

Draft City Code 17.110: Multifamily Energy Performance Reporting and Disclosure

17.110.010 Purpose. The purpose of this Chapter is to provide energy, climate and health information for multifamily residential buildings to the City and prospective tenants.

17.110.020 Definitions. For purposes of this Chapter, and administrative rules adopted under this Chapter, the following words and phrases will be construed as defined in this Section.

- A. **"Carbon emissions"** means greenhouse gas emissions released into the atmosphere that contribute to climate change, including but not limited to carbon dioxide, methane, and nitrous oxide. Carbon emissions are expressed in metric tons of carbon dioxide equivalent (CO₂e).
- B. **"City"** means City of Portland.
- C. **"Climate and health information"** means information related to a building's energy consumption and carbon emissions as generated by the energy management tool, and descriptive information about the physical building and its health risks.
- D. **"Condominium"** means a property that combines a separate ownership of individual condominium units with common ownership of other elements such as common areas.
- E. **"Covered building"** means any multi-dwelling building in the City, including, but not limited to:
 - 1. Single buildings;
 - 2. One or more buildings held in the condominium form of ownership, and governed by a single board of managers; and
 - 3. Two or more buildings that are served by the same electric or gas meter or are served by the same heating or cooling system(s).
- F. **"Director"** means the Director of the Bureau of Planning and Sustainability, or any successor bureau or department, or the Director's designee.
- G. **"Energy"** means electricity, natural gas, steam, heating oil, or other products sold 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.
- H. **"ENERGY STAR Score"** means the 1 to 100 numeric rating generated by the energy management tool that compares the relative energy usage of the building to that of similar buildings, where available.
- I. **"Energy management tool"** means the ENERGY STAR Portfolio Manager web-based tool developed by the United States Environmental Protection Agency, or any alternative system, tool, or form approved by the Director for evaluating building energy, carbon emissions, or health data.
- J. **"Energy use intensity (EUI)"** means a numerical value calculated by the energy management tool that represents the annual site energy consumed by a building relative to its gross floor area, reported as thousand British thermal units per square foot (kBtu/sf).
- K. **"Gross floor area"** means the total number of enclosed square feet measured between the principal exterior surfaces of the fixed walls of a building.

- L. **“Multi-dwelling building”** means a structure that contains two or more dwelling units, as defined in ORS 90.100 and as that statute may be amended, that share common walls or floor/ceilings with one or more dwelling units, and the land underneath the structure is not divided into separate lots. “Multi-dwelling building” does not include detached residential structures that sit on their own lot and are designed to be used as a single dwelling unit, commonly known as single-family homes.
- M. **“Owner”** means any of the following:
 1. One or more individuals or entities , jointly or severally, in whom is vested: all or part of the legal title to real property; or all or part of the beneficial ownership and right to present use and enjoyment of real property;
 2. A mortgagee of a covered building and in possession of that covered building;
 3. The board of the owner’s association of condominium unit owners responsible for the overall management, in the case of a condominium;

The master association, in the case of a condominium, where the powers of an owners’ association are exercised by or delegated to a master association; or

- 4. The board of directors, in the case of a cooperative apartment corporation.
- N. **“Residential rental unit”** means a dwelling unit, as defined in ORS 90.100 and as that statute may be amended, within a multi-dwelling building to which ORS Chapter 90 applies, and includes vacant rental dwelling units,
- O. **“Shared utility services”** means energy-related services such as electricity, natural gas, chilled water, heated water or steam for two or more buildings served by a single utility building meter.
- P. **“Tenant”** means a person or entity entitled under a rental agreement, as defined in ORS 90.100 and as that statute may be amended, to occupy a residential rental unit to the exclusion of others.
- Q. **“Utility”** means an entity that distributes and sells natural gas, electric, or thermal energy services to covered and residential buildings.

17.110.030 Authority of Director.

- A. The Director is authorized to administer and enforce the provisions of this Chapter.
- B. The Director may, upon request, issue written interpretations of how this Chapter applies in general or to specific circumstances.
- C. The Director is authorized to adopt, amend, and repeal rules, procedures, and forms to implement the provisions of this Chapter.
 1. Before adopting, amending, or repealing a rule, the Director will notify interested parties and hold a public comment period. Such notice, which may be provided by mail or electronic means, such as posting on the Bureau of Planning and Sustainability’s website, will be published at least 4 weeks before the close of the public comment period. The notice will include instructions on how an interested party may comment on the proposed rule, a brief description of the subjects covered by the proposed rule and how to access the full text of the proposed rule.
 2. During the public comment period, the Director will receive written comments concerning the proposed rule. At the conclusion of the public comment period, the Director will either adopt the proposed rule, modify it, or reject it, taking into consideration the comments received. If a substantial modification is made, an

additional public comment period will be held, as determined in the Director's sole discretion. Unless otherwise stated, all rules are effective upon adoption by the Director. Copies of all current rules will be posted on the Bureau of Planning and Sustainability's website.

3. Notwithstanding Subsections 1. and 2., the Director may adopt an interim rule to temporarily suspend or modify the requirements of this Chapter based on the determination that such requirements are temporarily infeasible due to economic or technical circumstances. An interim rule may be adopted without prior public notice upon the Director finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, stating the specific reasons for such prejudice. An interim rule adopted pursuant to this Subsection is effective for a period of not longer than 365 calendar days. The Director may extend the interim rule past the 365 calendar days for good cause, as determined in the Director's sole discretion.

17.110.040 Climate and Health Information Reporting Requirements

- A. A covered building owner will accurately report climate and health information of such building to the Director for the previous calendar year. The reports required by this Section will be submitted according to the following schedule:
 1. For covered buildings containing a gross floor area of 50,000 square feet or greater, the report will be submitted no later than April 22, 2025, and no later than every April 22nd thereafter.
 2. For covered buildings containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the report will be submitted no later than April 22, 2026, and not later than every April 22nd thereafter.
 3. For covered buildings containing a gross floor area less than 20,000 square feet, the report will be submitted no later than April 22, 2026, and no later than every April 22nd thereafter.
 4. For newly constructed covered buildings, the report will be submitted within three years of the owner receiving a Certificate of Occupancy from the City of Portland and no later than every April 22nd in each calendar year thereafter.
 5. Reporting submission dates may be extended at the Director's sole discretion.
- B. All covered building owner will accurately notify climate and health information of such building to the Director for the previous calendar year. At a minimum, the information will include the following details to be made publicly accessible:
 1. Building address;
 2. Year of construction;
 3. Number of residential rental units;
 4. Number of residential rental units cooled by air-conditioning supplied by the owner; and
 5. Number of residential rental units with natural gas stoves supplied by the owner;

- C. In addition to reporting the climate and health information in accordance with Subsection B., an owner of a covered building 20,000 square feet and larger will accurately report additional climate and health information of such building to the Director for the previous calendar year using the energy management tool. At a minimum, the information will include the following details to be made publicly accessible:
1. Building address;
 2. Year of construction;
 3. Primary use type and additional use types;
 4. Gross floor area as defined by ENERGY STAR Portfolio Manager;
 5. Number of residential rental units;
 6. Site energy use intensity (Site EUI);
 7. Weather-normalized Site EUI;
 8. Annual natural gas consumption;
 9. Annual electricity consumption and utility provider;
 10. ENERGY STAR Score, where available;
 11. Onsite renewable energy production; and
 12. Total annual carbon emissions.
- D. For campus portfolios where two or more covered buildings are served by shared utility services, the owner may opt to report campus-wide gross floor area, Site EUI, onsite renewable energy production, and total carbon emissions using the energy management tool.

17.110.045 Climate and Health Information Disclosure Requirements

- A. Effective January 1, 2025, in addition to the requirements set forth in ORS 90.295 and PCC 30.01.086, owners of covered buildings and unit owners of condominium units will disclose climate and health information to prospective tenants in writing at the time of application to lease a residential rental unit located within the covered building.
- B. Disclosure of climate and health information about the residential rental unit applied for at a minimum will include:
1. Access to average and peak monthly electricity cost, income qualified energy bill discounts and other energy assistance available through the utility;
 2. Access to average and peak monthly natural gas cost, where applicable, income qualified energy bill discounts and other energy assistance available through the utility;
 3. The presence of a natural gas stove and notification of the health risks associated with indoor natural gas combustion, as provided by the Director;
 4. The presence of natural gas stove hood ventilation to the outdoors; and operational guidance from the Director to reduce indoor health and safety risks;
 5. The presence and type of mechanical cooling, such as central air-conditioner, window air-conditioner, portable heat pump, central heat pump, ductless heat pump, and evaporative cooler; and

6. The presence and type of passive cooling measure, such as efficient windows, awnings, tree shading, or cool roofs.
- C. Disclosure of climate and health information under this Section will also include any and all other energy and climate and health information as determined and required by the Director.

17.110.050 Climate and Health Information Records Retention

Covered building owners and unit owners of condominium units will retain all information reported to the Director or prospective tenants, lessees, or purchasers as required by this Chapter for at least three years beyond the date on which reporting was required and make all climate and health information available for inspection and audit by the Director during normal business hours.

17.110.055 Review of Reported Climate and Health Information

The Director may arrange for a review to verify the climate and health information submitted by an owner of a covered building. The Director may examine the records of a covered building owner regarding the energy performance data to verify the accuracy of the information submitted to the Director. The Director will provide prior written notice to a covered building owner at least 30 days prior to examining the climate and health information data. Covered building owners will provide the Director with access to the requested records within the Portland metropolitan region, during normal business hours. Any failure by a covered building owner to comply with the Director's efforts to verify the climate and health information will constitute a violation of this Chapter.

17.110.060 Climate and Health Information Public Disclosure Schedule

- A. The Director will make City-wide summary statistics available to the public of the previous calendar year no later than November 1, 2025, and each November 1 thereafter.

17.110.065 Notification

Between October 1 and December 31 of each year, the Director will notify covered building owners of their obligation to report climate and health information for that calendar year, provided that the failure of the Director to notify any such owner will not affect the obligation of such owner to report.

17.110.070 Utility Data Access

- A. A covered building owner will obtain data from each utility providing energy service to such building, subject to the governing state and/or federal data privacy laws to which the utility is subject at the time of the owner's request.
- B. On and after January 1, 2025, and every year thereafter, upon the written or electronic request of a covered building owner, each utility will provide the owner with access to the monthly energy consumption data for all utility meters identified by the owner. The

data provided by the utility to the building owner will be aggregated by the utility and will not contain personally identifying information or any customer-specific billing data. The utility will provide access to such aggregated utility data within 45 days of the owner's request. Utilities providing energy service to a covered building will maintain energy consumption data for meters serving each covered building for at least the most recent calendar year.

1. Where a residential rental unit or other space is occupied by a tenant and separately metered by a utility, the utility may request the owner to submit a written or electronic request identifying such meters and follow the consent requirements of such utility.
2. To verify data entry of utility history in the ENERGY STAR Portfolio Manager estimation of building carbon emissions, the utility will coordinate with the Director to ensure accuracy of building energy meter information and greenhouse gas emission factors.

17.110.075 Building Data Access

- A. Where a residential rental unit is occupied by a tenant and separately metered by a utility, the covered building owner may request tenant data from the tenant relating to energy use, use of space, operating hours, and other information required for ENERGY STAR Portfolio Manager reporting.
 1. Within 30 days of a request by the owner, each tenant of a residential rental unit will provide all data that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this section, including, but not limited to, consent to access utility data as described in Section 17.110.070. If such tenant is not in compliance, the owner may provide a written or electronic request to the Director for an extension to the reporting schedule in Section 17.110.040.
 2. When the owner of a covered building receives notice that a tenant intends to vacate a residential rental unit in such building, the owner will request information relating to such tenant's energy use for any period of occupancy relevant to the owner's obligation to meet the reporting requirements in Sections 17.110.040, 17.110.045, 17.110.050, and 17.110.055.
 3. When a covered building changes ownership, the previous owner will provide the new owner all energy and climate and health information within its possession for the months of the calendar year during the time the previous owner was still in possession of the property.
 4. A tenant's failure to comply with the requirements of this Section will not be construed a violation of the tenant's rental agreement and will not be a basis for termination of the tenancy under ORS 90.392.

17.110.080 Exemptions and Extensions

- A. The Director may provide an extension, adjustment, or exemption to a covered building owner from the requirements of this Chapter, if the covered building owner submits documentation establishing any of the following:
 - 1. A demolition permit has been issued for the covered building during the calendar year for which reporting is required;
 - 2. Due to a special circumstance unique to the covered building, compliance would cause undue hardship as documented by the covered building owner and approved by the Director.

Any covered building owner requesting an extension, adjustment, or exemption will provide the Director any and all documentation requested to substantiate the request or otherwise assist the Director in the extension, adjustment, or exemption determination. If the Director learns that an extension, adjustment, or exemption was granted based on materially inaccurate submissions, then the Director may revoke or modify the extension, adjustment, or exemption.

- B. The Director may exempt a covered building owner from the requirements of this Chapter, if such owner submits documentation establishing the following:
 - 1. The covered building or areas of the building subject to the reporting requirements have been unoccupied for six months or more during the calendar year for which reporting is required.

17.110.090 Enforcement and Penalties

It is a violation of this Chapter for any entity or person to fail to comply with the requirements of this Chapter or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter. Any covered building owner, tenant, utility, or other person or entity who fails, omits, neglects, or refuses to comply with the provisions of this Chapter will be subject to:

- A. Upon the first violation, the Director may issue a written warning notice to the entity or person, describing the violation.
- B. Upon any subsequent violation, the Director may assess a civil penalty of up to \$500 per day and increase the civil penalty for every 90-day period during which the violation continues.

17.110.100 Right of Appeal and Payment of Assessments.

After being issued a written warning notice of a first violation, any person or entity receiving a subsequent notice of violation will, within ten calendar days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal hearing before the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the Portland City Code. The filing of an appeal request will stay the effective date of the penalty until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the penalty is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.