City's website, and articles about the hearings ran in the July 1 and July 15 Community Newsletters. Written notice was mailed to 284 owners of property in, and within 500 feet of, the proposed new zoning districts.

A public forum to discuss the proposed amendments was held on April 14, 2016. In addition, the Planning Board held a workshop on the Mill Creek zoning and benchmarking proposals on June 14, 2016. The Planning Board public hearing originally was scheduled for June 28 but was postponed at that meeting to July 26 due to the legal ads not having been published.

This submission was reviewed under Section 27-115 (g) Changes and amendments in Chapter 27 Zoning and for consistency with the City's Comprehensive Plan and Climate Action Plan.

PROPOSED BENCHMARKING + TRANSPARENCY TEXT AMENDMENTS FAQ

The following is from an FAQ developed to answer questions about the Mill Creek benchmarking proposal:

1. What is benchmarking?

- Energy benchmarking with public transparency is intended to encourage smarter and more efficient building energy consumption. By showing building managers and owners how their buildings consume energy relative to other similar buildings, opportunities for improvement may be found and pursued. As a result of those improvements, greenhouse gas emissions will fall, and the built environment will be on a path of continuous energy performance improvement.¹
- Put another way, "The overarching goal of a benchmarking and transparency policy is to encourage the development of a strong market for building efficiency. Benchmarking brings building owners' attention to energy efficiency, resulting in behavioral and operational changes that bring immediate and low-cost reductions in energy consumption. These policies also make building performance more visible in the marketplace, thus empowering consumers to more easily understand how buildings are performing and reward owners of efficient buildings."²
- Benchmarking, as it would function in South Portland, would require the use of the EPA's Energy Star Portfolio Manager online tool to standardize energy and water use data so that buildings of a similar type or use can be compared relative to energy and water use efficiency.
- Owners of buildings meeting the threshold for benchmarking would provide their Energy Star scores to the City, which would then be made public via a page on the City website. The image below is a screenshot from the Portfolio Manager account for the Planning & Development Department.

¹ "Building Energy Benchmarking & Transparency Laws," Urjanet, 2016, p. 3.

² "The Benefits of Benchmarking Building Performance," Institute for Market Transformation, 2015, p.2.

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ENERGY STAR® PortfolioManager®

MyPortfolio | [Sharing](#) | [Planning](#) | [Reporting](#) | [Recognition](#)

Planning Office
 496 Ocean Street, South Portland, ME 04106 | [Map It](#)
 Portfolio Manager Property ID: 3980462
 Year Built: 1961
[Edit](#)

ENERGY STAR Score (1-100)
Current Score: 78
Baseline Score: 77

Summary | [Details](#) | [Energy](#) | [Water](#) | [Goals](#) | [Design](#)

Notifications (1)
[Planning Office - Share accepted by Adin Wolfgram](#) [Clear](#)

Property Profile

 Former elementary school now used as offices for the City of South Portland's Planning & Development Department.
[View Profile](#)
[Edit Profile](#) [Delete Profile](#)

Metrics Summary [Change Time Period](#)

Metric	Mar 2014	Current (Mar 2015)	Change
ENERGY STAR score (1-100)	77	78	1(1.3%)
Source EUI (kBtu/ft²)	94.2	90.8	-3.4(-3.6%)
Site EUI (kBtu/ft²)	81.1	79.2	-1.9(-2.3%)
Energy Cost (\$)	12,687.56	14,251.34	1563.78(12.3%)
Total GHG Emissions (Metric Tons CO2e)	53.6	51.9	-1.7(-3.2%)

Check for Possible Data Errors
 Run a check for any 12-month time period to see if there are any possible errors found with your data.

2. Which buildings would it apply to?

- Benchmarking would apply to non-residential buildings in the proposed Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts, roughly between E Street and Broadway, that are 5,000 square feet or larger. At present, there are approximately 30 buildings meeting those criteria. It also would apply to residential buildings and apartment complexes in the three proposed zones that have 10 or more dwelling units. However, currently there are no such residential buildings. In addition, benchmarking would apply to all municipal and school buildings across the City, in all land use zones.

3. Where did the idea come from?

- The idea for benchmarking came out of the development of the Mill Creek Master Plan by the Comprehensive Plan Implementation Committee. The Committee felt that if, as the Comprehensive Plan recommended, the zoning rules were amended for Mill Creek to allow taller buildings, greater residential density, and mixed uses, there should also be requirements that over time make the Mill Creek area “greener” — i.e. more environmentally sustainable. The approach chosen by the Committee was benchmarking.

4. Are other cities doing benchmarking?

- Yes. Many other cities across the country are using benchmarking and transparency laws as a strategy to improve energy efficiency and reduce greenhouse gas emissions including Seattle, Boston, Cambridge, Boulder, and Portland OR to name a few.

5. What might the City have required instead of benchmarking?

- Some communities require buildings to be designed to meet various energy efficiency standards, such as Leadership in Energy and Environmental Design (LEED) certification. The cost from the certifying agency to obtain the desired designation can be high, and the way a building performs according to blueprints isn't necessarily the same as its performance once it's built and in use. Benchmarking costs very little, measures actual instead of predicted performance, and does not obligate the building owner to make any capital improvements.
- In exchange for allowing more intense development in the Mill Creek area, the City also could have required in the zoning amendments such facilities as green roofs or solar photovoltaic arrays. The Committee preferred a voluntary approach rather than a mandate. It is very likely that some building owners, after seeing the data from benchmarking, will decide to make such investments.

6. Is benchmarking hard, expensive, or time-consuming?

- No. Using online property data from the City's Assessing Department, it's easy to set up a Portfolio Manager account for a building and then it is just a matter of periodically entering energy and water usage data from utility bills. Third-party software, such as Rapport, is also available to do this for a fee, but in most cases, for single buildings, it only takes a few minutes each month to update the Portfolio Manager account with the latest meter readings.

7. Will the City help?

- The City's Sustainability Coordinator will make time, as needed, to assist building owners get their Portfolio Manager accounts up and running. However, there is a wealth of tips and tutorials on the Portfolio Manager website, and it is anticipated that most building owners will be able to set up their accounts without assistance.

8. Is there an incentive for property owners?

- Yes. Owners who have reported their benchmarking data and are in compliance with the program are eligible to be forgiven the first \$5,000 of any City permit or application

fees associated with making improvements to their properties. A typical building permit fee might be one or two hundred dollars. In cases where the redevelopment is sufficiently large to generate \$5,000 or more in fees, the economic and environmental benefits will be so substantial as to handily warrant the incentive. Thus, there is a substantial incentive for benchmarking-applicable building owners to both participate in the program and to make building improvements that meet today's more stringent building and site development standards.

9. What gives the City the right to make energy data transparent?

- The building sector is the single largest user of energy in the United States, accounting for approximately 40% of total energy consumption.³ This means that buildings are a major contributor of greenhouse gas emissions. We aren't as aware of these emissions as of, say, fumes from cars and trucks or smoke from factories, but using electricity from distant power plants and natural gas or oil for heat adds up to a lot of energy use and the addition of tons of new CO₂ and other greenhouse gases to the atmosphere. This imposes a cost that is shared by all of us. Owners of larger buildings, therefore, have some responsibility to protect the environment and general public, and providing transparent energy and water use data is a relatively inexpensive yet effective method for doing so.

10. What are the benefits of benchmarking and transparency?

- Benchmarking with transparency lets people look at buildings of a similar type, such as office buildings compared with other office buildings or apartment buildings compared with other apartment buildings, and see how their building's relative energy performance compares. In addition, it lets a property owner or manager know how a building's performance is trending over time—whether the efficiency rating is getting better or worse. In one instance in Knightville, for example, a property manager was able to persuade his condominium association to invest in a second hallway heat pump based on energy savings data generated by Portfolio Manager.
- In addition to saving energy, benchmarking can also have an economic impact by demonstrating energy efficiency, which may increase property values by making the buildings more desirable for potential tenants.
- Prospective tenants benefit from knowing the energy efficiency of the buildings they are considering. Various studies show that tenants are willing to pay more in rents for buildings that are efficient and are making investments in sustainability.⁴

³ "The Benefits of Benchmarking Building Performance," Institute for Market Transformation, 2015, p. 2.

⁴ "The Benefits of Benchmarking Building Performance," Institute for Market Transformation, 2015, p. 10.

- Transparent benchmarking is effective at utilizing market forces and private investment to improve the environmental characteristics of larger buildings. Studies by the EPA have shown that the annual average energy savings of benchmarked buildings is 2.4%, and buildings that had benchmarked for three years in a row saved an average of 7% over the course of that time.⁵

11. What if I'm a tenant?

- Tenants in any of the buildings participating in the benchmarking program will be asked to provide energy and water use data to the building owner or manager if they pay their own utility bills. However, with tenant authorization, building owners will attempt to have the various local utilities send whole-building data so that it would not be necessary for tenants to be involved.
- The City's Sustainability Coordinator will be working with the local utilities to encourage them to provide whole-building data as is done in other parts of the country.

12. Does benchmarking cost taxpayers any money?

- No. Benchmarking relies on data and reporting to drive private sector investment decisions that lead to smarter and more efficient uses of energy.

12. Is benchmarking consistent with the City's Climate Action Plan (CAP)?

- Yes. According to the CAP, "It is the vision of the City of South Portland to create a sustainable city that benefits the lives of all citizens through energy savings, preservation of the environment, economic opportunity, and improvement of the health and welfare of the employees and people of the City." The City's target is a 17% reduction in greenhouse gas emissions by 2017. The Mill Creek Benchmarking program is consistent with this vision and will help the City meet its emissions reduction goal.

13. What is the schedule for reporting and publishing Benchmarking Information?

- The dates for when owners of buildings meeting the criteria for benchmarking to provide their Benchmarking Information to the City, and for the City to make the information public, is shown in the table below:

⁵ "The Benefits of Benchmarking Building Performance," Institute for Market Transformation, 2015, p. 8.. See also EPA's *Energy Star Portfolio Manager—Data Trends*—October 2012.

Benchmarking Schedule			
January, 2017	May 1, 2018	September 1, 2019	May 1, 2023
First month to begin maintaining data for the Energy Performance Report.	First required date for submitting Energy Performance Reports. The required reporting date is May 1 of each year thereafter.	First date for the City to make public the Benchmarking Information for Covered Properties. The deadline is September 1 of each year thereafter. In all cases Benchmarking Information for the first year's Energy Performance Report is not published.	First required date for the Five-Year Comprehensive Energy Audit. The required audit date is May 1 of every fifth year thereafter.

REVISIONS FOLLOWING THE JUNE 14 PLANNING BOARD WORKSHOP

The main change in the draft following the Planning Board workshop was the addition of an incentive provision. This was based on a discussion summarized by one Board member in saying that the benchmarking proposal “appeared to involve more stick than carrot.” As such, a Sec. 27-1600(p) was added to the end of the draft that would enable Covered Property owners in compliance with the benchmarking provisions to not have to pay up to \$5,000 in permit or application fees associated with building construction or redevelopment on the covered property. Given that building permits on average are one or two hundred dollars, the value of this incentive in most cases will be considerably less than \$5,000. If a developer comes forward, however, with a major redevelopment project, the fees potentially could reach this upper limit. In a case like that, the incentive will be well worth the economic and environmental improvements.

Another change based on the Planning Board discussion was one made to Sec. 27-1600(g), the section that talks about the need for tenants to provide benchmarking information to the property owner, if requested. A clarification was added indicating that the objective of the provision is for the owner to obtain authorization from the tenants (if any) in order for the owner to be able to get whole-building data directly from the utilities.

DISCUSSION AT THE PLANNING BOARD HEARING

The following are from the draft minutes for the Planning Board hearing:

Chairman Laidley introduced the item and turned the floor over to the Planning Director.

T. Haeuser thanked the Chairman and indicated that the City's Sustainability Coordinator, Julie Rosenbach, would be providing most of the background information. He said, though, that he wanted to stress the connection to the Mill Creek zoning amendments just heard by the Board. The benchmarking provisions being proposed for the 29 owners of property in Mill Creek with buildings 5,000 sq. ft. or larger are not being imposed out of the blue. They are the green, environmental protection component that balances the zoning intensification and property value augmentation of the previously discussed amendments. The owners will be reaping the benefits of the elimination of residential density maximums; of a doubling, or near-doubling, of the allowed height limit; of having the flexibility of the planned development option for the Mill Creek Core zone; of reduced off-street parking requirements; and, should they make improvements to their buildings, of up to \$5,000 off of their permit and application fees. Therefore, it is not in any way unfair to ask the qualifying property owners to participate in a public benchmarking program.

Julie Rosenbach, Sustainability Coordinator, delivered the following remarks:

South Portland Energy and Water Use Performance Benchmarking

Remarks from Julie Rosenbach, Sustainability Coordinator
for the Planning Board Hearing
July 26, 2016

South Portland's Green Vision

Both the Comprehensive Plan and the Mill Creek Master Plan identify energy efficiency and conservation as a core part of the "green" vision for South Portland. The Comprehensive Plan, adopted in 2012, states that, "The City actively encourages the use of green building techniques... It promotes the use and development of alternative energy sources as well as energy efficiency and conservation, especially for older buildings..."⁶ Continuing in that vein, the Mill Creek Master Plan, adopted in 2015, specifically identifies energy and water use benchmarking as a short-term action to "make Mill Creek 'greener' in both a physical and environmental sense."⁷

This is important because the building sector accounts for roughly 40% of total U.S. energy consumption⁸ and nearly 40% of U.S. carbon dioxide (CO₂) emissions -- a leading greenhouse gas.⁹ This is more than any other sector, including industry or transportation.

⁶ [South Portland Comprehensive Plan](#). Adopted on October 15, 2012, pg 4-1.

⁷ [Proposed Benchmarking Zoning Text Amendments](#), Memo from Tex Haeuser to the Planning Board. July 20, 2016.

⁸ [The Benefits of Benchmarking Building Performance](#), Institute for Market Transformation, 2015, p. 2.

⁹ [Buildings and Climate Change Factsheet](#), US Green Building Council. Accessed July 26, 2016.

The City's Climate Action Plan (CAP), adopted in 2014, set a goal to reduce greenhouse gas emissions 17% by 2017. According to the CAP, "It is the vision of the City of South Portland to create a sustainable city that benefits the lives of all citizens through energy savings, preservation of the environment, economic opportunity, and improvement of the health and welfare of the employees and people of the City."¹⁰ The Mill Creek Benchmarking program is consistent with this vision and will help the City meet its emissions reduction goals.

In all of these plans, working with the business community is key to achieving reductions in energy use and GHG emissions.

Why benchmarking?

The challenge is that energy use and energy efficiency are, for the most part invisible, which makes policies hard to grasp and to promote. As the saying goes, "if you can't measure it, you can't manage it."

The purpose of benchmarking with public reporting is to show how much energy buildings in our community are using relative to the nation-wide average for similar buildings. With this information we can compare energy and water consumption on an apples-to-apples basis. This will allow building owners and managers to make informed decisions around building policies and upgrades. It will help the City develop targeted incentives and energy programs that can further support higher energy performance and lower our greenhouse gas emissions. And it will begin to create a marketplace for energy performance where property owners, potential buyers, tenants, realtors, and others can use building efficiency data to add value for higher performing properties.¹¹

Some communities target energy performance through building codes, such as Leadership in Energy and Environmental Design (LEED) certification. While stronger building codes help reduce energy use in new and renovated buildings, only about 3% of the U.S. building stock is newly built or renovated annually according to the Institute for Market Transformation.¹² To make a meaningful reduction in overall energy consumption and greenhouse gas emissions, we must address existing buildings. Benchmarking does this. It costs very little and does not obligate the building owner to make any capital improvements.

Does benchmarking achieve results? Yes. Fourteen cities, two states, and one county in the U.S. have passed policies requiring benchmarking and transparency for large buildings. Studies of these policies have shown that many building owners, after seeing their data benchmarked, decide to make energy upgrades to their buildings voluntarily. A 2012 EPA analysis of 35,000 benchmarked buildings found that these buildings see an average annual energy savings of 2.4%, and buildings that had benchmarked for three years in a row saved an average of 7% over the course of that time.¹³

What is benchmarking & How will it work?

¹⁰ [Municipal Climate Action Plan](#), City of South Portland. Adopted 2014, p. 5.

¹¹ "[Building Energy Use Disclosure Ordinance](#)," City of Cambridge, MA webpage. Accessed July 25, 2016.

¹² [The Benefits of Benchmarking Building Performance](#), Institute for Market Transformation, 2015, p. 4.

¹³ "[Data Trends: Benchmarking and Energy Savings Factsheet](#)," USEPA, 2012.

Again, in the simplest terms, benchmarking means measuring a building's energy use and then comparing it to the average for similar buildings.

As it would work in South Portland, the proposed amendment would cover all municipal buildings over 5,000 square feet in size; and non-residential buildings over 5,000 sq.ft. located in the new Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts. Should any residential buildings or apartment complexes be built with ten (10) or more dwelling units in these zoning districts, they would also be covered.

The owners of these properties would be required to track their building's energy and water consumption using the EPA's Energy Star Portfolio Manager tool. This web-based tool processes building information (use type, square footage, occupancy, building hours, etc.) and consumption data to show "energy use intensity" -- or energy use per square foot, greenhouse gas emissions, and other metrics, and assigns each building an ENERGY STAR score. The score indicates how the building is performing against peer facilities nationwide. For example, a score of 50 is average, while a 30 means the building is only more efficient than 30% of similar buildings. A score of 75 or higher means the building is a top performer — and eligible for ENERGY STAR certification.¹⁴

Owners would be required to report these metrics to the City's Sustainability Office annually. The City will then publish a summary report that will show the energy performance of each building and begin to track the impact of benchmarking.

As an exception, the first year of energy data provided by a building owner will not be published except to disclose whether or not the property is in compliance. This will give building owners and the City time to work out any problems with reporting and also give building owners an opportunity to improve their energy performance score before the first year of disclosure. Beginning in the second year of reporting, the City will publish summary metrics for each building; summary metrics for all buildings in aggregate; and a summary statistics on overall compliance. The City will work to analyze the data, possibly in partnership with academic researchers, to begin to understand energy use patterns and trends.

Starting with the three Mill Creek zones will serve as a pilot project for City-wide implementation.

Benefits of benchmarking

Benchmarking makes energy and water use visible and relatable. Many property owners are deterred from upgrading their buildings by a lack of information, misaligned financial incentives, or insufficient capital. By removing these barriers, we can help bring down costs for businesses and consumers, and reduce energy use and greenhouse gas emissions in line with the City's Climate Action Plan.¹⁵

In a nutshell, benchmarking provides a number of benefits:

¹⁴ "[Learn about benchmarking](#)," USEPA EnergyStar Program webpage. Accessed July 25, 2016.

¹⁵ "[Building Energy Performance Policy](#)," Institute for Market Transformation webpage. Accessed July 26, 2016.

- 1. Benchmarking provides property owners with valuable tools for managing their building(s) including:**
 - An understanding of their building's energy use, allowing prioritization of options for energy improvements
 - Metrics to rank their buildings' energy performance against other similar buildings
 - The basis of an energy management plan
 - For high performers, evidence of their building's additional value¹⁶

- 2. Benchmarking will help the City develop targeted incentives and programs for promoting energy efficiency and lowering greenhouse gas emissions.**
 - The next phase of the City's Climate Action Plan will target reductions in energy use and greenhouse gas emissions in the City's commercial and industrial sectors.
 - Benchmarking will provide data the City can use as a point of reference for this.

- 3. Benchmarking is an effective way to spur voluntary energy improvements using market forces.**
 - Benchmarking can have an economic impact by creating value for energy efficiency, which may increase property values of high performing buildings.
 - Prospective tenants benefit from knowing the energy performance of the buildings they are considering. Various studies show that tenants are willing to pay more in rents for buildings that are efficient and are making investments in sustainability.

- 4. Benchmarking saves energy.**
 - The average annual energy savings of benchmarked buildings is 2.4%, and buildings that had benchmarked for three years in a row saved an average of 7% over the course of that time.¹⁷

P. Notis had two questions: 1) would this apply just to apartment complexes or also to condominium buildings; and, 2) what would happen if a tenant refuses to provide authorization to the property owner (giving the owner permission to obtain whole-building data from a utility)? He indicated that he feels it's good project whose goals are worthy but that the mechanics may need more explanation.

T. Haeuser responded that condominium buildings would be included if any are built in Mill Creek with 10 or more units (there are no apartment or condo buildings that qualify now). If a tenant did not provide the requested authorization the City would try to obtain compliance, but if this does not work out there is language in the provisions to allow the building owner to provide partial data.

T. Haeuser read email comments from **Ruthann VanDePitte**:

¹⁶ [The Benefits of Benchmarking Building Performance](#), Institute for Market Transformation, 2015, p. 6.

¹⁷ ["Data Trends: Benchmarking and Energy Savings Factsheet,"](#) USEPA, 2012.

- As a property owner in South Portland and a potential one in the Millcreek area , I will not allow my information to be gathered. Does your zoning amendment with Benchmarking take into consideration the fact that you will have to sue me to obtain it? Have you factored in legal fees?
- It would appear that the City and its various Planning and Zoning Boards and Sustainability Clerk are trying to use Zoning Laws and Ordinances as a means of educating without the ability to police, punish, fine or incarcerate. I would highly recommend that your Benchmark apply only to City owned properties.
- I would also comment that property owners and managers can, should and do understand energy costs. Educate, educate, educate, don't legislate "good intentions" and feel good ordinances and laws.

David Canarie, a resident for 25 years, then delivered these remarks:

Comments on: Proposed Sec 27-1600 Energy and Water Use Performance Benchmarking

Dave Canarie
July 26, 2016

Mandatory benchmarking is an intrusive overreach.

Benchmarking requires landlords to ask their tenants for energy and water bills so the building owner can enter numbers in the database. This is intrusive because energy use implicates tenants' activities of daily living, such as bathing, washing and cooking that are of a highly personal nature. These are activities that describe fundamental aspects of how we live our lives. Our neighbors should not be pressured by landlords, and indirectly by the city of South Portland, to disclose this information.

The overreach is even more apparent when one considers that these bills from CMP and Portland Water District are generated monthly so the landlord will knock on tenants' doors--on behalf of the city government-- each month to collect data. Of course if the landlord wants to collect the data annually, the tenant is going to have to re-construct their energy and water bills for up to 12 months, which is obviously very burdensome and almost has the feel of an audit by the IRS.¹

The State of Virginia, which uses *voluntary benchmarking*-- as opposed to the proposed mandatory benchmarking in South Portland--describes some of the privacy issues with mandatory benchmarking as they relate to *commercial* businesses:

Data privacy is an important consideration to address in a commercial building benchmarking program. Building owners, tenants or building managers have a proprietary right to their utility data. Moreover, business sensitive buildings and operations, such those with data centers, may not wish to share energy use or building benchmarking information in order to maintain business advantage over competitors. Therefore, [in a voluntary program] it can be left to the discretion of the program participant to publicly share utility use and building benchmarking information.²

The [Energy Star Portfolio Manager Privacy Policy](#)³ says that data about individual people and their usage patterns that is entered on the Energy Star system can be used in connection with

¹ Building-level billing, referenced in FAQ 11, does not solve these objections because tenants will be pressured by landlords to release heretofore confidential information to a third party.

² *Commercial Building Energy Benchmarking and Labeling: Implementing Voluntary Program in Northern Virginia*,
<https://www.dmme.virginia.gov/DE/LinkDocuments/CommercialEnergyEfficiency/VolunteerBenchmarkingProgramWhitePaper.pdf>

³https://www.energystar.gov/index.cfm?c=home_privacy_policyhttps://www.energystar.gov/index.cfm?c=home_privacy_policy; <https://portfoliomanager.energystar.gov/pm/PrivacyPolicy>

“law enforcement investigations.” This proves that personally identifiable information is maintained in the database and the data is searchable. And we know based on the Patriot Act that government agencies take a very expansive view of what they are able to do under the guise of “law enforcement investigations.” WikiLeaks shows us that that government agencies have an insatiable appetite for data about each and every one of us.

The supposed benefits of mandatory benchmarking are speculative and doubtful.

The July 15, 2016 Planning Department FAQ says in item 10 that “studies by the EPA have shown” energy savings from benchmarking.⁴ This is misleading because there are no EPA “studies.” Real studies follow the scientific method, are subject to peer review, have control groups and describe the methodology they use.

The footnote in the FAQ that accompanies references to “EPA studies” doesn’t link to an EPA study. The footnote is to a report by the “Institute for Market Transformation,” which is a Washington, DC-based lobbying group, whose board is chaired by someone from the partisan National Resources Defense Council--which is a far cry from being an objective, scientific “EPA study.”

If one reads through all the Institute for Market Transformation materials, there is reference to “a 2012 U.S. EPA analysis” of benchmarked buildings⁵. That ultimately tracks to an [EnergyStar infographic](#)⁶ that is not a study at all and doesn’t even claim to be a “study.” The report doesn’t compare buildings that report data with buildings that don’t report data. We see that the results from building owners that reported data, but the report doesn’t show what happened in the buildings that didn’t report.

Moreover, a special “Note” at the end of the infographic cautions that the results have significant limitations: they are based on self-reported data, the data has been filtered and the data is not randomized. This is obviously not a study and, more importantly, doesn’t claim to be a study.

Several years ago a very brief letter to the editors of the *New England Journal of Medicine* reported some anecdotal evidence that opiates were not addictive when used in a controlled hospital setting. This one paragraph letter, never intended to be a study, was subsequently referred to as a study, then a *New England Journal of Medicine* study, then a *landmark study* the result of which was that physicians liberally prescribed opiates because, according to a landmark study, there was no addiction risk.⁷

⁴ http://www.southportland.org/files/9614/6861/3858/Mill_Creek_Benchmarking_FAQ--7-15-16.pdf

⁵ http://www.imt.org/uploads/resources/files/PCC_Benefits_of_Benchmarking.pdf

⁶ https://www.energystar.gov/ia/business/downloads/datatrends/DataTrends_Savings_20121002.pdf?3d9b-91a5

⁷ Canarie, *Book Review: ‘Dreamland’ explores nightmarish collision of prescription drugs and cheap heroin,* <http://www.pressherald.com/2015/08/16/book-review-dreamland-explores-nightmarish-collision->

The so-called “EPA study” on the advantages of mandatory benchmarking is not a study and not the basis for making public policy.

The unintended consequences of “energy shaming.”

The energy benchmarking system gives a rating to each building--and the rating will be public information. The Planning Department’s FAQ 10⁸ says building owners with lower energy usage will be viewed favorably and the market will reward them, presumably with higher market valuations. It’s also reasonable to assume that building owners who do not have favorable scores will see a reduction in the value of their investments.

But what about landlords who have tenants who because of age, health or family size need to use more energy? Those landlords would be unfairly punished by the system. Moreover, mandatory reporting may deter those landlords from renting to tenants whose personal circumstances require more energy use. These include: the elderly, large families, people with energy-intensive medical devices or people who have home offices or run small businesses from their homes.

Commercial landlords may similarly be financially punished for--or dissuaded from--renting to new tenants whose use of the building may result in an increase in the building’s energy use. Let’s say a landlord owns a commercial building and rents to a low energy using card shop and

[of-prescription-drugs-and-cheap-heroin/](#) “Quinones claims that America’s prescription opiate epidemic was ignited by a misinterpretation of a simple, one-paragraph letter to the editor of the influential New England Journal of Medicine in January of 1980. The letter, by Jane Porter and Hershel Jick, stated that, of over 11,000 patients treated with opiates while under inpatient care in a hospital setting, only four who had no previous history of addiction had become addicted.

It wasn’t a study, and the letter didn’t make any claims or predictions. It wasn’t remotely what could be called evidence-based science. It was just a letter containing some anecdotal information. But in a pre-internet age, when access to the full text of publications was difficult for those without subscriptions or a nearby medical school library, the letter took on a life of its own. In 1986, two authors writing in the journal *Pain* noted that an opiate addiction rate of 4 per 11,000 is “less than one percent.”

The “one percent” tag stuck, along with its variant: “Addiction is rare among patients treated with opiates.” Quinones describes how, as the letter was cited in other articles and seminars, its legend grew. One textbook called it a “landmark report.” In a National Institutes of Health Publication, researchers from Harvard and Johns Hopkins referred to the letter as a “study,” and an article in *Scientific American* upgraded Porter and Jick’s brief letter to the status of “an extensive study.” *Time* magazine said that the article proved “the exaggerated fear that patients would become addicted” when prescribed opiates was “basically unwarranted.”

Thus, one of the two major forces behind the current opium epidemic was unleashed, starting on the East Coast and heading westward. The pain relieving qualities of opiates were abundantly clear. Once “study” after “study” seemingly established that opiates were not addicting, the floodgates were opened.”

⁸ http://www.southportland.org/files/9614/6861/3858/Mill_Creek_Benchmarking_FAQ--7-15-16.pdf

the lease is up and a higher energy using business such as a “heated yoga” studio wants to move in? Or a data center? Or a pizza restaurant with lots of ovens? Or a laundromat that uses a lot of hot water? Or a business open 24 hours. The landlord would be publicly shamed as heading in the wrong direction from energy efficiency and the value of her property may decline if the landlord rented to a high energy-using tenant.

Many building owners in South Portland are people who rely on income from the building to get by. They are not part of big corporations--and are far from being real estate tycoons. For them it may not be possible to invest in the latest energy efficiency equipment given their competing challenges of keeping rents reasonable, paying real estate taxes and keeping up with repairs. Mandatory benchmarking places “regular people” building owners at a disadvantage compared with established and well-financed real estate firms.

What follows this “pilot?”

I am not a commercial building owner so this program doesn't affect me, but I think it is bad policy for our city. Moreover, my concern is that this “pilot” program will eventually expand beyond commercial buildings and be applied to individual owners in our community. That concern is not unfounded as household-level mandatory reporting is already happening in other parts of the country.

South Portland is not Boston.

Big data comparisons between and among buildings in multiple locations don't easily work. South Portland is structurally different than Boston or Berkeley, California. Moreover, benchmarking programs are all relatively new and there is not a mature fund of data upon which to make informed decisions. Why not let large cities take the lead on this instead of having South Portland rush into the forefront with a mandatory program?

Real Sustainability.

While it's great to focus on our Climate Action Plan, let's not lose sight of the fact that for many members of our community “sustainability” when used with “energy” means trying to stay warm during the winter. We should focus at least our sustainability efforts on providing our neighbors with tools to help them insulate their homes *this year*, rather than waiting for some big data project to--maybe--produce some incremental benefit in 5 years.

Why do we have so much advocacy for our Climate Action Plan and no advocacy for helping our neighbors stay warm? Why spend up to \$5,000 per commercial building owner to encourage mandatory benchmarking when people in our community struggle to pay for heating each winter.

FAQ 10⁹ says that “*Various studies have shown that tenants are willing to pay more in rents for buildings that are efficient and are making investments in sustainability.*”¹⁰ It stands to reason that the cost of upgrades to energy equipment will be passed on to tenants. Thus, FAQ 10 discloses the reality that mandatory benchmarking will increase housing costs at a time when people are already struggling to find affordable housing in our community. This is a significant unintended consequence of mandatory benchmarking.

Alternatives

The Planning Department never seriously considered alternatives to mandatory benchmarking. In FAQ 5 the Planning Department purports to consider alternatives to mandatory benchmarking, but it just sets up straw arguments for these alternatives. The FAQ says that if we don't have mandatory benchmarking we'd have to embark on costly LEED certification for building or put solar panels on rooftops. These are plainly not the only alternatives to mandatory benchmarking; they are just the least-appealing ones and the Planning Department obviously listed these to make mandatory reporting look better by comparison. The Planning Department did not assess voluntary benchmarking nor did it disclose that voluntary benchmarking is being used throughout the country.

I propose the following alternatives to mandatory energy benchmarking:

1. Mandatory energy benchmarking for City of South Portland buildings only.
2. Adopt voluntary reporting for non-government buildings in South Portland instead of mandatory reporting--as many other parts of the country have done, including San Francisco, northern Virginia, Dallas.
3. Amend the South Portland Climate Action plan to reflect the needs of low and moderate income South Portlanders for whom staying warm, and paying for energy is an often crushing burden.

Finally, if the case for benchmarking were so compelling--so obviously apparent--why does it need to be mandatory? Why does the city feel a need to waive up to \$5,000 in fees per building (with apparently no cap on total expenditures) to create economic incentives? The answer is obvious.

Dave Canarie is an attorney who lives in South Portland and is an adjunct faculty member at USM and St. Joseph's College.

⁹ http://www.southportland.org/files/9614/6861/3858/Mill_Creek_Benchmarking_FAQ--7-15-16.pdf

¹⁰ http://www.southportland.org/files/9614/6861/3858/Mill_Creek_Benchmarking_FAQ--7-15-16.pdf

I. Misiuk stated that he agrees with Mr. Canarie. The proposal is intrusive and probably unconstitutional. It would create a slippery slope. In order to be acceptable it would have to be voluntary.

K. Carr said that he found the public comments this evening compelling. It would be good to benchmark the municipal buildings but the program for commercial buildings would need to be voluntary. A mandatory benchmarking approach may be possible in the future. Mr. Carr indicated he is in agreement with Mr. Misiuk about benchmarking needing to be voluntary for commercial buildings.

K. Phillips said that she could see both sides of this issue. She has (real estate) clients for whom it is very important to know what the energy costs are. Benchmarking would help to get this data. And any building improvements would be voluntary.

W. Laidley asked why the information should go beyond the two parties. The proposal is intrusive.

T. Neff said that she is a big proponent of the proposal. The fact that 40% of energy is used by buildings is huge. And the Climate Action Plan can't just be words. It would be good to have South Portland recognized as being among the top environmentally-friendly cities in the country. A significant point of the proposal is that there currently are no residential properties that would be affected. In addition, the timeline for implementation is in no way burdensome.

I. Misiuk said that we possibly could have qualifying residential buildings in the future. Conversely, the proposal could prevent Mill Creek redevelopment.

A. Dowling stated that he likes the sentiment behind the proposal. Climate change and air pollution are things that he takes very seriously in the choices he makes about how to live his life. However, privacy also is important to him. He could get behind the proposal if it were changed to an opt-in (voluntary) approach.

Attachments

1. Annotated version of *Mill Creek Energy and Water Use Benchmarking*, June 22, 2016.
2. Unannotated version of *Mill Creek Energy and Water Use Benchmarking*, June 22, 2016.

Revised June 22, 2016

Draft Amendments to Chapter 27 Zoning to Implement the Mill Creek Master Plan

-- ENERGY & WATER USE BENCHMARKING --

Proposed additions to the ordinance are underlined:

Proposed deletions are ~~struck out~~.

Revisions made as a result of the 6/14/16 Planning Board Workshop are **highlighted**.

Create a new Sec. 27-1600 Energy and Water Use Performance Benchmarking that reads:

ENERGY AND WATER USE PERFORMANCE BENCHMARKING

Sec. 27-1600. Energy and Water Use Performance Benchmarking

(a) Definitions

For purposes of this section, the following terms shall have the following meanings:

Benchmarking information. Information generated by the Benchmarking Tool, as herein defined, including descriptive information about the physical property and its operational characteristics. The information shall include, but need not be limited to:

- (1) Property address;
- (2) Primary use type;
- (3) Gross floor area;
- (4) Site Energy Use Intensity (EUI) as defined in this section;
- (5) Weather normalized source EUI;
- (6) Annual greenhouse gas emissions;
- (7) Water use;

Comment [c1]: The Master Plan included a focus on making Mill Creek "greener" and more environmentally sound. The Plan proposed the adoption of Energy and Water Use Benchmarking requirements for larger non-residential and multifamily buildings. It is proposed to apply city-wide for municipal and school buildings and to the three new Mill Creek zones for non-residential buildings 5,000 square feet or larger and residential buildings or apartment complexes with 10 or more units.

Comment [c2]: Benchmarking measures performance (unlike green building standards) and helps building owners get a better handle on their energy/water patterns, helps prospective tenants know about a building's energy/water efficiency, and helps the City get data so that it can use its scarce resources in an effective manner by better tailoring its climate action programs.

- (8) The energy performance score that compares the energy use of the building to that of similar buildings, where available; and
- (9) Compliance or noncompliance with this section.

Benchmarking Tool. The Energy Star Portfolio Manager internet-based tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide; or an equivalent tool adopted by the City of South Portland Sustainability Coordinator.

Covered Property. A building or buildings existing as of and/or constructed or enlarged after the date of adoption of this section of the ordinance that meets any one of the following thresholds:

- (1) A municipal or school building with five thousand (5,000) square feet or more of gross floor area;
- (2) A non-residential building with five thousand (5,000) square feet or more of gross floor area that is located in the Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts;
- (3) A residential building with ten (10) or more dwelling units that is located in the Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts; or
- (4) A residential apartment complex with ten (10) or more units that is located in the Village Extension (VE), Broadway Corridor (BC), and Mill Creek Core (MCC) zoning districts.

In determining the gross floor area of a building or the number of dwelling units in a building or apartment complex, the current records of the South Portland Assessor shall apply.

Energy: Electricity, natural gas, steam, hot or chilled water, heating oil, or other product for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

Comment [c3]: This tool is relatively easy to use. Many commercial properties already use it. See <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>.

Comment [c4]: There are approximately 23 such buildings in the City at present.

Comment [c5]: There currently are 30 such buildings in these three zones, including City Hall.

Comment [c6]: There currently are no residential buildings or apartment complexes in the three zones with 10 or more units.

Comment [c7]: None currently in these zones.

Energy Performance Score: The numeric rating generated by the Benchmarking Tool that compares the energy usage of the building to that of similar buildings.

Energy Use Intensity (EUI): A score generated by the Energy Star Portfolio Manager, or by an equivalent Benchmarking Tool adopted by the City of South Portland Sustainability Coordinator, indicating energy used per square foot of gross floor area in kBtus (1,000 British Thermal Units).

Gross Floor Area: the total square footage, on all floors, at, above, and below grade, of all building components—including spaces without heating, ventilation, or air conditioning—as depicted in building layout diagrams in the current records of the South Portland Assessor.

Owner. Any of the following:

- (1) An individual or entity having title to a Covered Property;
- (2) An agent authorized to act on behalf of the owner of a Covered Property;
- (3) The net lessee in the case of a property subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options;
- (4) The board of managers or trustees in the case of a condominium; and/or
- (5) The board of directors or trustees in the case of a cooperative apartment corporation.

Site Energy. The amount of heat and electricity consumed by a Covered Property as reflected in utility bills or other documentation of actual energy use.

Source Energy. All the energy used in delivering energy to a Covered Property, including power generation and transmission and distribution losses, to perform a specific function, such as but not limited to space conditioning, lighting, or water heating.

Tenant. A person or entity leasing, occupying or holding possession of a Covered Property.

Comment [c8]: The score is between 1 and 100. A score above 75 (as I recall) entitles a building owner to an Energy Star plaque that can be displayed on the building. See, for example, Penny's, at the Mall, and Staples.

Comment [c9]: To address a consistency issue, the definition of "Office" has been removed. It referred to the Office of the Sustainability Coordinator. All instances of "Office" in the draft have been changed to either "South Portland Sustainability Coordinator" or "Sustainability Coordinator."

Utility. An entity that distributes and sells Energy for Covered Properties.

(b) Purpose.

In keeping with the City of South Portland Climate Action Plan, and to encourage efficient use of energy and to reduce the emission of greenhouse gases, this section requires owners of Covered Properties to annually measure and disclose energy and water usage to the South Portland Sustainability Coordinator. Furthermore, this section authorizes the Sustainability Coordinator to collect energy usage data to enable more effective energy and climate protection planning by the City and others. It also is intended to provide information to the real estate marketplace to enable its members to make decisions that foster better energy performance.

(c) Applicability.

This section is applicable to all Covered Properties as defined in Section 27-1600(a).

(d) Energy Performance Report and Schedule.

- (1) Covered Property owners subject to reporting requirements shall furnish an Energy Performance Report outlining the previous calendar year's energy and water use of each applicable property, as well as other building characteristics necessary to evaluate absolute and relative energy use intensity. Building owners shall report this information using the Benchmarking Tool.

- (2) Energy Performance Reports for Covered Properties shall be submitted annually to the South Portland Sustainability Coordinator by May 1 (or the first business day thereafter if May 1 is a Saturday or Sunday) according to the following implementation schedule:

(a) For Covered Properties existing as of the date of adoption of this section of the ordinance, the first required reporting date is May 1, 2018.

(b) For newly constructed Covered Properties or for properties that are enlarged such that the building exceeds the reporting thresholds, the owner shall fulfill the requirements of this section beginning with the first full calendar year after the building receives its Certificate of Occupancy.

(c) For a new or enlarged Covered Property that has not accumulated 12 months of energy use data by the first applicable reporting date following occupancy, owners shall comply with this section in the following year.

(3) Notwithstanding the foregoing, the South Portland Sustainability Coordinator shall develop a procedure for establishing alternative reporting dates for owners who supply timely notification of extenuating circumstances that delay compliance with the reporting requirements.

(e) Energy Performance Report Contents.

The Energy Performance Report must be completed using a format provided by the South Portland Sustainability Coordinator and, in addition to other descriptive information required by the Benchmarking Tool, shall include the following:

- (1) For a building type for which a Portfolio Manager benchmark score is available, a score result between one (1) and one hundred (100); or
- (2) If a Portfolio Manager benchmark score is not available, an Energy Use Intensity (EUI) score may be satisfactory; or
- (3) If insufficient information is available to achieve a Portfolio Manager Benchmark score or an EUI score, an explanation of why the requirements were not met

Comment [c10]: This gives the City's Sustainability Coordinator (Julie Rosenbach) over a year to help the affected property owners get their Portfolio Manager programs up and running.

sufficient in detail, as determined by the Sustainability Coordinator.

- (4) The Report shall identify information on any non-residential tenants who did not provide needed data or authorization to obtain information from the utility including the tenant's name, contact information, and gross floor area leased; and whether whole-building data was included for all utilities, or, if partial-building utility data was included, which set(s) of utility data were partial, and which covered the whole building.

Comment [c11]: The Sustainability Coordinator will be working with the utilities to reduce as much as possible the need for owners to have to gather energy/water data from tenants.

(f) Procedure.

Covered Property owners shall enter data in Energy Star Portfolio Manager and benchmark their building(s) using whole-building utility data. Whole-building utility data can be obtained from a utility company with tenant authorization where required, from master meters, or from tenants.

- (1) If a utility company has made aggregated utility data available to building owners, then a building owner must benchmark using whole-building utility data from that utility.
- (2) When a building owner does not have whole-building information sufficient to fulfill the requirements of this section, and has made a reasonable effort to obtain the information required or authorization to obtain that information from the utility from a tenant, but that information has not been received from that tenant, the building owner shall not be relieved of their benchmarking obligations, and shall instead submit a partial-building benchmarking report.
- (3) A partial-building benchmarking report shall include any available whole-building information (including any available aggregated utility data), any tenant information received (where applicable), and all common area information. If it is reasonable to estimate usage of a tenant that refuses to provide the necessary information or an authorization to obtain that

information from the utility, this may be done with prior approval of the Sustainability Coordinator.

(4) The report shall be submitted annually to, and maintained by, the City's Sustainability Coordinator.

(g) Provision of Benchmarking Information by Tenants to the Owner

The objective of this provision is for Owners to secure authorization from Tenants, if any, in order to obtain Benchmarking information from utilities for the Tenants' units, thus enabling utilities to provide the Owner with whole-building utility data and obviating the need for Tenants to submit Benchmarking information. Nevertheless, each Tenant located in a Covered Property shall, within 30 days of a request by the Owner and in a form to be determined by the South Portland Sustainability Coordinator, provide all information that cannot otherwise be acquired by the Owner and that is needed to comply with the requirements of this section. |

Comment [c12]: Penalties sentence removed.

(h) Five Year Comprehensive Energy Audit Requirements.

(1) Owners of each Covered Property subject to the reporting requirements of this section shall complete and submit to the Sustainability Coordinator an additional audit, as described below, within five years of the first annual Energy Performance Report deadline and every five years thereafter. The audit must meet the following criteria:

Comment [c13]: This is ensure the data is being reported correctly.

(a) Benchmarking audits must be performed by a licensed professional engineer every five years.

(b) The benchmarking audit shall consist of a review of the owner's meter data for up to the most recent three years, as appropriate, and include a determination as to whether accurate data is being used and whether the Portfolio Manager tool is being appropriately applied. Any inconsistencies shall be documented and recommendations for corrections shall be provided.

(2) Exemptions: Owners of each building subject to the requirement of this subsection are not required to complete an audit for a given filing period, if any of the following circumstances exist:

(a) The building is to be fully demolished within six months of when the assessment or action would otherwise be due.

(b) The building is fully vacant for the five-year period.

(i) Notification of Covered Properties.

Between September 1 and December 1 of each year, the City of South Portland Sustainability Coordinator shall notify Owners of Covered Properties of their obligation to input energy use into the Benchmarking Tool. By January 15 of each year, the Sustainability Coordinator shall post the list of the addresses of Covered Properties on a public website.

(j) Qualifications of Benchmarkers.

The South Portland Sustainability Coordinator may establish minimum proficiency requirements for the users of Benchmarking Tools.

(k) Publication of Benchmarking Information.

The South Portland Sustainability Coordinator shall make available to the public the Benchmarking Information for Covered Properties for each calendar year of reporting no later than September 1 of the following year.

(1) Benchmarking information received by the Sustainability Coordinator for the first year a Covered Property is required to provide an energy performance report will be not be published except to disclose whether or not the Covered Property is in compliance with this section.

(2) The South Portland Sustainability Coordinator shall make available to the public and update at least annually, the following information:

Comment [c14]: For one thing, this gives the owner another year to try to improve their efficiency score.

(a) Summary statistics on Energy consumption for Covered Properties derived from aggregating Benchmarking Information;

(b) Summary statistics on overall compliance with this section;

(c) For each Covered Property:

(1) The status of compliance with the requirements of this section;

(2) Annual summary statistics for the Covered Property, including EUI, annual greenhouse gas emissions, water use per square foot, and an Energy Performance Score where available; and

(3) A comparison of Benchmarking Information across calendar years for any years such Covered Property has input the total Energy consumed and other descriptive information for such Properties.

(l) Assessing Results

By December 31, 2026, the South Portland Sustainability Coordinator shall review the effect of this section on improving energy performance for Covered Properties. If energy performance for buildings in Covered Properties has not improved significantly, the Sustainability Coordinator shall make recommendations to the City Council as to whether amendments to this section or other measures are necessary to improve building energy performance for Covered Properties.

(m) Maintenance of Records

(1) Owners shall maintain records as the South Portland Sustainability Coordinator determines is necessary for carrying out the purposes of this section, including, but not limited to, energy and water bills and other documents received from Tenants and/or Utilities. Such records shall be preserved by Owners for a period of three (3) years. At the request of the Sustainability

Coordinator, such records shall be made available for inspection by the Sustainability Coordinator.

(2) At the time ownership of any occupied Covered Property is transferred, the buyer and seller shall arrange for the seller to provide to the buyer all information necessary for the buyer to report Benchmarking Information for the entire year in a timely manner. It shall be a violation of this section for any seller to fail to so provide any such information.

(n) Waivers

The Sustainability Coordinator shall grant a waiver from a requirement of this section if he/she determines that either, (1) 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 section would cause hardship, or (2) an application for a permit to substantially remodel or demolish the facility will be filed not later than 6 months after the time of sale.

(o) Violations

It shall be unlawful for any entity or person to fail to comply with the requirements of this section or misrepresent any material fact in a document required to be prepared or disclosed by this section. Any delay in report submission greater than thirty (30) calendar days shall be deemed a violation.

(p) Compliance Incentives

Notwithstanding relevant ordinance provisions with fee requirements to the contrary, the Owner of a Covered Property for which at least one Energy Performance Report has been issued, and which the South Portland Sustainability Coordinator deems is in compliance with the Energy and Water Use Benchmarking provisions, shall, for however long a period such compliance is maintained, be excused from paying the first \$5,000 of any building, electrical, plumbing, demolition, site

Comment [c15]: This addresses the concern that benchmarking is "too much stick and not enough carrot."

plan, or other City application, review, or inspection fee(s) associated with building construction or redevelopment on the Covered Property. In addition, to the extent otherwise allowed by law, the Owner of a Covered Property in compliance with these provisions shall also be eligible for any financial incentives, reduced interest loans, or other programs the City of South Portland may provide associated with improving energy and water efficiency and/or meeting the objectives of the City's Climate Action Plan.