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Detroit's New Energy and Water Benchmarking Ordinance – Are You Ready to Comply?

Client Alert

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In November 2023, the Detroit City Council unanimously adopted an energy and water benchmarking ordinance for existing buildings. The ordinance requires all municipal buildings, as well as commercial and multi-family buildings, over 25,000 gross square feet to annually report their energy and water usage. The first reporting deadline for buildings over 100,000 gross square feet is October 1, 2024 for energy and waste usage in 2023. The reporting deadline for commercial multi-family buildings over 25,000 gross square feet but under 100,000 gross square feet is June 1, 2025 for energy and waste usage in 2024. The objective of the ordinance is purportedly to assist the City in tracking its energy and water consumption and identifying areas for efficiency. The City believes that if it requires other building owners to do similar reporting, they will also continuously look for ways to be more energy and water efficient.

The City has indicated that the benchmarking policy is one of the key actions in its Detroit Climate Strategy, which was released by the City's Office of Sustainability. The strategy outlines actions the City and its partners will take to accelerate the fight against climate change and assist the City in reducing its municipal greenhouse gas emissions by 75% by 2034 and 100% by 2050. See [here](#).

While the first year reporting due dates are staggered, the second year reporting due date is June 1, 2025 for buildings over 10,000 square feet and June 1, 2026 for buildings over 25,000 square feet. The information collected under this ordinance includes: the building address, energy use intensity, annual greenhouse gas emissions, water usage, and the energy performance score that compares the energy use of the building to that of similar buildings if available. The benchmark tool used under the ordinance is the US Environmental

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Protection Agency's ("EPA") Energy Star portfolio manager tool or an equivalent tool chosen by the City of Detroit Buildings, Safety, Engineering, and Environmental Department ("BSEED").

The City's website provides benchmark resource guidelines and links to assist in accessing a company's energy data from DTE and water data from the Detroit Water and Sewerage Department ("DWSD"). The report needs to be signed by a "certified professional." The ordinance defines a "certified professional" as a professional engineer or a registered architect licensed in Michigan or another trained individual acceptable to BSEED.

Owners are required to submit benchmarking information annually to BSEED on BSEED's form. BSEED will also make available to the public on the City website all benchmarking information reported from the previous year. The City website will also include a statistical summary of energy and water consumption in the covered buildings and overall compliance with the ordinance. Additionally, the website will include for each building the status of compliance, annual summary statistics for the building including the energy use intensity, annual greenhouse gas emissions, water use per square foot, and an energy performance score. It will also include a comparison of benchmarking information across calendar years for the building.

Prior to the first benchmarking deadline and then every third benchmarking deadline thereafter, a certified professional must attest to the accuracy of the information submitted. In other words, companies will incur an added cost of having a professional review the data every third year.

One challenge will be for multi-story buildings owners to get the required information from each tenant. The ordinance provides that the tenants are required to provide the necessary information to the owner and failure of the tenant to supply the information could result in penalties. If the owner is unable to obtain the information from the tenant, the owner may use alternative values that have been established by BSEED.

There are some exceptions to the reporting requirements. The most notable is if the average occupancy rate of the building is less than 50% during the prior year. Another important exception is if the data would disclose trade secrets that would cause any secret manufacturing procedure, compound, or product to become public knowledge and available to competitors, or the owner is unable to obtain a substantial amount of the data as requested under the ordinance. Importantly, buildings used for manufacturing or other industrial purposes will not have their information released to the public unless the owner authorizes such release. It is unclear how the City will assure that that information will remain confidential.

What happens if an owner does not comply? The ordinance authorizes BSEED to issue blight violation notices for buildings that do not comply with the annual reporting deadline. However, there is no penalty for failure to reduce your energy or water consumption.

Some companies have raised the issue that energy and water consumption does not necessarily correspond with efforts to be more efficient. For example, many of the companies service the auto industry. The more cars that are built, the more shifts are added at a plant, the more energy and water

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usage is consumed. For hotels and multi-family housing, more water could indicate better occupancy. It is unclear, therefore, what use the data would have for anyone other than the building owner or operator themselves.

The City is holding benchmarking webinars on June 18, July 23, and August 20, 2024. Owners can register for the webinars on the City of Detroit website. Please contact your Butzel attorney or the authors of this Client Alert for more information.

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