

Benchmarking Laws Try to



Ordinances disproportionately target older buildings with unrealistic goals.

BY ALISON BERRY

As the trend toward greater energy conservation moves forward, the multifamily housing industry—particularly older buildings—may pay a higher price for compliance. The ultimate goal of all “energy benchmarking” ordinances is to reduce consumption.

Benchmarking ordinances generally require multifamily housing buildings to track energy performance and disclose energy usage and water consumption data to the city and/or the public. The idea is to track a building’s progress from a baseline compared to other buildings similar in use, size and age in the same city or within a housing portfolio. Any progress in increasing energy savings is then based on that benchmark.

In 2013, Boston, Minneapolis and Chicago joined a growing list of cities with energy benchmarking ordinances. Austin, Texas, Philadelphia, Seattle, San Francisco, New York and Washington, D.C., as well as the states of California and Washington, have already adopted similar energy-tracking practices.

If this trend holds, benchmarking will be one of the top local legislative challenges facing the apartment industry in the com-

ing years. The combination of these ordinances and aging rental housing stock presents a dilemma about which the rental housing industry must be made aware: Without proper context, the disclosure of energy data can lead to market discrimination of older buildings.

The requirements of each ordinance vary from city to city. Common threads include a focus on larger commercial buildings, required use of the U.S. Environmental Protection Agency’s (EPA) Portfolio Manager tool to track data, a schedule for reporting and a fine structure for noncompliance. These ordinances are generally part of a larger, city-wide effort to reduce building energy use by a certain percentage within a fixed timetable. A popular statistic supporters of building benchmarking cite is that, in some cities, large commercial buildings account for up to 75 percent of energy use.

As a rule: The older the building, the more costly the retrofits required to compete with newer buildings in the same market. Buildings that cannot afford the necessary retrofits to raise efficiency receive a “scarlet letter,” which simply adds another market disadvantage. A study conducted by Harvard economist

Austin

What Commercial buildings
10,000+ sq ft

When June 1, 2014 for final group

Disclosure Commercial buildings must submit annual report to local government. Multifamily buildings 5+ units must be audited at 10 years of age, and every 10 years thereafter.

Violations Class C misdemeanor, fine up to \$500. If criminal negligence determined, fine up to \$2,000.

Boston

What Commercial buildings
35,000+ sq ft / Multifamily buildings
35+ units

When May 15, 2017, for final group

Disclosure Annual report to local government. Additional energy assessments will be required every five years.

Violations Per violation: Residential buildings 50 units/50,000+ sq ft: \$200. Residential buildings 35 units/35,000 sq ft up to 50 units/50,000 sq ft: \$75. \$3,000 maximum fine per calendar year, per building or tenancy.

Chicago

What Commercial and residential buildings
50,000+ sq ft

When June 1, 2015, for residential buildings 250,000+ sq ft; June 1, 2016, for residential buildings 50,000 sq ft – 250,000 sq ft

Disclosure Annual report to local government. Data must be verified by a licensed architect, engineer or other professional every three years. City will publish annual energy efficiency report and can publicly disclose individual building performance starting June 2015.

Violations \$100 for first violation, \$25 per day it continues thereafter.

Robert Stavins for the Greater Boston Real Estate Board found that such labeling programs may not just decrease property values for an individual building, but for a whole neighborhood. Despite these problems, industry stakeholders have been unsuccessful in defeating these ordinances.

Of the nine cities that require buildings to benchmark, six of them explicitly apply to multifamily rental housing. Minneapolis, Philadelphia and San Francisco (as well as the two state laws) only apply to non-residential buildings. Some cities classify the affected buildings by number of residences, and others by square footage. Boston's ordinance applies to buildings of 35 residences or more, while Chicago, Washington, D.C., and New York City's ordinances apply to buildings of 50,000 square feet and larger. All of the ordinances at minimum require disclosure to local governments, while seven of the nine cities require additional public disclosure on the Web. Seattle requires further disclosure of energy performance data to residents.

Four of the six cities with ordinances applicable to multifamily housing require audits, anywhere from every three years to every 10 years.

The fines and violations for noncompliance vary as well. In Seattle, failure to submit a benchmarking report can result in a fine as high as \$1,000 per quarter. Building owners who submit inaccurate reports can also be fined up to \$500, though fines also extend to residents who refuse to provide the owner with the information necessary for them to adequately benchmark the building.

Other cities place a ceiling on the maximum yearly fine—\$2,000 in New York and \$3,000 in Boston. Austin considers violations a Class C misdemeanor; an owner found criminally



negligent can be fined up to \$2,000. Except in the case of Seattle, none of the other cities explicitly provides any punishments for residents who do not give information to the building owner.

With so many major cities adopting benchmarking ordinances, the trend is set to move forward. While opponents have not had success in defeating these proposals, stakeholders can pro-

pose policies that avoid inclusion of the most costly mandates, encourage the use of financial incentives for upgrades and extend timetables for compliance to ease the shock to property owners. Exemptions for buildings in financial hardship or that have already attained other efficiency certifications can further lessen the burden on property owners. In cities with benchmarking ordinances that do not currently extend to multifamily rental housing, owners and industry professionals should take into account that the ordinance could always be amended and expanded.

Ideally, local government should involve the affected industry during the formation of these policies. Unfortunately, this has not always been the case. The apartment industry must remain vigilant in monitoring these proposals as avoiding the worst effects can only be avoided with early involvement.

Irrespective, the industry must remember that multifamily is more inherently green than other forms of housing, but older building stock has limitations that must be taken into account by policymakers. It is up to industry professionals to make them aware of those limits. ■■

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New York City

What Commercial and multifamily buildings over 50,000 sq ft

When In effect

Disclosure Annual benchmarking report to city; energy audits required every 10 years (to be phased in over next decade).

Violations Failure to benchmark: \$500. Continued failure to benchmark: additional \$500 per quarter. Maximum yearly penalty of \$2,000.

Seattle

What Nonresidential and multifamily buildings 20,000+ sq ft

When In effect

Disclosure Annual report to local government. Must provide energy disclosure report upon request to current residents (within seven days), prospective residents, lenders and buyers.

Violations Failure to submit within 90 days of yearly deadline: \$1,000 per quarter for buildings 50,000+ sq ft; \$500 per quarter for buildings 20,000 sq ft to 49,999 sq ft. Submission of inaccurate report or failure to disclose upon request (for owner or tenant): \$150 first violation; \$500 for subsequent violations.

Washington, D.C.

What Nonresidential and multifamily buildings 50,000+ sq ft

When April 1, 2014, for final group

Disclosure Annual report to local government. City will disclose building data to public online after second annual benchmarking report. In addition, buildings of certain sizes had to submit data for 2010 and 2011, in addition to the initial reporting year of 2012.

Violations Failure to comply: written warning. After 30 days, owners may be fined up to \$100 per day. Allowances are made for partial benchmarking information.

— A.B.