

December 1, 2016

Update on Denver's Mandatory Energy Benchmarking and New C-PACE Program to Finance Efficiency Upgrades

Denver Mandatory Energy Benchmarking

On Nov. 30, 2016, the Denver City Council SAFEHOUSE Committee advanced [Bill 16-1231](#) to the full City Council to amend the Denver Revised Municipal Code to require energy benchmarking and publication of the benchmarking score for commercial, multifamily, institution and municipal buildings over 25,000 square feet, impacting a total of approximately 3,000 buildings.

This ordinance is based on recommendations from the Energy Denver Task Force ("Task Force"), a task force created by the City and County of Denver to help improve the energy efficiency of commercial and multifamily residential buildings in Denver by 10 percent by 2020 as part of the Energize Denver Initiative. To learn more about the Task Force process, recommendations and the history leading up to Bill 16-1231, read an earlier [Brownstein client alert](#) from June.

Notably, Bill 16-1231 does not include the final recommendation from the Task Force that was of most concern to building owners, which would have mandated energy efficiency upgrades for buildings with low benchmarking scores and imposed penalties for noncompliance. It is likely that the city will revisit this recommendation in the future with a proposal informed by the benchmarking data gathered from this first stage of implementation.

One of the major concerns expressed by commercial and multifamily-building owners is that tenants of buildings have more control over energy use than owners and the significant costs associated with energy efficiency upgrades.

Mandatory Energy Benchmarking

After low participation rates in Denver's voluntary energy benchmarking program, the Task Force recommended mandatory benchmarking for all commercial and multifamily residential buildings of more than 25,000 square feet. This requires building owners to use [ENERGY STAR Portfolio Manager](#), a free tool, to generate an ENERGY STAR score on a scale of 1–100 that compares the performance of the building to similarly situated buildings. If a building fails to participate, the Department of Environmental Health may assess civil penalties.

The energy benchmarking requirement will apply to buildings of more than 50,000 square feet with reporting due by June 1, 2017, and buildings between 25,000 and 50,000 square feet beginning June 1, 2018, unless an exemption applies. According to Denver's research, similar mandatory energy benchmarking exists in Atlanta, Austin, Berkeley, Boulder, Cambridge, Chicago, Kansas City, Minneapolis,

New York City, Philadelphia, Seattle, San Francisco and Washington, D.C.

Click [here](#) to view the PowerPoint presented to the City Council committee.

Publication

The ENERGY STAR scores for buildings within the scope of the requirements will be published publicly in a clickable map and searchable database. Building owners have voiced concerns about shaming low-performing building owners, overburdening operators with phone calls from energy efficiency companies, and exposing private tenant data. The city has proposed that the database only include annual information and not be in a downloadable form.

Next Steps

Dec. 12 - Denver City Council First Reading

Dec. 19 - Denver City Council Second Reading – Note, no public hearing is required or scheduled, unless a city councilperson calls for a courtesy public hearing.

If passed by Denver City Council, the Denver Board of Environmental Health will follow up with rules and regulations to further define the requirements.

Building owners with buildings in the scope of this legislation may want to explore benchmarking in ENERGY STAR Portfolio Manager in order to understand their buildings' ENERGY STAR scores and possible programs to fund or finance energy upgrades. The city anticipates providing education and training resources as well as an on-call help center to help owners comply with the ordinance.

C-PACE Program to Finance Energy Efficiency Upgrades

On a related note, Denver recently joined seven other counties (Adams, Arapahoe, Boulder, Broomfield, Eagle, Garfield, Jefferson and Pitkin) in the state's Commercial Property Assessed Clean Energy (C-PACE) program.

C-PACE offers unique financing options to property owners for the installation of energy-efficient, renewable energy and water conservation improvements in office, multifamily (with five or more units), industrial, retail, hotel and agricultural facilities. C-PACE loans can be used to fund clean energy projects related to both new construction and upgrades or renovations to existing buildings, typically costing \$200,000 to more than \$1 million.

Eligible clean energy projects include the installation of new or upgraded HVAC, lighting, water pumps, insulation, envelope improvements, solar panels, water fixtures, graywater systems, motors and roofs.

Under C-PACE, the property owner obtains the necessary capital for a clean energy project through a private third-party loan with no money down. However, rather than repaying the loan through traditional means, the property owner consents to the imposition of an additional property tax (similar to a sewer

district assessment), which is collected through the regular property tax assessment process. The proceeds of the assessment are then pledged to repay the private loan.

Due to the reduced risk of default since the payments are collected as part of the property tax assessment process, lenders are willing to provide long-term financing of 10–20 years with competitive, fixed rates. The term of the loan is based upon the weighted average useful life of the improvements. The property owner may finance up to 15 percent of total new construction costs through C-PACE, plus an additional 5 percent if the performance of the building exceeds code requirements for energy efficiency by 5 percent or more.

The C-PACE program anticipates that annual energy savings will often exceed the annual assessment, resulting in positive cash flow for the property owner. Moreover, many property owners will pass the additional cost of the assessment through to their tenants as part of real estate taxes and CAM.

Because the new assessment will have priority lienholder status, existing lender consent is required as part of the C-PACE lending process. C-PACE will work with the property owner to demonstrate that the C-PACE loan and assessment will result in positive cash flow for the property, increased collateral value, and improved mortgage repayment ability for the property owner. As a result, more than 100 mortgage lenders nationwide have consented to new C-PACE loans and assessments on properties in Colorado.

While individual counties must opt into C-PACE, the program is administered at a statewide level by the New Energy Improvement District, which was created by the Colorado Legislature in 2014. At least eight other counties are considering joining the C-PACE program (Clear Creek, Delta, Douglas, El Paso, Mesa, Ouray, Routt and Summit).

Please contact Carolynne White, Caitlin Quander or Charlie Smith to get an expanded analysis of the effect of this proposed legislation or C-PACE program in relation to a specific project or matter.

Carolynne C. White

Shareholder
cwhite@bhfs.com
303.223.1197

Caitlin Quander

Associate
cquander@bhfs.com
303.223.1233

Charles J. Smith

Associate
cjsmith@bhfs.com
303.223.1289

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