



July 12, 2021

Ordinance Analysis

As part of Marion County's effort to reduce its environmental impact, the City-County Council voted Monday to approve a new measure allowing the city to gather and publish building utility use data. While proponents of the ordinance pitch it as a simple data-collection strategy, those opposed recognize the significant burden data reporting requirements will inflict on building owners, particularly those in the multifamily housing industry. Though Proposal 185 only addresses data collection, it paves the way for the city to establish utility use benchmarks for private buildings long term.

Requirements

Beginning in 2023, Proposal 185 will require building owners to collect and report each property's energy and water consumption data to the city by June 1 each year. While only buildings with 100K sq. ft. or more are affected in 2023, the program expands to those with 50K sq. ft. or more the following year. Building owners may obtain the required data by requesting it from a utility, reading a master meter, or soliciting it from tenants. Although the ordinance imposes requirements upon building owners, it fails to compel either utility providers or tenants to comply with owners' requests for information. Consequently, the burden falls solely upon building owners to fulfill the ordinance's requirements. Owners are also deemed responsible for maintaining any data the program administrator deems pertinent for five years.

Extensions

If a building owner is unable to meet the June 1 submission deadline due to a failure to obtain the necessary data, the owner may request an extension. Extensions must be requested at least 30 days prior to the due date. An owner may not receive more than two extensions each calendar year, and extensions may not exceed 30 days each.

Exemptions

Similar to extensions, owners may request an exemption no less than 60 days before the June submission deadline. The city's program administrator will grant an exemption to an owner who demonstrates that (1) they were unable to obtain the necessary data, (2) the property is under financial hardship, (3) more than half the building is used for residential purposes, a master meter was not available, and neither the tenants nor the utility providers fulfilled the owner's request for data, or (4) compliance with the requirements would create an undue hardship upon the owner. The administrator is granted discretion to determine what qualifies as an undue hardship. The ordinance defines financial hardship as a covered property: (1) with property taxes and/or special assessments due and owing in arrears resulting in the property's inclusion on the Marion County tax lien sale list within the prior two years, (2) under the control of a court-appointed receiver, (3) owned by a financial institution or other lender which took title to the property due to default of a mortgage, lien, or other security interest against the property through a deed in lieu of foreclosure or court judgment, or (4) subject to one or more mortgages or other security interests, the holder of the most senior of which has given written notice to the owner that it is in default. Based on the above criteria, multifamily buildings may be able to obtain an exemption under the third qualification.

Penalties

Building owners who fail to satisfy the reporting requirement and do not obtain either an extension or an exemption are subject to pay penalties beginning in 2026. The penalty for the first offense is \$100. The penalty rises to \$250 for the second offense. However, the Council is willing to raise the penalties if too few building owners comply.

Indianapolis City-County Council Meeting

[Proposal No. 185, 2021](#)

Ordinance Summary

Proposal 185 requires certain property owners to collect and report energy and water consumption data to the city.

Applicability (Sec. 710-103):

- Each utility is highly encouraged (but not required) to develop and maintain the capability to determine aggregated whole-building data for the most recent 24 months.

Collecting and Entering Benchmarking Data; Recordkeeping (Sec. 710-104):

- The **deadline to submit data is June 1 of each year.**
- Data shall be compiled by obtaining aggregated whole-building data from a utility, reading a master meter, or **collecting data from all tenants.**
 - If an owner requests this info, all **non-residential tenants** must respond within 30 days.
 - If a tenant fails or refuses to provide energy and water data requested by the owner, the owner must apply for an exemption.
- Nothing in this chapter shall be construed to excuse an owner from complying with federal or state laws governing direct access to tenant utility data.
- **Owners should maintain records** the administrator determines necessary **for at least five years.**

Benchmark Exemptions (Sec. 710-108):

- The owner of a covered non-city property may **request an exemption from making a benchmarking submission** for any given calendar year **if the owner submits a written request** to the administrator, **at least 60 days before the submission date**, establishing that the covered property has met one or more of the following conditions:
 - Any of the conditions created by 710-107(1) – (3);
 - The owner of the covered non-city property is **unable to obtain the data;**
 - The covered property is **under financial hardship** (see definitions page);
 - The property has a gross floor area of more than **50% of which is used for residential purposes, has more than four energy/water meters, the owner is not able to obtain aggregated whole-building data, and the utilities serving the property does not provide access to aggregated whole-building data, or;**
 - Special conditions unique to the property exist such that strict **compliance with this chapter would cause the owner undue hardship.**
- The administrator shall grant an exemption if the owner provides documentation to demonstrate conditions in subsections (1), (2), and (3).
- The administrator has the discretion to grant an exemption or not under subsection (4).

Benchmarking Submissions (Sec. 710-105):

- If the owner is unable to complete the submission on time due to the failure of either a utility provider, tenant, or both to provide the owner with the information necessary, the owner may request an extension.
- **Extension requests must be made at least 30 days prior** to the due date.
 - The extension **may not exceed 30 days.**
 - **Owners may not receive more than two extensions a year.**

Benchmarking Implementation Schedule (Sec. 710-106):

- Submission requirements will begin incrementally in 2023.
 - **2023:** All Marion County **buildings greater than 100,000 sq. ft.**
 - **2024:** All Marion County **buildings greater than 50,000 sq. ft.**
- Between January 1 and March 1 of each year, for at least the first three years an owner is required to provide a benchmarking submission, **the administrator shall attempt to notify the owners.**
 - Notification may occur via direct mail, email, or through a posting on a public website.
 - Failure for the administrator to publicly post a list of all covered properties does not relieve such owners from their obligation to comply.

Enforcement (Sec. 710-109):

- In addition to civil penalties, the administrator may seek injunctive relief to enforce provisions of this chapter.

Schedule of Code Provisions and Penalties (Sec. 103-52):

- The first offense for failure to make benchmarking submission will cost \$100.
- The second offense for failure to make benchmarking submission will cost \$250.