



OTTEN JOHNSON ALERT

Energize Denver Benchmarking and Energy Performance Requirements

July 2023 • [Diana Caruso Jenkins](#)

Introduction

In November 2021, Denver City Council passed [an ordinance](#) to ensure the City reaches net zero greenhouse gas emissions by 2040 by requiring energy performance standards for commercial and multifamily buildings. [The Energize Denver Task Force](#) recommended a definition of Net Zero Energy buildings as those that are: highly energy efficient; all electric; powered by renewable energy and electricity; and providers of demand flexibility for the grid. In January 2022, Denver adopted new rules and regulations governing the Energize Denver Building Energy Performance Requirements, as authorized by the Energize Denver Ordinance. The City approved and adopted the final version of these new rules on July 11, 2023.

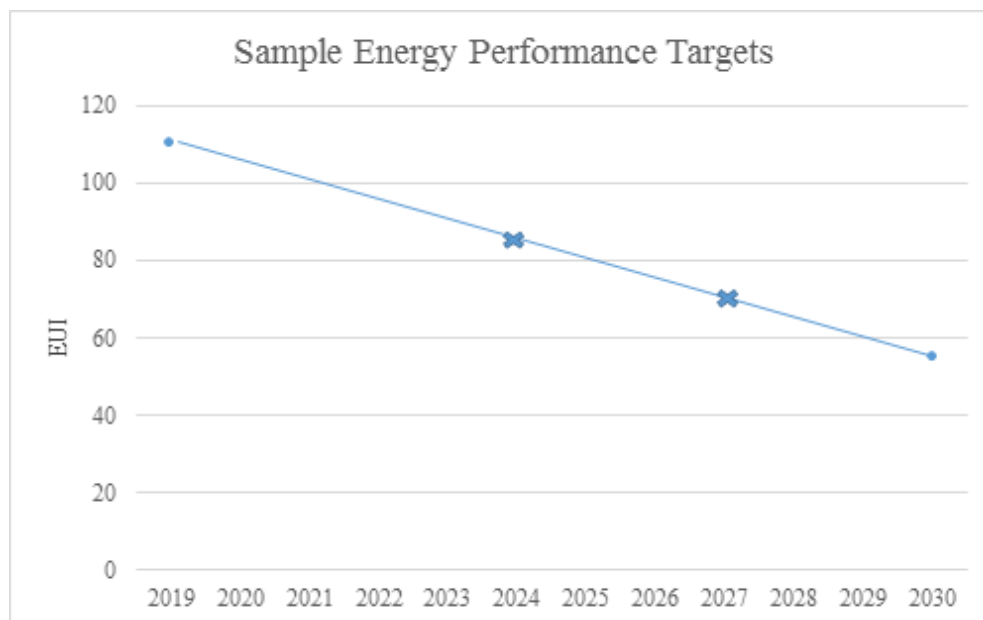
Through the Energize Denver Ordinance, Denver is focusing its efforts on commercial and multi-family buildings by creating mandatory energy usage targets for all buildings with floor areas of 25,000 square feet and greater. The Energize Denver Ordinance also requires smaller buildings with floor areas between 5,000 and 24,999 square feet to reduce their energy use by complying with new lighting density standards. The Office of Climate Action, Sustainability, and Resiliency (“CASR”) will implement these regulations.

Requirements for Buildings 25,000 Square Feet and Greater

By 2030, Denver plans to reduce greenhouse gas emissions by 30 percent from all buildings with floor areas of 25,000 square feet and greater. To achieve this goal, every commercial and multifamily building 25,000 square feet and over must report energy use annually and meet energy use performance targets in 2024, 2027, and 2030. To create these energy performance targets, CASR uses a measure called an Energy Use Intensity (“EUI”). An EUI compiles all of a building’s various types of energy usage data into a single metric. The lower a building’s EUI, the more energy efficient the building.

Using national data, CASR set performance targets for each building type, measured in EUIs. If CASR does not have adequate benchmarking data for a particular building type, it sets the 2030 target at 30 percent below the building’s baseline EUI. For mixed-used buildings, CASR develops targets based on the percentage of floor area assigned to each building type.

Once CASR determines a building’s baseline (usually the EUI reported for 2019) and 2030 target, it sets the 2024 and 2027 interim targets by drawing a line from the baseline to the 2030 performance target, as illustrated below. In this example, the subject building’s 2019 benchmark was 110 EUI. Imagine CASR set the 2030 goal for this subject building type at 55 EUI. Accordingly, the target for 2024 would be set at 85 EUI, and the 2027 target would be 70 EUI.



If a building does not have 2019 benchmarking data, CASR will determine a baseline using the building type and benchmarking data from other years. For buildings constructed after 2019, CASR will set a baseline based on the building type and create interim targets within six months after receiving the building’s first benchmarking report.

Initially, building owners are responsible for reducing their building’s energy use to achieve each performance target and maintain or improve that energy use level in the

following years. Then, after 2030, buildings must maintain the final prescribed EUI indefinitely. Owners of buildings that do not meet each target (including interim targets) will be subject to a penalty of 30 cents (\$0.30) per kBtu used beyond the target. And, beginning in 2031, owners of buildings that meet the 2030 target, but later do not maintain that EUI level will be subject to a penalty of 5 cents (\$0.05) per kBtu used beyond the target. More information, including various detailed sample compliance scenarios, is available [here](#).

Compliance Guide for Buildings 25,000 Square Feet and Greater

Building owners must use the Energy Star Portfolio Management tool to report their building's energy use for each calendar year by June 1 of the following year. Each report must show the building met its designated performance target by providing the building details, including Gross Floor Area, as well as monthly and annual energy usage data. If a building owner does not have utility usage data for the whole building, the owner must request the information from tenants. Tenants, in turn, must provide this information to building owners. Although many leases already have general language stating that tenants will comply with energy efficiency requirements, building owners shall ensure tenant-obligation provisions will satisfy the *Rules and Regulations Governing Energize Denver Building Energy Performance Requirements*.

At CASR's discretion, buildings owners can demonstrate compliance with these energy requirements in alternate ways. These options include: Electrification Bonuses; Renewable Credits; Compliance Timeline Adjustments; Performance Target Adjustments; and options for building designated as Manufacturing, Agricultural, or Industrial.

Requirements for Buildings between 5,000 and 24,999 Square Feet

While not subject to the same energy use regime as buildings over 25,000 feet, buildings with floor areas between 5,000 and 24,999 square feet must also comply with new energy requirements. Owners of these buildings must demonstrate that 90 percent the building's lights are LED or that the building has achieved an equivalent lighting power density. Alternatively, as with the requirements for larger buildings, owners of buildings between 5,000 and 24,999 square feet can comply by using renewable credits from solar generation. To do so, the building owner must demonstrate that through on- and off-site solar, it generates the equivalent of 20 percent of the building's annual energy use. Like the requirements for larger buildings, the *Rules and Regulations Governing Energize Denver Building Energy Performance Requirements* provide owners of buildings between 5,000 and 24,999 square feet with alternate compliance options.

Disclosure Requirements for All Buildings 5,000 Square Feet and Larger

The Rules and Regulations Governing Energize Denver Building Energy Performance Requirements create disclosure requirements in the event of a building's sale. In all advertising and documentation related to the building's sale, the building owner must disclose the building's compliance status. And, the building's performance targets, compliance status, any approved alternate compliance pathways, any energy usage data and audits, any compliance reports previously submitted to CASR, and any related penalties must be shared with any prospective buyer before the building's sale. Further, sellers are required to transfer any existing Energy Star Portfolio Manager profile to the buyer, an obligation of which both buyers and sellers should be aware.

Energize Denver Rules and Regulations Enforcement and Penalties

CASR will issue Notices or Orders for errors in data that are not corrected and for non-compliance with the regulations for buildings 5,000 square feet and greater. Building owners may appeal any such notice. While the City currently intends to implement the penalty scheme described above, the Denver's municipal code ([ch. 10, Art. XIV, Sec. 10-407](#)) allows CASR to fine building owners as much as 70 cents (\$0.70) per year for each kBtu the building uses beyond the target amount. The City may also assess a minimum annual penalty of \$2,000 for failure to comply with the energy reporting requirements. If a building owner fails to pay a penalty related to these regulations, the City may place a perpetual lien on the property until the penalty, plus interest, is paid in full.

Conclusion

The Rules and Regulations Governing Energize Denver Building Energy Performance Requirements may pose significant costs to building owners, whether they choose to accomplish the energy reductions through capital improvements and major systems upgrades or by purchasing on- or off-site solar energy. Governor Polis is also considering introducing [similar rules statewide](#) for buildings over 50,000 square feet, which has raised concerns about whether the electrical grid can support such a dramatic uptick in usage. We will continue to track how buildings meet compliance requirements in the coming years, as well as potential barriers to success that may arise.

Danielle DeSantis, a third year law student at the University of Denver's Sturm College of Law and law clerk with Otten Johnson, co-authored this alert.

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950 Seventeenth Street, Suite 1600, Denver, CO 80202
Phone 303.825.8400 | Fax 303.825.6525 | ottenjohnson.com