AN ACT to:

(1) expand the number of buildings covered by benchmarking requirements;
(2) amend certain definitions;
(3) establish energy performance standards for covered buildings with certain gross floor area;
(4) create a Building Performance Improvement Board; and
(5) generally revise County law regarding environmental sustainability.

By amending
Montgomery County Code
Chapter 18A, Environmental Sustainability

By adding
Montgomery County Code
Chapter 18A, Environmental Sustainability

The County Council for Montgomery County, Maryland approves the following Act:


18A-38[A]. Intent.

The intent of this Article is to:

* * *

(b) engage the commercial and multi-family residential building sector with building energy information crucial to adopting energy conservation and efficiency opportunities;

* * *

(d) strengthen the local economy by encouraging more efficient business operations and providing new opportunities for local businesses that provide energy conservation and efficiency services; [and]

(e) recognize building owners that have made investments to improve their building energy performance and expand in-house capacity for energy management[.]; and

(f) improve the energy performance of covered buildings through established building energy performance standards, therefore, reducing greenhouse gas emissions from the built environment and helping the County achieve its climate action goal of zero greenhouse gas emissions by 2035.


In this Article, the following words have the meanings indicated:

Affordable housing means a [[dwelling unit]] multi-family building that includes at least 50% of dwelling units whose sale or rental price [[does]] do not
exceed that of a moderately-priced dwelling unit under Chapter 25A. [or group senior assisted housing.]]

*Benchmark* means to track and input a building’s energy consumption data and other relevant building information for 12 consecutive months, as required by the benchmarking tool, to quantify the building’s energy use.

*Benchmarking tool* means the website-based software, commonly known as ENERGY STAR Portfolio Manager, or any successor system, [developed and maintained] approved by the United States Environmental Protection Agency to track and assess the relative energy use of buildings nationwide.

*Building* means:

1. any single structure utilized or intended for supporting or sheltering any occupancy, except if a single structure contains two or more individually metered units operating independently that have stand-alone heating, cooling, hot water, and other mechanical systems, and no shared interior common areas, or:

2. two or more structures utilized or intended for supporting or sheltering any occupancy, that:

   A. are serviced by a common energy meter;
   B. have a common heating or cooling system;
   C. share interior common areas; or
   D. whose configuration otherwise prevents an accurate determination of the energy consumption attributable to each individual structure.

*Building energy performance standard* means a policy that sets a minimum required level of energy performance for covered buildings.
Building performance improvement plan means a document in a format approved by the Director submitted by a covered building owner and approved by the Director as described in this Article.

Building type means a category of covered buildings subject to the same final performance standards.

* * *

County-owned covered building means [any] a building owned by the County[, or any group of buildings owned by the County that have the same property identification number, that] whose gross floor area equals or exceeds [50,000] 25,000 [in total building] square [footage] feet.

Covered building means [any] a County-owned [building], Group 1 [covered building], [or] Group 2, Group 3, Group 4, or Group 5 covered building. [Covered building does not include any building with more than 10% of total building square footage which is used for

(1) public assembly in a building without walls;

(2) warehousing;

(3) self storage; or

(4) a use classified as manufacturing and industrial or transportation, communication, and utilities.]

* * *

Energy use intensity or EUI means a numeric value calculated by the benchmarking tool that represents the energy consumed by a building relative to its size.]

Final performance standard means the numeric value of site EUI that each covered building must ultimately achieve [[or exceed]].

Gross floor area means the total building square footage measured between the principal exterior surfaces of the enclosing fixed walls of a building. Gross floor
area consists of all areas inside the building, including lobbies, tenant areas, common areas, meeting rooms, break rooms, the base level of atriums, restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms. Gross floor area does not include exterior spaces, balconies, patios, exterior loading docks, driveways, covered walkways, outdoor play courts (e.g., tennis, basketball), parking, the interstitial space between floors (which house pipes and ventilation), and crawl spaces. Gross floor area is not the same as rentable space, but rather includes all areas inside the building(s).

Group 1 covered building means [any] a privately owned nonresidential covered building [, or any group of nonresidential buildings that have the same property identification number, not owned by the County that] whose gross floor area equals or exceeds 250,000 [in total building] square [footage] feet.

Group 2 covered building means [any] a privately owned nonresidential covered building [, or any group of nonresidential buildings that have the same property identification number, not owned by the County that] whose gross floor area equals or exceeds 50,000 square feet [gross floor area] but is less than 250,000 [in total building] square [footage] feet.

Group 3 covered building means:

(1) a privately owned nonresidential covered building whose gross floor area equals or exceeds 25,000 square feet but is less than 50,000 square feet, or

(2) a privately owned nonresidential covered building whose gross floor area equals or exceeds 50,000 square feet and whose use type was previously exempted under this Article.

Group 4 covered building means a privately owned multifamily residential or mixed-use covered building whose gross floor area equals or exceeds 250,000 square feet.
**Group 5 covered building** means a privately owned multifamily residential or mixed-use building whose gross floor area equals or exceeds 25,000 square feet but is less than 250,000 square feet.

**Interim performance standard** means the numeric value of site EUI which covered buildings must achieve or exceed by a fixed date every [[five (5)] four (4) years from a covered building’s performance baseline.  

**Interior common area** means shared space within a building such as hallways, lobbies, stairwells, and other shared amenities (e.g., gyms, laundry rooms, party rooms).

**Mixed-use building** means a building that contains both residential units and commercial space.

**Net site EUI** means site energy use minus energy generated from [[onsite solar sources]] the renewable energy allowance divided by the total gross floor area of the building expressed in thousands of British thermal units per gross square feet (kBtu/GSF).

**Newly constructed covered building** means a covered building whose owner has completed construction, received a use and occupancy permit, and is able to begin benchmarking the building’s energy use and other characteristics.

**Normalized net site energy** means the site energy use by the covered building normalized for weather and other characteristics within the limits of the capabilities of the benchmarking tool and normalized for other factors as determined by the Department minus energy generated from [[onsite solar sources]] the renewable energy allowance.

**Normalized net site EUI** means the total normalized net site energy use consumed by a covered building in one year divided by the total gross floor area of the building expressed in kBtu/GSF.
Owner means an individual or legal entity in whose name a building is titled, or in the case of a community association, the governing body of either a condominium or a cooperative housing corporation.

Performance baseline means the normalized net site EUI for a covered building averaged over two calendar years.

Performance metric means an objectively verifiable numeric measure of normalized site EUI to determine building performance.

Process load means energy consumed for bona fide purposes other than heating, cooling, ventilation, domestic hot water, lighting, appliances, office equipment, data centers, or other plug loads.

* * *

Reported benchmarking information means the descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool regarding the building’s energy consumption, efficiency, and performance. Reported benchmarking information includes the building identification number, address, gross floor area, energy performance score, site energy use intensity, and annual greenhouse gas emissions.

[Residential occupancy means the occupancy of dwelling units in any building that includes one or more dwellings.]

Site energy use means all energy used onsite by a covered building to meet the energy loads of a building, including electricity delivered to the building through the electric grid and generated onsite with renewable sources; natural gas; district steam; district hot and chilled water; diesel; propane; fuel oil; wood; coal; and other fuels used onsite. Site energy use does not include electricity used to charge vehicles.

Site energy use intensity or site EUI means a numeric value calculated by the benchmarking tool that represents the energy consumed by a covered building
relative to its size in terms of energy used per square foot of gross floor area per year.

*Tenant* means a person or legal entity occupying or holding possession of a building, part of a building, or premises under a rental agreement.

[Total building square footage] means the sum of the gross horizontal area of the several floors of a building or structure measured from the exterior faces of the exterior walls or from the center line of party walls. In a covered but unenclosed area, such as a set of gasoline pumps or a drive-through area, total building square footage means the covered area. Total building square footage does not include any:

1. basement or attic area with a headroom less than 7 feet 6 inches;
2. area devoted to unenclosed mechanical, heating, air conditioning, or ventilating equipment;
3. parking structure; or
4. accessory structure to a residential building.]

**18A-38B. Applicability.**

This Article does not apply to a covered building for which more than 50% of the total gross floor area is used for:

(a) public assembly in a building without walls;
(b) industrial uses where the majority of energy is consumed for manufacturing, the generation of electric power or district thermal energy to be consumed offsite, or for other process loads; or
(c) transportation, communications, or utility infrastructure.

**18A-39. Energy use benchmarking.**

(a) *County-owned covered buildings.*

(1) No later than June 1, 2015, and every June 1 thereafter, the County must benchmark any County-owned covered building[s] whose
gross floor area equals or exceeds 50,000 square feet for the previous calendar year and report the benchmarking information to the Department.

(2) No later than June 1, [[2022]] 2023, and every June 1 thereafter, the County must benchmark any County-owned covered building whose gross floor area equals or exceeds 25,000 square feet but is less than 50,000 square feet for the previous calendar year and report the benchmarking information to the Department.

(b) * * *

c) * * *

(d) Group 3 and Group 4 covered buildings. No later than June 1, [[2022]] 2023, and every June 1 thereafter, the owner of any Group 3 or Group 4 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(e) Group 5 covered buildings. No later than June 1, [[2023]] 2024, and every June 1 thereafter, the owner of any Group 5 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(f) Newly constructed covered building. Following the first full calendar year that energy data can be collected and that the building was occupied, on average, by at least one full-time-equivalent employee (40 person-hours per week) exclusive of security guards, janitors, construction workers, landscapers, and other maintenance personnel throughout the calendar year being reported, the owner of any newly constructed covered building must benchmark the building and report to the Department no later than June 1 of that following year, and every June 1 thereafter.
Waiver. [The Director may waive the benchmarking requirements of this Section if] For any time period for which the owner of a covered building documents, in a form required by regulation, [that the building]
any of the conditions below, the Director may waive the benchmarking requirements of this Section:

1. [is in financial] Financial distress, defined as a building that:
   (A) is the subject of a tax lien sale or public auction due to property tax arrearages;
   (B) is controlled by a court appointed receiver; or
   (C) was recently acquired by a deed in lieu of foreclosure;

2. [had average physical occupancy of less than 50% throughout the calendar year for which benchmarking is required] On average, less than one full-time-equivalent employee occupied the building during the calendar year being reported; [or]

3. The covered building is [new] newly [construction] constructed and has received its certificate of use and occupancy during the calendar year for which benchmarking is required; or

4. The covered building was demolished or received its demolition permit during the calendar year for which benchmarking is required.

18A-42. Establishment of building energy performance standards.

(a) Requirement. The Department must develop and implement building energy performance standards for covered buildings. The standards must:

1. increase the energy efficiency of existing covered buildings and expedite the reduction of greenhouse gas emissions from the building sector:
(2) use normalized net site EUI as a performance metric wherever feasible or net site EUI if the Director determines that normalization is not practical as performance metric;

(3) account for [[onsite solar generation]] the renewable energy allowance in the performance metric;

(4) use the benchmarking tool to report building energy performance to the County; and

(5) utilize available data sources and best practices to establish interim and final performance standards.

(b) Building types.

(1) No later than [[June 1, 2022]] December 31, 2023, the County Executive must issue Method (2) regulations establishing building types for every covered building.

(2) Covered buildings within each building type must have shared characteristics that facilitate the implementation and enforcement of this Article. The Department may define one or more building types to be identical to ENERGY STAR property type categories.

(3) All covered buildings within the same building type category must be subject to the same final performance standards that facilitate the implementation and enforcement of this Article.

(c) Performance baseline. The performance baseline for each covered building must be calculated as follows:

(1) County-owned covered buildings whose gross floor area equals or exceeds 50,000 square feet, Group 1 covered buildings, and Group 2 covered buildings: Average of the 2 complete years with the highest normalized net site EUI between calendar year 2018 and calendar year [[2021]] 2022.
(2) County-owned covered buildings whose gross floor area is at least 25,000 square feet but not greater than 50,000 square feet, Group 3, and Group 4 covered buildings: Average of the 2 complete years with the highest normalized net site EUI between calendar year [[2021]] 2022 and calendar year [[2023]] 2024.

(3) Group 5 covered buildings: Average of the 2 complete years with the highest normalized net site EUI between calendar year [[2022]] 2023 and calendar year [[2024]] 2025.

(4) Newly constructed covered buildings: Average of the 2 complete years with the highest normalized net site EUI over the first 3 years of benchmarking reporting.

(d) Interim and final performance standards.

(1) No later than [[June 1, 2022]] December 31, 2023, the County Executive must issue Method (2) regulations establishing final performance standards for each building type using the normalized site EUI performance metric wherever feasible or site EUI if the Director determines that normalization is not practical.

(2) The Department must calculate [[each]] interim performance standards for each covered building with the starting point set at the covered building’s performance baseline and continuing to the final performance standard.

(3) Each covered building must demonstrate progress towards the final performance standard by complying with interim performance standards every [[4]] 5 years after the performance baseline year as follows:
(A) County-owned covered buildings whose gross floor area equals or exceeds 50,000 square feet, Group 1, and Group 2 covered buildings:

(i) Interim performance standard: December 31, [[2027]] 2028, and evaluated with June 1, [[2027]] 2029, benchmarking.

(ii) Final performance standard: December 31, [[2034]] 2033, and evaluated with June 1, [[2035]] 2034, benchmarking.

(B) County-owned covered buildings whose gross floor area is at least 25,000 square feet but not greater than 50,000 square feet, Group 3, and Group 4 covered buildings:

(i) Interim performance standard: December 31, [[2028]] 2030, evaluated with June 1, [[2029]] 2031.

(ii) Final performance standard: December 31, [[2036]] 2035, and evaluated with June 1, [[2037]] 2036.

(C) Group 5 covered buildings:

(i) Interim performance standard: December 31, [[2029]] 2031, and evaluated with June 1, [[2030]] 2032, benchmarking.

(ii) Final performance standard: December 31, [[2037]] 2036, and evaluated with June 1, [[2038]] 2037.

(D) Newly constructed buildings will be added to a coverage group (Group 1, Group 2, Group 3, Group 4, or Group 5) based on gross floor area and building type:

(i) Interim performance [[standard]] standards:

Evaluated with the [[first]] interim standard of the
building’s coverage group following creation of the performance baseline. (ii) Final performance standard: Evaluated with the final performance standard of the building’s coverage group, if the performance baseline is created before the final performance standard. 

(4) Covered buildings must maintain the final performance standards established by regulation. 

(5) Covered buildings must demonstrate compliance with the interim and final performance standards by reporting building energy benchmarking data to the Department using the benchmarking tool. The Department must determine compliance by comparing the performance metric against the interim or final performance standards for the applicable building type.

18A-42A. Building Performance Improvement Board. 

(a) Established. The County Executive must appoint, subject to confirmation by the Council, a Building Performance Improvement Board comprised of 15 voting members. Designees of the Department of Environmental Protection, Department of General Services, Department of Housing and Community Affairs, Department of Housing and Community Development, and Department of Permitting Services are ex officio nonvoting members of the Board. 

(b) Membership. Each voting member of the Board must be a resident of the County or a member of the governing body or staff of an entity doing business in the County. The Board should include: 

(1) Representatives of local electricity or natural gas utilities;
(2) Providers of energy efficiency, building resilience and/or renewable energy services or consulting;

(3) Owners or managers of affordable housing;

(4) Owners or managers of multi-family residential buildings containing market-rate units;

(5) Nonresidential building owners or managers;

(6) Nonprofit building owners or managers;

(7) Technical building design or operations professionals;

(8) Providers of facilities, mechanical, or similar engineering services;

(9) Commercial or multi-family residential construction finance or investment professionals;

(10) Representatives of nonprofit organizations dedicated to climate action, resiliency, public health, green building, economic development, or building decarbonization; and

(11) Representatives of nonprofit organizations dedicated to racial equity or environmental justice.

(c) Terms. Each voting member serves a 3-year term beginning on January 1. Of the members first appointed, one-third must be appointed for 1-year terms, one-third must be appointed for 2-year terms, and one-third must be appointed for 3-year terms. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified. The Board must elect one of its members as Chair to be who must serve as such for one calendar year or until a successor is elected.
(d) **Procedures.** The Board must adopt rules to govern its procedures including meeting frequency, managing Chair elections, establishing committees, and other issues that pertain to Board governance.

(e) **Duties and responsibilities.** The Board must generally advise the Department on implementation of building energy performance standards. This includes providing recommendations to the Director on:

1. **Building type groupings;**
2. Interim and final performance standards for each building type;
3. Managing situations where ownership of a building is transferred or a building’s type changes;
4. Building performance improvement plan technical review and approval processes;
5. Complementary programs or policies, with particular attention to assistance or accommodations for challenged or under-resourced sectors, such as affordable housing, non-profit organizations, and small businesses; and

(f) **Compensation.** The members of the Board serve without compensation.

**18A-42B. Building performance improvement plans.**

(a) If a covered building owner cannot reasonably meet one or more of the applicable interim or final performance standards due to economic infeasibility or other circumstances beyond the owner’s control, based on guidelines established by regulation, the owner may submit a proposed building performance improvement plan to the Department for review and approval by the Director in consultation with the Building Performance Improvement Board.
(b) A building performance improvement plan must include:

1. documentation of economic infeasibility or other circumstances beyond the owner’s control such that interim or final performance standards are not met;
2. a list of potential improvement measures, including engineering calculations of energy savings and a cost-benefit analysis of each potential improvement measure;
3. a plan and timeline for achieving energy improvements to the building’s performance that will provide cost-effective energy savings based on guidelines established by regulation, including the estimated savings to be realized by implementing all of the cost-effective measures identified in the plan; and
4. procedures for correcting any noncompliance or deviation from the plan.

(c) The owner must submit a building performance improvement plan to the Department at least 90 days before the deadline for submitting documentation of compliance with interim or final performance standards.

(d) If, after consulting with the Building Performance Improvement Board, the Director approves the building performance improvement plan, the owner must record the building performance improvement plan as a covenant in the County land records and deliver a certified copy of the recorded plan to the Department. After the Director receives the certified copy of the recorded plan, the covered building will be deemed to be in compliance with the applicable interim or final performance standards as long as the owner fulfills the terms of the building performance improvement plan within the timeline specified in the plan.
18A-42C. Extensions and adjustments.

(a) The Department may establish additional criteria recommended by the Building Performance Improvement Board for qualified affordable housing, non-profit buildings, and other buildings as appropriate to modify compliance with interim or final performance standards by regulation.

(b) The Director, in consultation with the Building Performance Improvement Board, may grant an extension or adjustment to an interim or final performance standard for a covered building whose owner submits a request along with documentation at least 90 days before the deadline for submitting documentation of compliance with an interim or final performance standard if any of the following conditions apply:

1. A demolition permit has been issued or a demolition of the building is planned before the deadline to comply with the next interim performance standard;

2. The building is in financial distress under Section 18A-39 (g)(1);

3. The building is exempt from real property taxes and the owner is able to certify by the statement of a certified public accountant or by sworn affidavit that the owner’s revenue less expenses for the previous 2 years was negative; []]

4. The Director determines that strict compliance with those standards would be economically infeasible, as defined by regulation, due to circumstances beyond the owner’s control [[]]; or

5. Other acceptable conditions as determined by the Director through regulation.
18A-[42]-43. Annual report; disclosure of benchmarking and energy performance information.

(a) Annual report required. By October 1 of each year, the Director must submit a benchmarking and building performance report to the County Executive and County Council. The report must review and evaluate energy efficiency in covered buildings, including:

(1) summary statistics on the most recent reported energy benchmarking information, including information on the completeness and level of data quality of the building energy data being reported by building type;

(2) discussion of any energy efficiency trends, cost savings, and job creation resulting from energy efficiency improvements; [and]

(3) for County-owned covered buildings:

(A) the scores of County-owned covered buildings benchmarked; and

(B) whether the Director recommends any energy efficiency improvements for specific buildings; and

(4) building energy performance summary statistics, if an interim or final performance standard occurs for a covered building type in the current reporting cycle.

(b) Disclosure of benchmarking and building energy performance standards [information] data. The Director must make reported aggregated benchmarking and building energy performance standard [information] data readily available to the public, including on the open data website created under Section 2-154, and the Director may exempt information from disclosure only to the extent that disclosure is prohibited under federal or state law.
(c) **Exceptions to disclosure.** To the extent allowable under state law, the Director must not make the following readily available to the public:

1. any individually [-] attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark; [and]
2. any individually [-] attributable reported benchmarking or building energy performance standards information relating to a covered building if the disclosure of the covered building’s energy use would be harmful to the public interest and national security [that contains a data center, or television studio that together exceeds 10% of the total building square footage of the individual building until the Director finds that the benchmarking tool can make adequate adjustments for these facilities. When the Director finds that the benchmarking tool can make adequate adjustments, the Director must report this data in the annual report]; and
3. building performance improvement plans and associated documentation attributable to an individual covered building.

18A-[43]43A. Regulations[; penalties].

[(a)] The County Executive may issue Method (2) regulations to administer this Article.

[(b) Any violation of this Article is a Class A violation.]

18A-43B. Penalties; enforcement.

(a) A building owner must not knowingly provide false information required under this Article to the Department. The Director may revoke or modify an extension, adjustment, building performance improvement plan, or compliance with benchmarking or the interim or final performance
standards in response to any false information provided by the building owner.

(b) Any violation of this Article is a Class A violation.


(a) Before a buyer signs a contract for the sale of a covered building as defined in Section 18A-38A, the seller must:

(1) disclose to the prospective buyer that the building is subject to building energy performance standards in Chapter 18A, Article 6;

(2) transfer the following records to the prospective buyer:

(A) the benchmarking property record from the benchmarking tool;

(B) documentation of data verification; and

(C) any other related records relevant to maintain compliance with Chapter 18A, Article 6; and

(3) provide to the prospective buyer the following information:

(A) performance baseline;

(B) interim and final performance standards; and

(C) building performance improvement plan.

(b) The prospective buyer must indicate, by signing an addendum to the contract or a separate section of the contract printed in boldface type, that the seller has made the disclosures and provided the information required by subsection (a).
Approved:

Gabriel Albornoz, President, County Council

Approved:

Marc Elrich, County Executive

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

4/22/2022

Date