**LOCAL LAW NO. [#]-2016**

A LOCAL LAW

TO ESTABLISH ENERGY BENCHMARKING REQUIREMENTS FOR

CERTAIN MUNICIPAL AND PRIVATE BUILDINGS

*Drafting Note: For broadest applicability, this legislation is presented here as a local law, but communities should note that it may also be adopted as an ordinance, where they have the power to do so.*

Be it enacted by the [legislative body] of the [City, Town, or Village of \_\_\_\_\_ ] as follows:

The Code of the [City, Town, or Village of \_\_\_\_\_ ] is hereby amended by adding a new Chapter [#], entitled “BUILDING ENERGY BENCHMARKING,” to read as follows:

**§1. PURPOSE.**

Buildings are the single largest user of energy in the State of New York. The poorest performing buildings typically use several times the energy of the highest performing buildings—for the exact same building use. As such, this Local Law will use Building Energy Benchmarking to promote the public health, safety, and welfare by making available good, actionable information on building energy use to help identify opportunities to cut costs and reduce pollution in the [City, Town, or Village of \_\_\_\_\_ ].

Collecting, reporting, and sharing Building Energy Benchmarking data on a regular basis allows Owners and occupants to understand their building’s energy performance relative to similar buildings nationwide. Equipped with this information, property owners and government agencies are able to make smarter, more cost-effective operational and capital investment decisions, reward efficiency, and drive widespread, continuous improvement.

**§2. DEFINITIONS.**

(A) “Benchmarking Information” shall mean information generated by Portfolio Manager, as herein defined including descriptive information about the physical building and its operational characteristics.

(B) “Building Energy Benchmarking” shall mean the process of measuring a building’s Energy use, tracking that use over time, and comparing performance to similar buildings nationwide.

(C) “Commissioner” shall mean the head of the Department.

(D) “Covered Building” shall mean any private commercial or multi-family residential building or facility within the [City, Town, or Village \_\_\_\_\_\_\_ ] that is 25,000 square feet or larger in size.

(E) “Covered Municipal Building” shall mean a building or facility that is owned or occupied by the [City, Town, or Village \_\_\_\_\_\_\_ ] that is 1,000 square feet or larger in size.

(F) “Department” shall mean [specific municipal department assigned the responsibility of administering the Energy benchmarking program]

(G) “Energy” shall mean electricity, natural gas, steam, hot or chilled water, fuel oil, or other product for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities, as reflected in Utility bills or other documentation of actual Energy use.

(H) “Energy Performance Score” shall mean the numeric rating generated by Portfolio Manager that compares the Energy usage of the building to that of similar buildings.

(I) “Energy Use Intensity (EUI)” shall mean the kBTUs (1,000 British Thermal Units) used per square foot of gross floor area.

(J) “Gross Floor Area” shall mean the total number of enclosed square feet measured between the exterior surfaces of the fixed walls within any structure used or intended for supporting or sheltering any use or occupancy.

(K) “Owner” shall mean:

(a) An individual or entity having title to a Covered Building; or

(b) An agent authorized to act on behalf of the individual or entity having title to a Covered Building.

(L) “Portfolio Manager” shall mean ENERGY STAR Portfolio Manager, the internet-based tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative Energy performance of buildings nationwide, or successor.

(M) “Utility” shall mean an entity that distributes and sells Energy to Covered Buildings or Covered Municipal Buildings.

(N) “Weather Normalized Site EUI” shall mean the amount of Energy that would have been used by a property under 30-year average temperatures, accounting for the difference between average temperatures and yearly fluctuations.

**§3. APPLICABILITY.**

(A) This Local Law is applicable to the following:

(a) All Covered Municipal Buildings as defined in Section 2 of this Local Law; and

(b) All Covered Buildings as defined in Section 2 of this Local Law.

(B) The Commissioner may exempt individual Covered Municipal Buildings from the benchmarking requirement if the Commissioner determines that it has characteristics that make benchmarking impractical.

(C) The Commissioner may exempt from the benchmarking requirement the Owner of a Covered Building that submits documentation, in a form prescribed by the Commissioner, establishing any of the following:

(a) The Covered Building is presently experiencing qualifying financial distress, as defined by any of the following: (i) the Covered Building is the subject of a qualified tax lien sale or public auction due to property tax arrearages, (ii) the Covered Building is controlled by a court appointed receiver, or (iii) the Covered Building has been acquired by a deed in lieu of foreclosure; or

(b) The Covered Building had average physical occupancy of less than 50 percent throughout the calendar year for which benchmarking is required; or

(c) The Covered Building is a new construction and the Covered Building’s certificate of occupancy was issued during the calendar year for which benchmarking is required.

(D) The Commissioner may grant an extension of time if the Owner of the Covered Building demonstrates, in a form required by the Commissioner, that despite good faith efforts, the Owner could not satisfy the requirements of this Law by the imposed deadlines. The Commissioner may grant a maximum of two (2) extensions annually of no more than four (4) months per extension for each Covered Building.

**§4. BENCHMARKING REQUIRED FOR COVERED MUNICIPAL BUILDINGS.**

(A) No later than December 31, 2016, and no later than May 1 every year thereafter, the Commissioner or his or her designee from the Department shall enter into Portfolio Manager the total Energy consumed by each Covered Municipal Building, along with all other descriptive information required by Portfolio Manager for the previous calendar year.

(B) For new Covered Municipal Buildings that have not accumulated 12 months of Energy use data by the first applicable date following occupancy for inputting Energy use into Portfolio Manager, the Commissioner or his or her designee from the Department shall begin inputting data in the following year.

**§5. BENCHMARKING REQUIRED FOR COVERED BUILDINGS.**

(A) No later than December 31, 2016, and no later than May 1 every year thereafter, the Owner shall enter into Portfolio Manager the total Energy consumed by each Covered Building, along with the building address, primary use type, and gross floor area, and all other descriptive information required by Portfolio Manager for the previous calendar year.

(B) Covered Buildings on master-metered campuses shall be benchmarked at the campus level until they are sub-metered at the building level, after which point those buildings shall be benchmarked at the building level.

(C) The Owner(s) of a new Covered Building that has not accumulated 12 months of Energy use data by the first applicable date following occupancy for inputting Energy use into Portfolio Manager shall comply with this Local Law in the following year.

(D) Where the current Owner learns that any information reported as part of a benchmarking submission is inaccurate or incomplete, the Owner shall amend the reported information in Portfolio Manager and shall provide an updated benchmarking submission to the Department within thirty (30) days of learning of the inaccuracy.

**§6. NOTIFICATION OF COVERED PROPERTIES.**

Between September 1 and December 1 of each year, the Department shall notify Owners of Covered Buildings of their obligation to input Energy use into Portfolio Manager. By January 15 of each year, the [City, Town, or Village \_\_\_\_\_\_\_ ] shall post the list of the addresses of Covered Buildings on a public website.

**§7. DISCLOSURE AND PUBLICATION OF BENCHMARKING INFORMATION.**

(A) Owners shall annually provide Benchmarking Information to the Department, in such form as established by the Department, by the date provided by the schedule in Section 5 of this Local Law.

(B) The Department shall make available to the public on the internet Benchmarking Information for the previous calendar year:

(a) no later than December 31, 2016 and by September 1 of each year thereafter for Covered Municipal Buildings; and

(b) no later than September 1, 2016 and by September 1 of each year thereafter for Covered Buildings.

(C) The Department shall make available to the public on the internet and update at least annually, the following Benchmarking Information:

(a) Summary statistics on Energy consumption for Covered Municipal Buildings and Covered Buildings derived from aggregation of Benchmarking Information for both; and

(b) For each Covered Municipal Building or Covered Building individually:

(i) The status of compliance with the requirements of this Local Law; and

(ii) The building address, primary use type, and gross floor area; and

(iii) Annual summary statistics, including site EUI, Weather Normalized Source EUI, annual GHG emissions, and an Energy Performance Score where available; and

(iv) A comparison of the annual summary statistics (as required by Section 7(3)(b)(iii) of this Local Law) across calendar years for all years since annual reporting under this Local Law has been required for said building.

**§8. MAINTENANCE OF RECORDS.**

(A) Owners of Covered Buildings shall maintain records to the extent the Department determines is necessary for carrying out the purposes of this Local Law, including but not limited to Energy bills and other documents received from tenants and/or Utilities. Such records shall be preserved by Owners for a period of three (3) years. At the request of the Department, such records shall be made available for inspection and audit by the Department.

(B) The Department shall maintain records for Covered Municipal Buildings as necessary for carrying out the purposes of this Local Law, including but not limited to Energy bills and other documents received from tenants and/or Utilities. Such records shall be preserved by the Department for a period of three (3) years.

(C) At the time ownership of any occupied Covered Building is transferred, the buyer and seller shall arrange for the seller to provide to the buyer, at or before closing, all information necessary for the buyer to report Benchmarking Information for the entire year in a timely manner. It shall be a violation of this Local Law for any seller to fail to so provide any such information.

**§9. VIOLATIONS.**

It shall be unlawful for any Owner to fail to comply with the requirements of this Local Law or misrepresent any material fact in a document required to be prepared or disclosed by this Local Law.

**§10. ENFORCEMENT AND ADMINISTRATION.**

(A) The Commissioner shall be the Chief Enforcement Officer of this Local Law.

(B) The Chief Enforcement Officer of this Local Law may promulgate regulations necessary for the administration of the requirements of this Local Law.

(C) If any Owner violates any provision of this Local Law, the following enforcement measures may be taken:

(a) For the first violation, a written warning may be issued; and

(b) For any subsequent violation, the Chief Enforcement Officer may issue a fine of up to $[fine amount] per day.

(D) Within thirty days after each anniversary date of the effective date of this Local Law, the Chief Enforcement Officer shall submit a report to the [legislative body] including but not limited to summary statistics on Energy consumption for Covered Buildings and Covered Municipal Buildings derived from aggregation of Benchmarking Information, the total number of Covered Buildings and Covered Municipal Buildings, a list of all Covered Municipal Buildings identifying each Covered Municipal Building that the Commissioner determined to be exempt from the benchmarking requirement and the reason for the exemption, and the number of violations issued pursuant to this section during the preceding year, and the status of compliance with the requirements of this Local Law,

**§11. EFFECTIVE DATE.**

This Local Law shall be effective immediately upon passage.

**§12. SEVERABILITY.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.