

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. CB16-XXXX
COMMITTEE OF REFERENCE:
Safety and Well-being

A BILL

For an ordinance amending Article I and adding a new Article V to Chapter 4 of the Revised Municipal Code of the City and County of Denver regarding energy efficiency in commercial and multifamily buildings.

WHEREAS, the City and County of Denver adopted a goal to reduce its greenhouse gas emissions to 1990 levels by 2020 and to reduce its greenhouse gas emissions to 80 percent below 2005 levels by 2050, to create a more sustainable future for the City and County of Denver; and

WHEREAS, the energy used in commercial and multifamily buildings constitutes the largest source of greenhouse gas emissions in the City and County of Denver; and

WHEREAS, in order to achieve its greenhouse gas emissions reduction goal, the City and County of Denver has set a target to reduce the energy consumption of commercial and multifamily buildings by 3.8 million MMBTUs by the end of 2020 (the equivalent of ten percent of the energy used in 2012) and 7.6 million MMBTUs by the end of 2030; and

WHEREAS, increasing energy efficiency can also have significant benefits for the economy by reducing operating costs for building owners and tenants and increasing the value of buildings.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Chapter 4, Article I, Section 2, entitled “Definitions,” of the Denver Revised Municipal Code shall be amended by adding the language underlined as follows:

Sec. 4-2. Definitions

The following definitions shall apply in the interpretation and enforcement of this chapter and all rules and regulations adopted hereunder:

- (1) *Air Contaminant or Air Pollutant:*** Any fume, odor, smoke, particulate matter, vapor, gas or any combination thereof but not including water vapor or steam condensate.
- (2) *Air Contaminant Source:*** Any source whatsoever at, from or by reason of which there is emitted or discharged into the atmosphere any air contaminant.

- (3) ***Air Pollution***: The presence in the outdoor atmosphere of one (1) or more air contaminants.
- (4) ***Air Quality Review***: A review of facilities to be performed by the department in accordance with rules and regulations adopted by the board and promulgated by the manager pursuant to this chapter.
- (5) ***Ambient Air***: The surrounding or outside air.
- (6) ***Atmosphere***: The gaseous envelope that surrounds the earth.
- (7) ***Benchmarking***: Measuring a Covered Building's energy performance using the ENERGY STAR Portfolio Manager tool.
- (8) ***Board***: the Board of Environmental Health of the City.
- (9) ***Clean-Burning Fuels***: Compressed natural gas, liquefied natural gas, liquefied petroleum gas or hydrogen; multifuels, such as diesel/compressed natural gas fumigations; fuels containing not less than eighty-five (85) percent ethanol or methanol; electricity or any other alternative fuel that the board determines to be clean-burning.
- (10) ***Covered Building***: Any individual building in the City and County of Denver with a Gross Floor Area of twenty-five thousand (25,000) square feet or larger except the following:
- (a) A building that was not occupied and did not have a certificate of occupancy or temporary certificate of occupancy for all twelve (12) months of the calendar year for which benchmarking is required;
 - (b) A building that was not occupied, due to renovation, for all twelve (12) months of the calendar year for which benchmarking is required;
 - (c) A building for which 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;
 - (d) A building that 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;
 - (e) A building that had an average physical occupancy of less than sixty (60) percent throughout the calendar year for which benchmarking is required;

- (f) A building that is used primarily for industrial or agricultural processes; and
- (g) A building for which the Owner can demonstrate that its energy performance is a confidential business practice that includes trade secrets, privileged, or confidential commercial information. In order to qualify for this exemption, the Owner shall specifically identify the information it believes is confidential and provide a written statement describing the manner in which public disclosure would cause substantial harm to the Owner's competitive position. Inefficient energy usage alone will not be considered confidential commercial information.

(11) **Covered Municipal Building:** A Covered Building that is owned or operated by the City and County of Denver.

(12) **Criteria Pollutants:** Those pollutants for which national ambient air standards have been established pursuant to the federal Clean Air Act as amended, i.e., particulate matter, sulfur oxides, nitrogen dioxide, ozone, carbon monoxide and lead.

(13) **Department:** The Department of Environmental Health for the City.

(14) **Device:** Any machine, equipment, fabrication or contrivance the use of which causes the release of air contaminants, or that alters, contains, controls, prevents or removes air pollution from any air contamination source.

(15) **Emergency Vehicle:** Any surface or airborne vehicle used for the official business of the police and fire departments and any emergency medical vehicle as defined in Chapter 17 of this Code.

(16) **Emission or Emit:** To discharge, release or to permit or cause the discharge or release of one (1) or more air contaminants into the atmosphere.

(17) **Emission Offset:** A net reduction in total emissions of a regulated air pollutant so that emissions of the regulated air pollutant are less than were emitted prior to instituting the offset. An offset can be accomplished by the installation of air pollution control devices or by the elimination of or changes in the method or process of manufacture in existing stationary or mobile sources or in any other way approved by the board.

(18) **Energy Efficiency Program:** The administrative program implemented by the Department requiring the benchmarking and reporting of energy consumption in commercial and multifamily buildings that are twenty-five thousand (25,000) gross square feet or larger within the City and County of Denver.

- 1 **(19) ENERGY STAR Portfolio Manager:** The online tool created by the U.S.
2 Environmental Protection Agency used to measure and track a building's energy use,
3 water consumption, and greenhouse gas emissions.
- 4 **(20) *Engine*:** Any internal combustion machine, such as found in motor vehicles, aircraft,
5 locomotives and stationary power units, that utilizes gas or liquid fuel for combustion
6 energy.
- 7 **(21) *Existing Facilities*:** Facilities for which application for all applicable permits and
8 approvals required from the city have been submitted prior to the effective date of this
9 article.
- 10 **(22) *Fireplace*:** An opening made in a chimney and surrounded with brick, stone, metal or
11 like material to hold a fire, and that has no specific method for recirculating heat or
12 reducing emissions.
- 13 **(23) *Fuel*:** Any combustible substance or material or any combination of such.
- 14 **(24) *Fuel-Burning Equipment*:** Any furnace, boiler apparatus, stack or appurtenance
15 thereto used in the process of burning fuel for the primary purpose of producing heat or
16 power by indirect heat transfer.
- 17 **(25) *Fugitive Particulates*:** Particulate matter that cannot be readily captured and routed
18 through a stack or air pollution control equipment that is entrained in the ambient air
19 and is caused by human or natural activities or both, including, without limitation,
20 construction, demolition, earth moving, grading, sandblasting, materials handling,
21 vehicular traffic on unpaved haul roads, and wind.
- 22 **(26) *Fugitive Particulate Control Plan*:** The plan submitted for activities that could emit
23 particulate matter into the atmosphere beyond the lot line of the property on which the
24 emissions originate.
- 25 **(27) *Gas*:** An aeroform fluid having neither independent shape nor volume but tending to
26 expand indefinitely.
- 27 **(28) *Gaseous Fuel*:** A fuel that exists as a gas at atmospheric temperature and pressure.
- 28 **(29) Gross Floor Area:** The total property square footage, measured between the principal
29 exterior surfaces of the enclosing fixed walls of a building, as defined in the ENERGY
30 STAR Portfolio Manager definitions.
- 31 **(30) *Hazardous Air Pollutant*:** An air pollutant to which no national ambient air quality
32 standard is applicable and that, in the judgment of the Colorado Air Quality Control

Commission, causes or contributes to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible or incapacitating reversible illness or injury; and any air pollutant listed by the state or federal government as a hazardous air pollutant.

- (31) **Health Risk Assessment:** An assessment, based on accepted scientific standards and information from inventories, sampling, modeling and/or estimation techniques, of the potential human health risk from exposure to specified levels of identified hazardous air pollutants and criteria pollutants.
- (32) **High-Pollution Day:** That period of time in which the Colorado Department of Public Health and Environment anticipates levels of carbon monoxide or particulates exceeding federal ambient air quality standards or when air pollution standards are exceeded for particulates, carbon monoxide or visibility.
- (33) **Incinerator:** A container, device or other appliance, designed, used or intended to be used for the disposal or reduction of household, commercial or industrial waste material or any commercial or industrial material by burning.
- (34) **Manager:** The manager of the Department of Environmental Health of the City.
- (35) **Masonry Heater:** An appliance designed for or capable of burning wood, capable of and intended for domestic space heating or domestic water heating, and has been approved by the Colorado Department of Public Health and Environment by meeting all design criteria, and emissions standards set forth by that agency.
- (36) **New Facilities:** Facilities and temporary facilities not exempted through regulation by the board that have not applied for all applicable permits prior to the effective date of this article.
- (37) **Nuisance:** The doing of or the failure to do something that allows or permits air contaminants to escape into the open air that are or tend to be detrimental to the health, comfort, safety or welfare of the public or that causes or tends to cause injury or substantial annoyance or inconvenience to persons exposed thereto or causes or tends to cause damage to property.
- (38) **Opacity:** The fraction of a beam of light that fails to pass through a plume of smoke or air contaminants, expressed in percentage.

- (39) **Open Burning:** Fire or smoldering where any material is burned in the outdoor air or in an open container, receptacle, pit, vessel, chiminea, or other device designed or used for outdoor fires.
- (40) **Owner:** The person or entity having a legal or equitable interest in real property and its fixtures and appurtenances.
- (41) **Particulate Matter:** Any material, except water mist or spray, that exists in a finely divided form as a liquid or solid.
- (42) **Pellet Stove:** A wood heater that meets the following criteria:
- (a) The manufacturer makes no reference to burning cordwood in advertising or literature;
 - (b) The unit is safety listed for pellet fuel only;
 - (c) The unit's operating and other instruction manual states that the use of cordwood is prohibited by federal law; and
 - (d) The unit must be manufactured and sold including a hopper and auger combination as integral parts.
- (43) **Person:** Any person, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user or owner and shall include any municipal corporation, state or federal governmental agency, district or any officer or employee thereof.
- (44) **Phase II Wood Stove:** A wood-burning device that has been certified by the United States Environmental Protection Agency or the Colorado Department of Public Health and Environment.
- (45) **Premises:** Any building, structure, land, utility or portion thereof, including all appurtenances, and shall include yards, lots, courts and properties without buildings.
- (46) **Process:** Any individual action, operation or treatment involving chemical, industrial or manufacturing factors and all other methods or forms of manufacturing or processing that may emit air contaminants.
- (47) **Reduction:** Any process utilizing heat, including but not limited to burning, rendering, drying, dehydrating, digesting, evaporating and protein concentrating that decreases the volume of material being processed.
- (48) **Regulated Air Pollutant:** A pollutant that is a criteria air pollutant or hazardous air pollutant.

1 **(49) Smolder:** To burn and produce smoke without flame.

2 **(50) Solid-Fuel-Fired Device:** A device designed for the combustion of solid fuels including
3 wood-burning devices, fireplaces, solid-fuel-fired stoves and combustion fuel furnaces
4 that burn solid fuel. Solid-fuel-fired devices do not include natural gas-fired devices,
5 commercial ovens or stoves used to prepare food for human consumption, public utility
6 facilities generating steam or electricity, or solid-fuel-fired barbecue devices. The board
7 may adopt and the manager may promulgate rules and regulations, as authorized in
8 subsection 4-6(a), to further define solid-fuel-fired devices including exclusions to the
9 definition for fuels or classes of technology where the board determines that the
10 excluded fuel or technology is reliably cleaner burning than a Phase II wood stove or
11 where the board determines that no reasonable alternative to the burning of solid fuel
12 exists. In no case shall such definitions or exclusions be inconsistent with the
13 requirements of Chapter 24 of the Denver Revised Municipal Code.

14 **(51) Solid Waste:** Refuse consisting of paper, wood, yard wastes, food wastes, plastic,
15 leather, rubber and such other combustibles and noncombustible glass, rock, etc., that
16 may be generated from residential and commercial operations and from industrial sites.

17 **(52) Stationary Source:** Any building, structure, facility, equipment or installation or any
18 combination thereof belonging to the same facility that emits or may emit any air pollutant
19 subject to regulation under the federal Clean Air Act, that is located on one (1) or more
20 contiguous or adjacent properties and that is owned or operated by the same person or
21 by persons under common control.

22 **(53) Traffic Operations:** Activities necessary to direct traffic, to repair, install or maintain
23 traffic-control devices, to paint traffic-control lanes or to pave, maintain or repair streets
24 and sidewalks or to accomplish similar activities.

25
26 **Section 2.** That a new Article V, entitled “Energy Efficiency in Commercial and Multifamily
27 Buildings,” of Chapter 4 of the Denver Revised Municipal Code is added to read and be read as
28 follows:

29 **Sec. 4-51. Purpose.**

30 The purpose of this article is to establish an Energy Efficiency Program that requires Covered
31 Building Owners to benchmark building energy performance, and makes such energy performance
32 information publically available in order to raise awareness and drive action.

Sec. 4-52. Applicability.

The Energy Efficiency Program shall apply to all commercial and multifamily buildings within the City and County of Denver with a Gross Floor Area of twenty-five thousand (25,000) square feet or larger.

Sec. 4-53. Benchmarking and Reporting.

- (1)** Each Owner of a Covered Building shall benchmark the building's energy usage annually using the ENERGY STAR Portfolio Manager tool, and by June 1st each year, shall accurately report energy performance information to the Department for the previous calendar year.

 - (a)** Each Owner of a Covered Municipal Building shall begin reporting by June 1, 2017.
 - (b)** Each Owner of a Covered Building, other than a Covered Municipal Building, with a Gross Floor Area greater than fifty thousand (50,000) square feet shall begin reporting by June 1, 2017.
 - (c)** Each Owner of a Covered Building with a Gross Floor Area between twenty-five thousand (25,000) and fifty thousand (50,000) square feet shall begin reporting by June 1, 2018.
- (2)** The energy performance information that must be reported to the Department shall include, at a minimum, a Covered Building's annual energy use intensity, ENERGY STAR Portfolio Manager score if eligible for a score, greenhouse gas emissions, and any other data fields needed to calculate the ENERGY STAR Portfolio Manager score for auditing and verification purposes. Owners of Covered Buildings shall not be required to report monthly energy bill data.
- (3)** Owners of Covered Buildings shall keep records of monthly energy consumption for a minimum of twenty-four (24) months. Such records shall be made available for the Department's inspection upon request.

Sec. 4-54. Board to Promulgate Rules.

The Board shall promulgate rules for the Energy Efficiency Program.

Sec. 4-55. Enforcement.

The Manager, or the Manager's designee, is empowered to enforce the provisions of this article and any rules and regulations adopted by the Board pursuant to this article.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

COMMITTEE APPROVAL DATE: _____, 2016

MAYOR-COUNCIL DATE: _____, 2016

PASSED BY THE COUNCIL: _____, 2016

- PRESIDENT

APPROVED: _____ - MAYOR _____, 2016

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2016; _____, 2016

PREPARED BY: Lindsay Carder, Assistant City Attorney DATE: _____, 2016

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kristin Bronson, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: _____, 2016