

## CHAPTER 18.94

# COMMERCIAL BUILDING BENCHMARKING AND MARKET TRANSPARENCY

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**18.94.010: PURPOSE:**

The purpose of this chapter is to promote long-term economic development in Salt Lake City through the enhanced energy efficiency of existing commercial buildings, and to reduce local air pollution and greenhouse gas emissions resulting from energy consumption in such buildings through increased energy efficiency, by requiring certain non-residential buildings to benchmark and report energy consumption and investigate opportunities to implement cost-effective building energy tune-ups. Promoting and recognizing efficient buildings will contribute to a cleaner environment and a more efficient use of energy resources. (Ord. 45-17, 2017)

**18.94.020: SCOPE:**

The provisions of this chapter apply to buildings and building owners as follows:

A. All buildings owned by the City, that are not used for residential purposes, wastewater reclamation plants, or for heavy manufacturing purposes as defined in section 21A.62.040 of this Code, with three thousand (3,000) square feet or more of gross floor area; provided, however, no building with less than twenty two thousand (22,000) square feet of gross floor area shall be subject to the provisions of section 18.94.080 of this chapter.

B. All other governed buildings or campuses of buildings that are not used for residential purposes within Salt Lake City's geographic boundaries, where at least one of the buildings is comprised of at least twenty five thousand (25,000) square feet of gross floor area. To the extent a governed building contains elements or uses that are not included within the definition of a governed building under this chapter, the square footage of gross floor area of such elements or uses shall be excluded from the square footage of gross floor area of such building and shall not be considered a part of the governed building for purposes of this chapter.

C. Exemptions:

1. Governed buildings that are new construction and the Certificate of Occupation was issued less than two (2) years prior to the applicable deadlines; or
2. Governed buildings that do not have a Certificate of Occupation or temporary Certificate of Occupation for all twelve (12) months of the calendar year being benchmarked; or
3. Governed buildings where a full demolition permit has been issued for the prior calendar year, provided that demolition work has commenced, some energy-related systems have been compromised, and legal occupancy is no longer possible at some point during the calendar year being benchmarked; or
4. Governed buildings, including individual buildings or structures, that do not receive utility services; or
5. Any of the following: a property or building that is not assessed ad valorem real property taxes by Salt Lake County, houses of worship, apartments, agricultural storage facilities and greenhouses, buildings used for heavy manufacturing purposes as defined in section 21A.62.040 of this Code, oil and gas production facilities, buildings that contain movie/television/radio production studios, soundstages, broadcast antennae, data center, or trading floor that together exceed ten percent (10%) of gross floor area.

D. Governed buildings do not include properties owned by State or Federal government. (Ord. 45-17, 2017)

**18.94.030: DEFINITIONS:**

**BASE BUILDING SYSTEMS:** A building assembly made up of various components that serve a specific function and that are controlled and operated by the owner or designee, including:

- A. The building envelope;
- B. The HVAC (heating ventilating and air conditioning) systems;
- C. Conveying systems;

- D. Electrical and lighting systems;
- E. Domestic hot water systems.

**BENCHMARK:** To track and report the total energy consumed for a governed building for the previous calendar year and other descriptive information for such building as captured by the benchmarking tool. Total energy consumption may not include separately metered uses that are not integral to building operations, such as broadcast antennas and electric vehicle charging stations.

**BENCHMARKING SUBMISSION:** A subset of:

- A. Information input into the benchmarking tool; and
- B. Benchmarking information generated by the benchmarking tool.

**BENCHMARKING TOOL:** The Energy Star portfolio manager or any replacement tool adopted by the U.S. Environmental Protection Agency, and any substantially similar tool approved by the Director.

**BUILDING ID NUMBER:** The identification number that is unique to a governed building.

**BUILDING MANAGEMENT SYSTEM:** A computer-based system that monitors and controls a building's mechanical and electrical equipment, such as HVAC, lighting, power, fire, and security systems, including an energy management system, incorporating interior temperature sensors and a central processing unit and controls, which are used to monitor and control gas, steam and oil usage, as applicable.

**CAMPUS:** A collection of two (2) or more buildings where at least one of the buildings has at least twenty five thousand (25,000) square feet of gross floor area or more and that act as a single cohesive property with a single shared primary function, and are generally owned and operated by the same party.

**CITY PROPERTY:** All buildings owned by the City, that are not used for residential purposes, wastewater reclamation plants, or for heavy manufacturing purposes as defined in section 21A.62.040 of this Code.

**DEPARTMENT:** The Salt Lake City Department of Sustainability.

**DIRECTOR:** The Director of the Salt Lake City Department of Sustainability.

**ENERGY STAR PORTFOLIO MANAGER:** The tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide.

**ENERGY STAR SCORE:** The 1 - 100 numeric rating generated by the Energy Star portfolio manager tool.

**FINANCIAL HARDSHIP:** A property that:

- A. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within the prior two (2) years, on the City's annual tax lien sale list; or
- B. Has a court appointed receiver in control of the property due to financial distress; or
- C. Is owned by a financial institution through default by the borrower; or
- D. Has been acquired by a deed in lieu of foreclosure; or
- E. Has a senior mortgage subject to a notice of default.

**GOVERNED BUILDING:** All stand-alone and enclosed buildings used or occupied for a commercial use, including:

- A. Banking/financial services;
- B. Stand-alone data centers;
- C. Education (including K - 12, daycare, pre- school, vocational school);
- D. Entertainment/public assembly (including convention centers, gyms, movie theaters, performing arts, meeting halls, recreation centers);
- E. Food sales and services (including restaurants, supermarkets, grocery stores, convenience stores);
- F. Healthcare (including hospitals, medical offices, senior care communities, assisted living and nursing care);
- G. Lodging (including hotels, motels);
- H. Mixed use;
- I. Offices;
- J. Retail (including retail goods establishments, retail service establishments, department stores, mass merchandising stores, specialty stores, enclosed retail malls and shopping centers);
- K. Technology/science (including data centers and research facilities);
- L. Warehouses, distribution, and package delivery facilities.

**GROSS FLOOR AREA:** All gross floor area, which is the area included within the exterior walls of a building or portion thereof, including mezzanines, enclosed interior balconies, enclosed porches, basement floor area, penthouses, attic space having headroom of seven feet (7') or more, and interior connected floor area devoted to accessory uses. Gross floor area does not include

balconies, patios, crawl spaces, courts, convertible indoor/outdoor space, parking or loading areas, and covered walkways.

HEAVY MANUFACTURING: The same as defined in section 21A.62.040 of this Code.

OCCUPANCY: The physical occupancy of a unit or space by an occupant or a tenant.

OWNER: Any of the following:

- A. An individual or entity possessing title to a governed property;
- B. The net lessee in the case of a property subject to a triple net lease with a single tenant;
- C. The Board of Managers in the case of a nonresidential condominium;
- D. An agent or party duly authorized to act on behalf of the owner.

PERSISTENT COMMISSIONING: An ongoing process of comparing data obtained through the building management system with analytic models; identifying problematic sensors, controls and equipment; and resolving operating problems, optimizing energy use and identifying retrofits for existing buildings.

SHARED BENCHMARKING INFORMATION: Any descriptive information identifying governed buildings with Energy Star scores above 50, and any portions of the submitted benchmarking information that owner elects to be posted publicly on the department's website.

SUBMITTED BENCHMARKING INFORMATION: Whole-building information generated by the benchmarking tool and descriptive information about the governed building and its operational characteristics, which is submitted to the department. The information shall be limited to:

- A. Descriptive information:
  - 1. Property address;
  - 2. Primary use type;
  - 3. Gross floor area;
- B. Output information:
  - 1. Site electricity consumption (kWh);
  - 2. Site natural gas consumption (therms);
  - 3. Site energy use intensity (site EUI);
  - 4. Weather normalized source energy use intensity (source EUI);
  - 5. Total annual greenhouse gas emissions;
  - 6. Water use per gross square foot (if available);
  - 7. The Energy Star score, where available; and
- C. Comparable information based on updates/revisions to Energy Star portfolio manager.

TENANT: A person or entity occupying or holding possession of all or a portion of real property, or all or a portion of a governed building pursuant to a rental or lease agreement.

TUNE-UP EVALUATION: A utility sponsored retro-commissioning process that systematically evaluates base building systems and identifies improvements to achieve optimal building performance. This includes planning, investigation, and documentation to optimize operation, maintenance and performance of the facility and/or its base building systems and assemblies.

TUNE-UP EVALUATION REPORT: A report certified by the tune-up professional demonstrating that a tune-up evaluation was conducted through a utility-sponsored tune-up incentive program.

TUNE-UP PROFESSIONAL: An individual or entity approved or utilized by local utilities to provide tune-up evaluation services or who possesses other substantially similar credential to perform a tune-up evaluation required by this chapter. (Ord. 45-17, 2017)

**18.94.040: SUMMARY OF BUILDING ENERGY PERFORMANCE REQUIREMENTS AND INITIAL COMPLIANCE DATES:**

Properties	Submitted Benchmarking Information Due	Shared Benchmarking Information Made Publicly Available	Date When First Tune-Up Evaluation Report Must Be Filed	Frequency Of Tune-Up Evaluation
City property	May 1, 2018	Sept. 1, 2018	May 1, 2020	Prior to Dec. 31 of every fifth year

Governed building (50,000 sq. ft. of gross floor area or larger)	May 1, 2019	Sept. 1, 2020	May 1, 2021	Prior to Dec. 31 of every fifth year
Governed building (25,000 to 49,999 sq. ft. of gross floor area)	May 1, 2020	Sept. 1, 2021	May 1, 2022	Prior to Dec. 31 of every fifth year

(Ord. 45-17, 2017)

**18.94.050: BENCHMARKING AND BENCHMARKING SUBMISSION REQUIRED:**

A. Governed buildings and City properties shall be benchmarked annually for the previous calendar year according to the following schedule:

1. Each City property shall be benchmarked no later than May 1, 2018, and every May 1 thereafter.
2. Each governed building with a gross floor area of fifty thousand (50,000) square feet or more shall be benchmarked no later than May 1, 2019, and every May 1 thereafter.
3. Each governed building with a gross floor area of twenty five thousand (25,000) to forty nine thousand nine hundred ninety nine (49,999) square feet shall be benchmarked no later than May 1, 2020, and every May 1 thereafter.

B. Below is a summary table of the first benchmarking submission compliance dates:

Properties	Benchmarking Submission By Building Owner
City property	May 1, 2018
Governed building (50,000 square feet of gross floor area or larger)	May 1, 2019
Governed building (25,000 to 49,999 square feet of gross floor area)	May 1, 2020

C. Benchmarking shall be performed and/or verified by the owner.

D. Before making a benchmarking submission the owner shall run all automated data quality checker functions available within the benchmarking tool, and shall correct all missing or incorrect information identified.

E. If the current owner receives notification from the City that any information reported as part of the benchmarking submission is inaccurate or incomplete, the information so reported shall be amended in the benchmarking tool by the owner and the owner shall provide an updated benchmarking submission to the Director within sixty (60) days of the notification.

F. Exceptions:

1. Governed buildings whose average occupancy throughout the calendar year for which benchmarking is required is less than sixty percent (60%); or
2. Governed buildings under financial hardship; or
3. 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 chapter would cause undue hardship or would not be in the public interest; or
4. An owner is unable to benchmark due to the failure of either a utility provider or a tenant (or both) to report the information necessary for the owner to complete any benchmarking submittal requirement.

G. For properties qualifying for these exceptions, the owner shall file documentation, in such form and with such certifications as required by the Director, with the department in the year prior to the due date for the benchmarking submission, establishing that the governed building qualifies for such an exception.

H. A randomly-selected subset of benchmarking submission not to exceed ten percent (10%) of the total benchmarking submissions completed in a given year may be subject to verification by the City. Such reviews shall be conducted in a way so as to preserve the anonymity of individual properties and shall be conducted at no cost to the owner.

I. An owner may make a claim of confidentiality for any submitted benchmarking information pursuant to the limitations under State law. (Ord. 45-17, 2017)

**18.94.060: BUILDING ENERGY PERFORMANCE TRANSPARENCY:**

A. The City shall make accessible to the public the shared benchmarking information for the previous calendar year.

1. For each governed building with a gross floor area of fifty thousand (50,000) square feet or more, on or about September 1, 2020, and on or about each September 1 thereafter.

2. For each governed building with a gross floor area of twenty five thousand (25,000) to forty nine thousand nine hundred ninety nine (49,999) square feet, on or about September 1, 2021, and each September 1 thereafter.

B. The department may, upon request, make available the submitted benchmarking information for the previous calendar year for an individual City property or governed building. (Ord. 45-17, 2017)

**18.94.070: PROVIDING BENCHMARKING INFORMATION TO THE PROPERTY OWNER:**

A. Each tenant occupying a governed building shall, within sixty (60) days of a request by the owner and in a form to be determined by the Director, provide all information that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this chapter. (Ord. 45-17, 2017)

**18.94.080: TUNE-UP EVALUATIONS REQUIRED:**

A. Required: Tune-up evaluations are required for governed buildings and City properties that are eligible for participation in a utility-sponsored tune-up incentive program, as determined by the utility offering the incentive program and that have an Energy Star score of 49 and below. Implementation of tune-up measures in addition to evaluations is encouraged but not required.

B. Report: The owner shall conduct a tune-up evaluation of the base building systems of a qualifying governed building and file a tune-up evaluation report prior to December 31 of the year in which the tune-up evaluation is being performed. The initial reporting year shall be determined by the last digit of the property's tax ID number as illustrated below, and subsequent tune-up evaluation shall be completed and tune-up evaluation reports filed every fifth year thereafter:

Last Digit Of Tax ID Number	50,000 Square Feet And Above Of Gross Floor Area	25,000 To 49,999 Square Feet Of Gross Floor Area
0	2021	2022
1	2021	2022
2	2022	2023
3	2022	2023
4	2023	2024
5	2023	2024
6	2024	2025
7	2024	2025
8	2025	2026
9	2025	2026

C. Report Submission: The owner shall submit the tune-up evaluation report to the City.

D. Exceptions: Tune-up evaluations are not required if any of the following are met:

1. If the governed building is less than five (5) years old; or

2. If a registered design professional or tune-up professional certifies that:

a. The governed building has an Energy Star score of 50 or above for the year prior to the first tune-up due date or for at least two (2) of the three (3) years preceding the due date of the governed building's tune-up evaluation report.

b. There is no Energy Star rating for the building type and owner submits documentation that the property's energy performance is better than the energy performance of an average building of its type for two (2) of the three (3) years preceding the due date of the governed building's tune-up report.

c. The governed building has received certification under the most recent LEED 2009 rating system for existing buildings or operation and maintenance, or existing buildings version 4 rating system or future iterations of LEED published by the U.S. Green Building Council or other substantially similar rating systems for existing buildings, for at least two (2) of the three (3) years preceding the due date for the governed building's tune-up evaluation reports.

d. The governed building has performed a tune-up evaluation within the past five (5) years prior to the tune-up evaluation due date.

3. If the governed building has a persistent commissioning program in place.

For properties qualifying for these exceptions, the owner shall file documentation, in such form and with such certifications as required by the Director, with the department in the year prior to the due date for the tune-up report, establishing that the governed building qualifies for such an exception.

E. Verification: A randomly-selected subset of tune-up evaluation reports not to exceed ten percent (10%) of the total tune-up evaluation reports completed in a given year may be subject to verification by the City. Such reviews shall be conducted in a way so as to preserve the anonymity of individual properties and shall be conducted at no cost to the owner. (Ord. 45-17, 2017)

**18.94.090: NOTIFICATION:**

A. Between January 1 and March 1 of each year during which an owner is required to provide a benchmarking submission, the Director shall notify these owners of their obligation to benchmark performance for the previous calendar year through whatever means the Director so chooses. (Ord. 45-17, 2017)

**18.94.100: VIOLATIONS AND ENFORCEMENT:**

A. If the Director determines that an owner has failed to comply with the requirements of this chapter or the owner submits incomplete or false information, the Director may issue up to three (3) written notices of noncompliance to the owner, allowing owner to cure such noncompliance within ninety (90) days after each notice of violation. After the third written notice of violation, the Director may impose a fine of up to five hundred dollars (\$500.00) per violation thereafter not exceeding a total of one thousand dollars (\$1,000.00) annually. (Ord. 45-17, 2017)

**18.94.110: APPEALS PROCESS:**

A. Any owner affected by the Director's determination related to that owner's property regarding enforcement of this chapter may request, within thirty (30) days of owner's written notification of the Director's determination, in writing filed with the department, an appeal hearing before the Board of Appeals and Examiners, established under this title. (Ord. 45-17, 2017)