



Model Ordinance for a Building Performance Standard

Introduction

The model ordinance presented below serves as a template for local and state governments to develop building performance standards. The ordinance benefits from lessons learned from the four jurisdictions (District of Columbia, New York City, St. Louis, and State of Washington) that had adopted building performance standards as of January 2021. Since 2018, IMT has worked in varying capacities with over a dozen jurisdictions on building performance standards and was heavily involved in the development of the adopted performance standards in the District of Columbia and St. Louis.

As a model ordinance, the intended purpose is to provide the structural foundation for a strong building performance standard ordinance that suits the conditions and goals of any jurisdiction. IMT encourages governments to modify or remove language as necessary to reflect policy priorities and to work with community members and professionals with expertise in fields such as real estate, energy efficiency, and sustainability to develop performance standards that are specific to the needs of their community. Lawmakers should also consult with legal experts and tailor their legislation to the authority of their jurisdiction.

IMT considers this model ordinance a living document. It will be updated and amended based on the input of expert stakeholders and feedback from governments, community-based organizations, and other stakeholders that use the model ordinance in their policy development processes.

Note that this model assumes the adopting jurisdiction has an energy and water benchmarking ordinance in place with high compliance rates and data available to the jurisdiction. Jurisdictions without a benchmarking law should include the relevant requirements in this ordinance. For a model benchmarking ordinance, see <https://www.cityenergyproject.org/resources/annotated-model-ordinance-language-for-a-policy-to-improve-the-performance-of-existing-buildings/>.

Both building owners and tenants routinely make decisions that heavily impact building performance. Accordingly, while this model ordinance follows standard practice of placing requirements on owners, the ordinance is structured to encourage landlords and tenants to work together to improve building performance. Green leasing plays a critical role in helping owners and tenants cooperate; it is recommended as part of broader educational and technical assistance initiative to complement a building performance standard.

IMT's model ordinance provides a starting point for regulating building performance in a variety of ways. Recognizing that building performance intersects with a variety of other social priorities such as health, economic development, resiliency, housing affordability, and racial equity, the model ordinance reserves sections for addressing these issues. IMT is currently working with

experts in these topic areas and, in the coming months, will provide statutory language and additional guidance to help jurisdictions narrow and prioritize some of these related issues. Alternatively, the current model ordinance can serve as one piece of a broader policy agenda that addresses these other, interrelated issues.

U.S. state and local governments are facing a housing affordability crisis which is especially acute for disinvested communities such as communities of color. To avoid exacerbating this crisis through adoption of building performance standards, IMT urges jurisdictions considering a BPS to adopt or amend existing housing regulations to protect tenants from evictions or rent increases resulting from BPS compliance. IMT will be issuing formal guidance on how to develop tenant protections that are compatible with BPS in the coming months. Check imt.org/bps for more information.

How to read the model ordinance

Throughout this document, the reader will find italicized discussion sections explaining the purpose of certain provisions and definitions and, in some cases, suggesting alternative language. Jurisdictions should not include these discussion sections in their ordinances.

IMT uses brackets to indicate values that jurisdictions should customize. For example, readers will see [date] to indicate a place where the jurisdiction should fill in the appropriate date. In other places, IMT suggests a value that jurisdictions can choose to adopt or modify as appropriate. For example, in the definition of Covered Property, the model ordinance suggests a minimum gross floor area of [25,000] square feet. Jurisdictions may choose to use this size threshold or change it as they and their stakeholders see fit. Throughout the ordinance, IMT designates defined terms by spelling them with all capital letters.

Recommended supplementary reading

IMT recommends reading the “[Summary of IMT’s Model Ordinance for a Building Performance Standard](#)” before reading the ordinance for the first time. The summary, which explains the intent and structure of the ordinance in plain language, will help readers more easily grasp the functions of the provisions of this ordinance. Alternatively, readers can review this [PDF presentation](#) for a condensed summary of the ordinance.

Additional resources

IMT has a growing suite of resources on building performance standards at www.imt.org/bps. In addition, the organization welcomes feedback on this model ordinance via IMT Senior Advisor Cliff Majersik at cliff@imt.org.

Model Ordinance

Statement of Purpose: The purpose of this ordinance is to improve performance, conserve energy, and reduce operating costs of buildings for the equitable benefit of the residents of [jurisdiction] and to mitigate climate change.

Sec. 1. Definitions

Discussion: Each jurisdiction should endeavor to align BPS definitions with definitions already used in the jurisdiction's laws. For instance, if a jurisdiction has a benchmarking law it should use definitions from that law or if necessary for the BPS, modify benchmarking law's definitions and then use the modified definitions in the new BPS ordinance.

AFFORDABLE MULTIFAMILY HOUSING means a PROPERTY that is majority residential and:

- a. Has use restrictions or other covenants that require at least 50 percent of all of the PROPERTY's dwelling units be occupied by households with incomes less than or equal to [80] percent of the area median income; or
- b. The OWNER can demonstrate that at least [50] percent of the dwelling units rent at levels that are affordable to households with incomes less than or equal to [80] percent of the area median income.

Discussion: Jurisdictions should work with local affordable housing experts, including owners, operators, tenant advocates, and affordable housing advocates to create a locally appropriate definition of affordable housing.

ALTERNATIVE COMPLIANCE PAYMENT (ACP) means a payment established by the DEPARTMENT pursuant to section 12 that an OWNER pays to comply with this ordinance in lieu of a COVERED PROPERTY achieving required levels of performance.

Discussion: The use of the term "alternative compliance payment" instead of the term "fine" or "penalty" will facilitate owners passing through some or all of the costs to commercial tenants and thereby better align landlord and tenant incentives.

BASELINE PERFORMANCE means, for any PERFORMANCE METRIC of any COVERED PROPERTY, the value of the PERFORMANCE METRIC in the BASELINE YEAR(S) defined by the DEPARTMENT.

Discussion: Each performance metric a jurisdiction includes in its ordinance will need a source of data with which to measure covered properties' baseline performance. Jurisdictions that collect benchmarking data can use this to assess properties' baseline performance in terms of energy and water consumption and greenhouse gas emissions. Jurisdictions that wish to set

performance standards for metrics for which they do not already have data, such as a health metric, will need to collect data on properties' performance to support the use of that metric.

Where sufficient quality data is available, setting baseline performance to the average performance over two or three years will reduce the impact of exceptional weather or other events that occurred in one particular year. In some cases, including potentially in response to the large variations in building energy use due to COVID, jurisdictions may want to create a broader range of three or four years and, for each performance metric, allow each building owner to select the year within that range that provides the most room for improvement. This gives owners flexibility but does not change their obligation to meet the fixed, final standards.

The Department may choose to use different baseline years for different performance metrics for the same building. Such decisions should typically be made in consultation with stakeholders during rulemaking and should consider both the data available for each metric and the quality of that data.

BASELINE YEAR means a 12-month period selected by the DEPARTMENT for each COVERED PROPERTY for each PERFORMANCE METRIC.

Discussion: Above allows the department to set baseline years for buildings constructed after passage of this ordinance and to set different baseline years for different metrics or property types.

COINCIDENT PEAK ELECTRIC DEMAND means the COVERED PROPERTY's demand expressed in kW at the [15-minute] interval when utility demand was at its highest point for the COVERED YEAR as measured by the total electrical demand from all sources on the electric utility.

COINCIDENT PEAK LOCAL ELECTRIC DEMAND means the COVERED PROPERTY's demand expressed in kW at the [15-minute] interval when utility demand was at its highest point for the COVERED YEAR as measured by the total electrical demand from all sources on the electric substation serving the COVERED PROPERTY.

Discussion: Jurisdictions that include performance standards for coincident peak electric demand and/or coincident peak local electric demand should work with their local electric utility to maintain interval consumption data for up to 10 years for the purpose of measuring properties' compliance with the standard. In some cases, it may be appropriate to use data from the independent system operator rather than the electric utility to find the highest point of demand for the covered year.

Both peak demand metrics defined above are only recommended for jurisdictions where (1) the electric utility is committed to providing both the necessary data and advance warning of anticipated peak demand times, and (2) where smart metering and building automation technology have proliferated widely among covered properties. A jurisdiction could consider using this metric only for a subset of covered property types.

COMMUNICATIONS INFRASTRUCTURE means facilities used to house equipment to deliver electronic communications services, including voice, broadband, data and video services.

CONDOMINIUM means a property that combines separate ownership of individual units with common ownership of other elements such as common areas.

COVERED PROPERTY means any of the following with at least [25,000] square feet of GROSS FLOOR AREA:

- a. A single building;
- b. One or more buildings held in the CONDOMINIUM form of ownership, and governed by a single board of managers; or
- c. Two or more buildings that are served by the same electric or gas meter or are served by the same heating or cooling system(s), which is not a DISTRICT ENERGY SYSTEM.

Exception: Buildings that are sub-metered or otherwise subject to easy determination of the energy consumption attributable to each of the individual buildings in the sole discretion of the DEPARTMENT shall be treated as separate COVERED PROPERTIES.

Discussion: In some cases, multiple buildings with separate energy meters share a single water meter. If your jurisdiction has such cases, then decide whether to write item c. above of your ordinance to treat such cases as a single covered property or to leave the question for rulemaking.

Exceptions:

- a. A facility where the majority of energy is consumed for manufacturing, the generation of electric power or DISTRICT THERMAL ENERGY to be consumed off site, communications infrastructure or for other process loads. Process loads are energy consumed for bona fide purposes other than heating, cooling, ventilation, domestic hot water, cooking, lighting, appliances, office equipment, data centers, or other plug loads.
- b. The property is owned by the federal government.
- c. Other PROPERTY TYPES that do not meet the purpose of this ordinance as determined by the DEPARTMENT.

Discussion: As defined here, the term “covered property” may refer to either a single building or a collection of buildings, depending on the situation. To consistently maintain this perspective, with the necessary exception of section 11.2, the term “covered property” is used throughout this ordinance rather than “building.”

DEPARTMENT means the agency or department overseeing administration of the ordinance.

DISINVESTED COMMUNITIES refers to census tracts with either a concentration of low income (the median income is less than 80% of the area median income) or minority residents; and/or commercial areas that have experienced a loss of economic activity or a lack of public and private investment.

Discussion: Where possible use a term and/or definition that has already been established in your jurisdiction or work with community members and local equity and racial justice experts to find an appropriate term and definition for your community.

DISTRICT ENERGY SYSTEM means a system serving multiple COVERED PROPERTIES and consisting of thermal energy generation, transfer, and distribution equipment providing thermal energy in the form of heat and/or heat rejection.

DISTRICT THERMAL ENERGY means energy in the form of heat and/or heat rejection sources provided by a DISTRICT ENERGY SYSTEM for use in a COVERED PROPERTY's space temperature, humidity control, or service hot water heating. DISTRICT THERMAL ENERGY

shall be calculated as the energy input necessary to generate, transfer, and distribute thermal energy to the COVERED PROPERTY based on a formula developed by the DEPARTMENT for allocating all energy consumed by the DISTRICT ENERGY SYSTEM. To the extent that published and verified metered data is not available for any of the DISTRICT ENERGY SYSTEM's energy inputs or outputs, the formula shall assume maximum plausible levels of SITE ENERGY USE and GREENHOUSE GAS EMISSIONS.

Discussion: If your jurisdiction has no district energy or expectation that a district energy system might be developed, then these definitions may not be needed.

This definition requires that each building's district thermal energy use be included in calculating the building's site use and onsite greenhouse gas emissions. This ordinance therefore effectively extends the building boundary to include the building's share of the district energy system's site energy and GHG emissions. This will provide motivation to a critical mass of building owners to come together to demand decarbonized energy from the owners of the district thermal energy system and may drive the investments needed to make this happen.

Note that the most effective way of reducing GHGs associated with a DISTRICT ENERGY SYSTEM is for the jurisdiction adopting the BPS ordinance to directly negotiate with the system owner to make changes to the system or to pass legislation requiring action.

To calculate each building's share of the DISTRICT THERMAL ENERGY, all of the energy must be accounted for. If metered consumption is not equal to DISTRICT THERMAL ENERGY, the difference should be assumed lost through leakage in the distribution system. This difference should then be added to each building's metered DISTRICT THERMAL ENERGY in proportion to its consumption of total metered DISTRICT THERMAL ENERGY.

The DISTRICT ENERGY SYSTEM must provide the jurisdiction with conversion factors that can be applied to metered data on a per BTU basis to allow the calculation of individual building CO₂e emissions. In developing rules for this accounting and allocation, the Department should consult with the Building Performance Improvement Board and its technical committee, building owners, district energy systems, engineers, and other relevant experts. For additional guidance, see [ASHRAE Standard 189.1-2020](#) and IMT's forthcoming BPS implementation guide.

ENERGY AND WATER BENCHMARKING TOOL means the ENERGY STAR Portfolio Manager web-based tool developed by the United States Environmental Protection Agency, or any alternative system or tool approved by the DEPARTMENT that rates the performance of a qualifying building in relation to similar buildings and accounts for the impacts of year-to-year weather variations, building size, location, and several operating characteristics.

FINAL PERFORMANCE STANDARD means the numeric value of a PERFORMANCE METRIC, which COVERED PROPERTIES shall achieve by [date].

Discussion: This text sets a single date for all performance metrics. Some jurisdictions may instead choose to set different dates for different performance metrics.

FINANCIAL HARDSHIP of a COVERED PROPERTY means that a COVERED PROPERTY:

- a. Had arrears of property taxes or water or refuse charges that resulted in the COVERED PROPERTY's inclusion, within the prior 2 years, on the city's annual tax lien sale list; or
- b. Has a court-appointed receiver in control of the asset due to financial distress; or

- c. Is owned by a financial institution through default by the borrower; or
- d. Has a senior mortgage subject to a notice of default.

GREENHOUSE GAS (GHG) EMISSIONS means gases released into the atmosphere that contribute to climate change, including but not limited to carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O). GREENHOUSE GAS EMISSIONS are expressed in metric tons of carbon dioxide equivalent (CO₂e). In calculating GREENHOUSE GAS EMISSIONS, the DEPARTMENT shall include leakage and other emissions resulting from extraction, processing and distribution of fuels to the extent practical.

Discussion: The [Gas Index](#) is one potential source for regional gas leakage data.

GROSS FLOOR AREA means the total COVERED PROPERTY area, measured between the outside surface of the exterior walls of the COVERED PROPERTY's building(s). The DEPARTMENT shall publish guidance governing the calculation of GROSS FLOOR AREA, including areas that shall be excluded from the calculation.

Discussion: This definition of gross floor area is consistent with the way the term is defined in ENERGY STAR Portfolio Manager.

INTERIM PERFORMANCE STANDARD means the numeric value of a PERFORMANCE METRIC, which COVERED PROPERTIES shall achieve by a fixed date every [five] years from the [effective date of this ordinance].

NORMALIZED SITE ENERGY means the SITE ENERGY USE by the COVERED PROPERTY normalized for weather and other characteristics within the limits of the capabilities of the ENERGY AND WATER BENCHMARKING TOOL and normalized for other factors at the discretion of the DEPARTMENT.

NORMALIZED SITE EUI means normalized site energy use intensity and is equal to NORMALIZED SITE ENERGY divided by GROSS FLOOR AREA.

ONSITE AND DISTRICT THERMAL GREENHOUSE GAS EMISSIONS means total annual GREENHOUSE GAS EMISSIONS attributable only to: 1) energy consumed on the COVERED PROPERTY; or 2) energy consumed indirectly through use of DISTRICT THERMAL ENERGY.

Discussion: The ONSITE and DISTRICT THERMAL GREENHOUSE GAS EMISSIONS metric is intended to drive beneficial electrification and so does not include off-site GREENHOUSE GAS EMISSIONS resulting from consumption of electricity.

If your jurisdiction has no district energy or expectation that a district energy system might be developed, then strike references to district energy. District energy can account for a large portion of a building's energy carbon footprint. Consult with your district energy system owner(s) early in the process of developing your ordinance.

OWNER means any of the following:

- a. an individual or entity possessing title to a COVERED PROPERTY;
- b. the board of the owners' association, in the case of a CONDOMINIUM;
- c. the master association, in the case of a CONDOMINIUM, where the powers of an owners' association are exercised by or delegated to a master association;

- d. the board of directors, in the case of a cooperative apartment corporation; or
- e. an agent authorized to act on behalf of any of the above.

Discussion: All potential use cases are included under this definition, so that the term owner can be used generically throughout the remainder of the ordinance without having to call out special cases. Jurisdictions should consider looking for and referencing an appropriate definition of owner that already exists in the city's laws.

PERFORMANCE METRIC means each of the objectively verifiable numeric measures of building performance regulated by this ordinance as laid out in Section 4.

PROPERTY TYPE means a category of COVERED PROPERTIES subject to the same INTERIM and FINAL PERFORMANCE STANDARDS, as defined by the DEPARTMENT. COVERED PROPERTIES within each PROPERTY TYPE shall have shared characteristics that facilitate the implementation and enforcement of the ordinance. The DEPARTMENT may define one or more PROPERTY TYPES to be identical to ENERGY STAR property types.

SITE ENERGY USE means total energy consumed annually at a COVERED PROPERTY to provide heating, cooling, lighting, water heating, cooking, refrigeration or any other end use. It is measured in kBtu. It does not include separately-metered electricity used to charge vehicles or energy used for other purposes deemed in the discretion of the DEPARTMENT to be unrelated to the operation of the building(s). It includes electricity, natural gas, steam, fuel oil, diesel, propane, DISTRICT THERMAL ENERGY, and renewable onsite electricity generation, or other product, and shall be modified pursuant to section 4.1.1.

Discussion: IMT recommends aligning with ENERGY STAR rules for energy uses such as exterior lighting.

SITE ENERGY USE INTENSITY (EUI) means the SITE ENERGY USE divided by the GROSS FLOOR AREA of the COVERED PROPERTY as calculated by the ENERGY AND WATER BENCHMARKING TOOL.

WATER USE means the total gallons of water used annually inside or outside of buildings by a COVERED PROPERTY.

WATER USE INTENSITY means the WATER USE divided by the GROSS FLOOR AREA of the COVERED PROPERTY, as calculated by the ENERGY AND WATER BENCHMARKING TOOL and modified pursuant to section 4.1.2.

Sec. 2. Applicability

This ordinance shall apply to COVERED PROPERTIES.

Sec. 3. Property Types

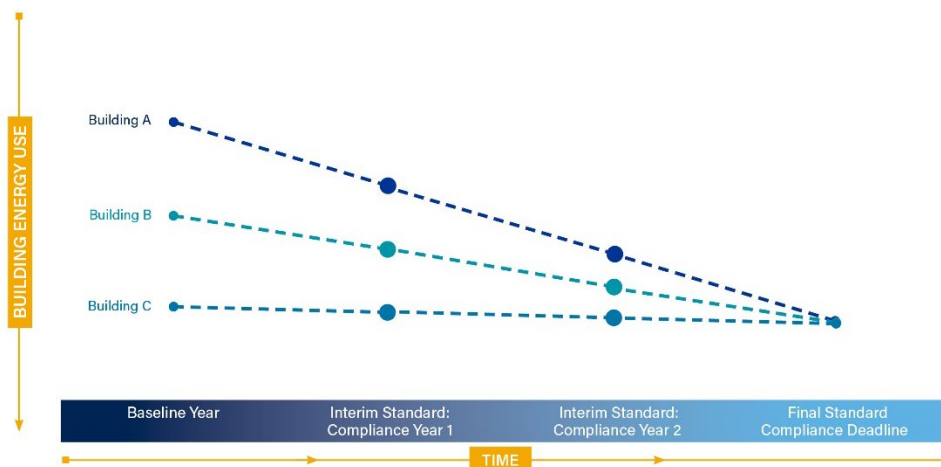
3.1 No later than [date] the DEPARTMENT, in its sole discretion, shall establish PROPERTY TYPES such that every COVERED PROPERTY shall fall within a PROPERTY TYPE.

3.2 All PROPERTIES of the same PROPERTY TYPE shall be subject to the same FINAL PERFORMANCE STANDARDS.

Sec. 4. Performance Metrics, Final Performance Standards and Interim Standards

Discussion: This section sets the fundamental structure of the performance requirements for covered properties. For each property type and each metric selected for inclusion in the ordinance, the Department sets a final standard – a minimum level of performance – that each property within that type must meet by the date specified in the definition of the final performance standard.

Final performance standards must result in performance improvements at least as large as those stipulated in section 4.5. While the final performance standard for each metric is the same for each property type, the trajectory to achieve the standard varies for each individual property to reflect its baseline performance. To ensure that covered properties make progress toward the final standard(s), section 4.9 creates interim performance standards that properties must achieve at a regular interval of five years. The diagram below illustrates this trajectory approach by using as an example three buildings of the same type that must meet a final performance standard based on energy use:



4.1 Adjustments to PERFORMANCE METRICS

4.1.1 In order to encourage building operators to shift their electric load so as to reduce GREENHOUSE GAS EMISSIONS from the grid, the DEPARTMENT shall promulgate rules modifying the conversion of certain electricity to BTU for the purpose of calculating SITE ENERGY USE.

4.1.2 In order to encourage building owners to maintain exterior landscaping, the DEPARTMENT may promulgate rules to adjust the calculation of WATER USE INTENSITY to reflect the COVERED PROPERTY's area of exterior landscaping.

4.2 No later than [date] the DEPARTMENT shall set a FINAL PERFORMANCE STANDARD for each PROPERTY TYPE for each of the following PERFORMANCE METRICS:

Discussion: In deciding which and how many metrics to use, each jurisdiction will have to balance the benefits of including a metric against its costs and additional complexity. Another consideration is the value of having a single ordinance which includes a comprehensive solution for buildings versus a more piecemeal approach requiring the passage of multiple ordinances over time.

1. Maximum NORMALIZED SITE EUI

Discussion: This model ordinance recommends measuring a property's energy performance in terms of normalized site energy use intensity because (a) owners have more control over site energy than source energy and (b) site EUI favors electrification because it is not adjusted for energy losses from transmission and distribution of electricity. In areas where the electricity mix from the grid is increasingly generated from renewable sources these losses are acceptable from a greenhouse gas emissions perspective. We recommend using normalized site EUI as the principal energy metric to account for variables that affect energy 'density' such as operating schedules and number of workers. ENERGY STAR Portfolio Manager can normalize site EUI for weather for all properties. IMT is collaborating with building owners, state and local governments, trade organizations, and the EPA (which is responsible for ENERGY STAR Portfolio Manager) to determine the feasibility of normalizing for other property use characteristics such as hours of operation and number of workers.

Discussion: Building owners may request that jurisdictions give credit for renewable energy that is generated onsite. One way to address this is to allow some portion of onsite-generated electricity to be deducted from a property's site energy use. This has the advantage of giving owners credit for non-polluting generation, but the disadvantage of reducing the amount of efficiency required to meet a site energy performance standard. Because both renewable energy and efficiency are important and necessary to achieving a low-emissions building sector, jurisdictions should seriously discuss whether they want one to be traded off against the other. To the extent that jurisdictions are willing to allow this, IMT recommends placing a cap on the amount of credit given for solar to avoid situations where very inefficient buildings meet the performance standard by simply installing large solar arrays. (Note that ENERGY STAR Portfolio Manager does not give credit for onsite generation of renewables when calculating site energy use, and aligning with this ENERGY STAR rule will ease calculation of site energy use and reduce the risk of confusion.) Regarding giving credit for off-site renewable energy, IMT urges jurisdictions to exercise extreme caution. Some jurisdictions may lack the legal authority to credit purchases of renewable energy generated outside their jurisdiction. Renewable energy generated in a distant location is unlikely to produce local employment, reliability, or resilience benefits or to be within the direct control of building owners. Some studies have also questioned whether certain purchases of off-site renewable energy result in the construction of additional generation.

2. Maximum ONSITE AND DISTRICT THERMAL GREENHOUSE GAS EMISSIONS

Discussion: By creating a performance standard based on Onsite and District Thermal Greenhouse Gas Emissions, a jurisdiction can require property owners to phase out the use of fossil fuels such as gas on their properties. This metric works in tandem with the site energy use metric to encourage electrification and require the reduction of overall energy consumption, both critical requirements for a low-emissions building sector. The model ordinance does not set a standard for greenhouse gas emissions attributable to electricity purchased from the grid, because emissions on the grid vary constantly over the course of days and seasons. To

accurately measure buildings' GHG emissions from grid electricity requires data on the grid's carbon content by time of day as well as property owners having data on the time of use of their energy consumption. These conditions are currently present in very few jurisdictions.

3. Maximum WATER USE INTENSITY
4. Maximum COINCIDENT PEAK ELECTRIC DEMAND
5. Maximum COINCIDENT PEAK LOCAL ELECTRIC DEMAND
6. Placeholder for additional metrics related to community priorities

Discussion: As stated in the introduction, in the coming months IMT will release guidance to help jurisdictions develop strategies to address additional aspects of building performance such as health and resilience. This placeholder signifies the possibility of a jurisdiction including performance metrics related to community priorities such as health or resilience.

4.3 The DEPARTMENT may determine that certain PERFORMANCE METRICS shall not apply to certain COVERED PROPERTIES.

4.4 In setting FINAL PERFORMANCE STANDARDS, the DEPARTMENT shall make reasonable efforts to equitably distribute the level of required effort and investment among COVERED PROPERTIES and in consultation with the Community Accountability Board take special care to benefit DISINVESTED COMMUNITIES.

4.5 In developing each performance standard, the DEPARTMENT shall ensure that FINAL PERFORMANCE STANDARDS result in minimum total reductions across all COVERED PROPERTIES in [jurisdiction] of:

- [X] percent from [YYYY] levels for [Maximum NORMALIZED SITE EUI]
- [X] percent from [YYYY] levels for [Maximum ONSITE AND DISTRICT THERMAL GREENHOUSE GAS EMISSIONS]
- [X] percent from [YYYY] levels for [Maximum WATER USE INTENSITY]
- [X] percent from [YYYY] levels for [Maximum COINCIDENT PEAK ELECTRIC DEMAND]
- [X] percent from [YYYY] levels for [Maximum COINCIDENT PEAK LOCAL ELECTRIC DEMAND]
- [X] percent from [YYYY] levels for [placeholder for metrics such as health and resilience-related metrics]

Discussion: Jurisdictions can write the numeric value of performance standards directly into this ordinance rather than setting them through rulemaking.

Discussion: The minimum reductions listed above should be aligned with jurisdiction's plans, goals and commitments including regarding climate.

Discussion: If a jurisdiction develops a performance metric where increasing values are better, then it will need to set a minimum increase instead of a minimum reduction for that metric.

4.6 The DEPARTMENT may set more demanding performance standards for COVERED PROPERTIES permitted after [date].

4.7 Unless otherwise directed by the DEPARTMENT, the FINAL PERFORMANCE STANDARDS for any COVERED PROPERTY containing multiple PROPERTY TYPES shall be

calculated on a pro rata basis based on the square footage of each PROPERTY TYPE within the COVERED PROPERTY, in accordance with the ENERGY STAR method of pro rata calculation.

4.8 As of [date] and at the end of every [five] year period thereafter, each COVERED PROPERTY shall demonstrate progress toward the FINAL PERFORMANCE STANDARD(S) by complying with the INTERIM PERFORMANCE STANDARD(S) set by the DEPARTMENT for the COVERED PROPERTY.

Discussion: In some cases, a jurisdiction will not be able to align the schedules of all of its performance metrics. In such cases, the above language should be adjusted to allow for different dates for different performance metrics.

4.9 The Department shall calculate each INTERIM PERFORMANCE STANDARD for each COVERED PROPERTY using a straight-line trajectory from the COVERED PROPERTY'S BASELINE PERFORMANCE for each PERFORMANCE METRIC to the FINAL PERFORMANCE STANDARD for that PERFORMANCE METRIC such that each calculated performance metric shall improve in equal increments during each [60-month] period.

Sec. 5. Community Accountability Board and Building Performance Improvement Board.

5.1 Establishment of the Community Accountability Board

Within [X] days of the effective date of this ordinance, the DEPARTMENT shall establish a Community Accountability Board (hereinafter "CAB") composed of representatives of DISINVESTED COMMUNITIES and experts in areas related to racial and social equity to review the impact of the ordinance on DISINVESTED COMMUNITIES and recommend actions to increase equitable outcomes. The Building Performance Improvement Board and the DEPARTMENT shall take such actions unless the DEPARTMENT determines that the preponderance of evidence shows that such actions would not be in the public interest. The CAB shall consist of [X] members appointed by the [Mayor/Governor] in their sole discretion. At least [X] members of the CAB shall be residents of [jurisdiction].

5.1.1 Responsibilities of the CAB include:

- Advising the [Mayor/Governor] on the selection of members to the Building Performance Improvement Board.
- Develop plan for how to allocate funds collected from ALTERNATIVE COMPLIANCE PAYMENTS to improve the performance of covered buildings and ensure that they benefit DISINVESTED COMMUNITIES.
- Advising on the development of rules for implementing the ordinance and complementary programs or policies, including the deep renovation task force.
- Recommending metrics and data to track the ordinance's impact on DISINVESTED COMMUNITIES
- Producing a public report every [3] years evaluating the ordinance's equity impacts and recommending strategies to improve the ordinance's effect on DISINVESTED COMMUNITIES

- Advising on community priorities that could be advanced through additional Building Performance Action Plan requirements; review portions of proposed action plans as requested by the DEPARTMENT
- Hosting, in partnership with the Building Performance Improvement Board and the DEPARTMENT, an [annual] Community Accountability Meeting to gather input regarding the ordinance's design and implementation. CAB and the DEPARTMENT shall conduct broad outreach to communities of color, low-income populations, and other representatives of DISINVESTED COMMUNITIES to solicit participation in the meeting.

5.1.2 [\$X] shall be budgeted annually to the CAB to commission research and hire experts to advise and assist on the implementation of the ordinance.

Discussion: Equitable implementation of BPS requires an instrument of accountability for the law's effects on disinvested communities. The CAB's responsibility is to work with the Department and Building Performance Improvement Board to course-correct aspects of BPS implementation to prevent harm and repair historical inequities.

5.2 Establishment of the Building Performance Improvement Board

Within [X] days of the effective date of this ordinance, the DEPARTMENT shall establish the Building Performance Improvement Board (hereinafter, the "BPIB"). The BPIB shall consist of [X] members appointed by the [Mayor/Governor] in their sole discretion. At least [X] members of the BPIB shall be residents of [jurisdiction]. The BPIB shall include representatives, or their designees, from the following entities and professions:

- The Director of the DEPARTMENT
- Local utility
- Provider of energy efficiency, building resilience or renewable energy services or consulting
- AFFORDABLE HOUSING owner or operator
- AFFORDABLE HOUSING tenant
- Labor
- Technical building design professional
- Facility operations professional
- Nonprofit dedicated to climate action, resiliency, public health, green building, economic development, or building decarbonization
- Nonprofit dedicated to racial equity or environmental justice
- Multifamily building owner or operator
- Nonresidential building owner or operator
- Engineering

BPIB members may also be members of the CAB.

Discussion: The list above is a starting point. Jurisdictions should develop their list in consultation with stakeholders.

5.2.1 BPIB Responsibilities

The BPIB shall:

- Establish a Technical Committee per 5.3 below.
- Review the Technical Committee's recommended FINAL PERFORMANCE STANDARDS for each PROPERTY TYPE and make final recommendations to the DEPARTMENT;
- Advise the DEPARTMENT on implementation of this ordinance;
- Advise on the development of rules for implementing the ordinance;
- Recommend complementary programs or policies;
- Review appeals of any rejected BPAP and determine whether to refer to Technical Committee;

5.3 Establishment of the Technical Committee

Within [X] days of its formation, the BPIB shall establish a Technical Committee which shall be composed of technical experts in areas related to PERFORMANCE METRICS. Members of the Technical Committee may also be members of the full BPIB and of the CAB. The decisions of the Technical Committee are appealable to the full BPIB.

5.3.1 The responsibilities of the Technical Committee include:

- Recommend FINAL PERFORMANCE STANDARDS for each PROPERTY TYPE to the BPIB;
- Review the draft and approve final Building Performance Action Plan Form created by the DEPARTMENT;
- As requested by the DEPARTMENT, review submitted Building Performance Action Plans and make recommendations for changes, approval or denial by the DEPARTMENT.
- Upon referral from BPIB review appealed BPAPs. The Technical Committee's decision shall be binding upon the DEPARTMENT.

5.4 Terms of Office

All initial appointments to the CAB, BPIB, and Technical Committee shall be for a term of [X] years, except that terms for initial appointments shall be staggered. Appointments to fill vacancies shall extend through the end of the vacating member's unexpired term. Members whose appointed terms have expired shall be permitted to continue to serve until reappointed or replaced by a new appointee.

5.5 Compensation

BPIB members, CAB members, and Technical Committee members shall be compensated for services rendered on a per meeting basis as established by rulemaking and subject to availability of funds.

5.6 Equitable Engagement

CAB, BPIB, and Technical Committee meetings shall take place at collectively selected locations and at times that are convenient to ensure full participation. Upon selection to the CAB, BPIB, or Technical Committee, members shall be given the opportunity to communicate barriers to participation, including childcare, transportation costs, and interpretation needs. The [jurisdiction] shall commit to removing obstacles to participation whenever practicable. If CAB,

BPIB, or Technical Committee meetings are held during meal times, food and drink will be provided.

5.8 Procedures

The CAB, BPIB, and Technical Committee shall each elect one of its members as chair who shall serve as such during the remainder of the calendar year or until a successor is elected. The CAB, BPIB, and Technical Committee shall from time to time adopt rules as shall be reasonably necessary to govern their procedures. It shall be unlawful for any appellant or appellant's representative to contact any member of the BPIB or Technical Committee on any matter that is pending or scheduled to be heard on appeal by the BPIB.

Discussion: Jurisdictions should supplement and/or replace the language above to avoid conflicts with existing procedures, rules, and ethics governing the conduct of governmental bodies such as Boards. In many cases, jurisdictions should add subsections to this ordinance addressing meeting schedules and staffing of the Boards.

Sec. 6. Building Performance Action Plans

6.1 Building Performance Action Plans.

If, due to unusual circumstances, an OWNER believes that a COVERED PROPERTY cannot reasonably meet one or more of the applicable INTERIM or FINAL PERFORMANCE STANDARDS, then the OWNER may propose a Building Performance Action Plan (hereinafter, "BPAP") to the DEPARTMENT for the DEPARTMENT'S approval using the Building Performance Action Plan Form. The BPAP shall include, at a minimum,

- (1) description of unusual circumstances that prevent the building from reasonably complying with INTERIM or FINAL PERFORMANCE STANDARDS
- (2) a physical description of the COVERED PROPERTY;
- (3) an inventory of all major energy- and water-using equipment including their age, efficiency, fuel type, designed performance, and capacity as indicated on the nameplate;
- (4) recommendations, including engineering calculations, for proposed performance of the COVERED PROPERTY; and
- (5) a timeline by which proposed improvements will be achieved.

Discussion: Consider incorporating by reference provisions of [ASHRAE Standard 211 for Commercial Building Energy Audits](#) in this ordinance or through rulemaking.

As part of a BPAP application, an OWNER may propose additional services and benefits to the community; in consultation with the CAB, the DEPARTMENT shall consider the value of such proposals.

Discussion: Buildings proposing BPAPs represent an opportunity for the City to advance important community priorities identified by the CAB in areas such as public health, resilience, and equity in exchange for additional flexibility. For example, a building owner could propose to open a portion of its building as a cooling center to serve neighboring communities during heat emergencies.

By [date], the DEPARTMENT shall establish rules and deadlines governing BPAPs, including regarding whether the DEPARTMENT shall publish some or all of BPAPs and criteria for such publication decisions.

Once a BPAP for a COVERED PROPERTY is approved by the DEPARTMENT, then the COVERED PROPERTY shall be in compliance with this ordinance so long as the terms of the BPAP are fulfilled on a timely basis. The BPAP may establish provisions to cure any noncompliance with the BPAP; if these are not included in the BPAP, then normal enforcement provisions of this ordinance shall apply. The BPAP constitutes a binding agreement between the OWNER of the COVERED PROPERTY and the DEPARTMENT and shall be referenced in an attachment to the deed to the COVERED PROPERTY at the office of the Recorder of Deeds.

Discussion: This provision gives the jurisdiction the power to establish higher compliance payments on owners that do not meet the terms of their approved Building Performance Action Plan.

When seeking to sell a property, the OWNER of any COVERED PROPERTY or any portion of a COVERED PROPERTY subject to a BPAP, the OWNER shall include a reference to the BPAP in any listings, notices, advertisements of sale, term sheets, or contracts of sale.

At least three weeks prior to selling a COVERED PROPERTY or any portion of a COVERED PROPERTY, the OWNER shall apply to DEPARTMENT for a certification that the COVERED PROPERTY is in compliance with this law and provide the certification to the buyer. DEPARTMENT shall include in any certification a reference to any BPAP to which the COVERED PROPERTY is subject.

6.2 Prohibition of Unnecessary Delays in Improvement

[Jurisdiction] recognizes that there is a both an environmental and economic value to achieving the standards in this ordinance sooner rather than later. BPAPs are therefore intended principally to give flexibility in the replacement of long-lived equipment such as air-conditioning and heating or long-lived envelope components such as windows and insulation. They are not intended to allow the unnecessary delay of improvements that can be done at the same cost at any time including changes in operations, maintenance and controls, lighting retrofits, and behavioral changes.

Discussion: Plans calling for future renovations may specifically cite known date-certain opportunities for such renovations including lease expiration, mortgage maturity or equipment life cycles.

Sec. 7. Extensions, Adjustments and Exemptions.

The DEPARTMENT may grant an extension, adjustment or exemption to one or more INTERIM OR FINAL PERFORMANCE STANDARDS on a COVERED PROPERTY whose OWNER submits a request, together with documentation, in a form prescribed by the DEPARTMENT, at least [180 days] prior to any INTERIM OR FINAL PERFORMANCE STANDARD submission deadline, if the COVERED PROPERTY meets any of the following criteria:

- A demolition permit was issued or demolition is planned that will prevent achievement of the next INTERIM PERFORMANCE STANDARD;

- The COVERED BUILDING did not have a certificate of occupancy or temporary certificate of occupancy for all twelve months of the BASELINE YEAR prior to the INTERIM PERFORMANCE STANDARD compliance schedule;
- The COVERED PROPERTY is under FINANCIAL HARDSHIP;
- The DEPARTMENT determines that strict compliance with provisions of this ordinance would cause FINANCIAL HARDSHIP or would not be in the public interest due to:
 - Major renovations, or
 - Special circumstances specific to the COVERED PROPERTY and not based on a condition caused by actions of the OWNER

Any OWNER requesting such an extension, adjustment, or exemption shall provide the DEPARTMENT any and all documentation requested to substantiate the request or otherwise assist the DEPARTMENT in the extension, adjustment, or exemption determination. If the DEPARTMENT learns that an extension, adjustment, or exemption was granted based on materially inaccurate submissions, then the DEPARTMENT may revoke or modify the extension, adjustment, or exemption.

Sec. 8. Technical and Financial Assistance to Building Owners

As advised by the CAB, the [Mayor/Governor] shall convene a deep renovation task force charged with creating a combined funding and technical assistance package for OWNERS lacking the financial or technical capability to meet INTERIM OR FINAL PERFORMANCE STANDARDS. The package may be offered by [Jurisdiction] or its designee. The DEPARTMENT shall develop eligibility guidelines for these services which shall include a building audit provided by the jurisdiction or its designee at no cost to OWNER. OWNERS opting to use these services shall consent to the following:

- Reasonable access to the COVERED PROPERTY, utility data and other information to enable completion of an audit by a qualified professional, paid for by the [Jurisdiction] or its designee. To the extent practical, audits shall provide all information and recommended actions necessary to establish a plan that will allow the COVERED PROPERTY to meet all FINAL PERFORMANCE STANDARDS.
- Implementation of any approved BPAP.
- Waiver granting access to all utility bills, including historical bills, to the [jurisdiction] or its designee.
- Installation as necessary of physical or electronic equipment capable of monitoring changes in building energy use, water use and other PERFORMANCE METRICS as applicable.
- Agreement to repay the DEPARTMENT or its designee for the cost of building improvements. The DEPARTMENT shall design the program to assure that the combined monthly cost of repaying the implementation and utilities bills shall not exceed the weather adjusted annual pre-implementation utility bills paid related to the COVERED PROPERTY on an annual basis adjusted to current utility prices.
- Implementation of all measures deemed cost-effective or to have an acceptable return on investment by the DEPARTMENT or, at the DEPARTMENT's discretion, by the entity providing the funding.
- OWNERS opting not to proceed with cost-effective improvements recommended by an audit, or to otherwise achieve equal levels of performance improvements, shall be liable for repayment of the full cost of the audit.

Discussion: This funding and technical assistance program is a critical part of an equitable BPS law. Owners of many buildings, including but not limited to affordable multifamily buildings, will struggle to meet performance standards without such assistance. This challenge could result in owners being forced to sell or redevelop their buildings in response to the costs imposed by BPS requirements, resulting in displacement of disinvested community members from their homes, businesses, places of employment, and houses of worship. The intended outcome of this program is to avoid such inequitable outcomes by helping participating buildings to continue operations, comply with the ordinance, and enjoy the benefits of energy efficiency improvements, with no upfront capital expenditure.

Sec. 9. Rules and Guidance

From time to time, the DEPARTMENT shall issue such guidance and promulgate such rules as deemed in its discretion necessary to carry out the provisions of this ordinance, including establishing reporting and data verification requirements for all submissions required by the DEPARTMENT

Discussion: Some jurisdictions may wish to give the Building Performance Improvement Board authority to promulgate rules. In such cases, this authority should be written into the Building Performance Improvement Board section of the ordinance rather than as a separate section.

Sec. 10. Transparency

The DEPARTMENT shall publish each building's FINAL and INTERIM PERFORMANCE STANDARDS and its performance against those standards across every PERFORMANCE METRIC on an annual basis beginning [3] years after the initial INTERIM PERFORMANCE STANDARDS are determined.

Sec. 11. Compliance Obligation

11.1 Responsibility to Comply

OWNERS of COVERED PROPERTIES shall demonstrate compliance with all applicable INTERIM and FINAL PERFORMANCE STANDARDS at the applicable compliance dates published by the DEPARTMENT at the appropriate compliance date. Responsibility to comply shall not be affected by changes in ownership, OWNER/tenant lease language or changes thereto. The landlord shall clearly and prominently notify tenant of any Alternative Compliance Payment passed through to a tenant including pursuant to a lease.

11.2 Separate utility metering

No action shall be taken to cause a COVERED PROPERTY and one or more additional real properties to newly share energy, water, heating, or cooling without submeter(s) to allow separate measurement of each property's energy and water consumption or prior written permission from the DEPARTMENT. DISTRICT ENERGY SYSTEMS are exempted from this prohibition.

No building over 1,000 gross square feet shall be constructed to share energy or water with another building over 1,000 gross square feet without submeter(s) to allow separate measurement of each building's energy and water consumption or prior written permission from the DEPARTMENT. No modifications shall be made to cause two or more buildings over 500 gross square feet that had previously been separately metered to newly share one or more utility meters or heating, cooling or water heating systems without submeter(s) to allow separate measurement of each building's energy and water consumption and for the buildings to be separately subject to this ordinance or prior written permission from the DEPARTMENT.

Discussion: This provision prevents building owners from circumventing this ordinance by manipulating the placement or coverage of energy consuming equipment or utility meters so as to cause a property to evade requirements by receiving energy or water services from another property or by altering a covered property's characteristics or reclassifying its property type so as to gain unfair advantage. This provision prevents backsliding from the goal of measuring each building's utilities separately and moving each building to improve over time.

Sec. 12. Violations and Enforcement

12.1 ALTERNATIVE COMPLIANCE PAYMENTS.

An OWNER whose COVERED PROPERTY fails to perform to the level of an INTERIM or FINAL PERFORMANCE STANDARD by the applicable compliance date shall be required to make an ALTERNATIVE COMPLIANCE PAYMENT.

12.2 ALTERNATIVE COMPLIANCE PAYMENT Amounts

The DEPARTMENT shall determine the required ACP for a COVERED PROPERTY in its sole consideration; however, the ACP shall proportionally reflect: (1) the total number of INTERIM OR FINAL PERFORMANCE STANDARDS with which an OWNER has failed to comply (2) the assessed value of the COVERED PROPERTY; and (3) the magnitude of non-compliance under each PERFORMANCE METRIC.

Discussion: ACPs are set proportionally to the assessed value of the covered property to make the payments more equitable. For example, if two apartment buildings miss a performance standard but one is a luxury building located in a premium location and the other is in an area with lower rents, it would be inequitable for both buildings to pay the same ACP. By tying the payment to the buildings' assessed value, the high-end property would pay a higher ACP reflecting its higher economic value.

If an OWNER fails to report one or more values for one or more PERFORMANCE METRICS subject to one or more INTERIM or FINAL PERFORMANCE STANDARDS for a COVERED PROPERTY, then, for purposes of calculating the ACP, for each of the PERFORMANCE METRICS that was not reported, the COVERED PROPERTY shall be assumed to have performed at a level [30%] worse than the worst-performing PROPERTY of the COVERED PROPERTY's PROPERTY TYPE for that PERFORMANCE METRIC.

The DEPARTMENT shall set ACPs at levels sufficient to provide an incentive for OWNERS to ensure that COVERED PROPERTIES meet the applicable INTERIM or FINAL PERFORMANCE STANDARDS and to deter payment of an ACP in lieu of complying.

Discussion: The term “ALTERNATIVE COMPLIANCE PAYMENT” should be used to indicate that an OWNER has complied with the ordinance by making such payment. If your jurisdiction lacks the authority or will to set ACPs high enough to ensure that owners are sufficiently incentivized to comply, then use a different term like “poor performance payment” instead of the term “ALTERNATIVE COMPLIANCE PAYMENT” and do not deem owners making such payments to be in compliance with this ordinance. The term “poor performance payment” is preferable to “fine” or “penalty” in that it will facilitate owners passing through some or all of the costs to commercial tenants and thereby better align landlord and tenant incentives.

12.3 [Annual] Payment

Any OWNER subject to an ACP shall make required payments [annually] until such time as the COVERED PROPERTY meets all of the applicable INTERIM and FINAL PERFORMANCE STANDARDS.

12.4 Necessary Trust Funds or Accounts

Necessary trust funds or accounts shall be established by the DEPARTMENT to deposit monies received under this ordinance.

- a. At least [50%] of ACPs collected under this ordinance shall be used to support performance improvements to privately-owned properties within [the jurisdiction]; of that amount, the DEPARTMENT shall spend at least [x] percent to improve the regulated performance of COVERED PROPERTIES serving DISINVESTED COMMUNITIES in accordance with the plan developed by the CAB in section 5.1.1. The remainder shall be allocated to improve the performance of public properties within [the jurisdiction] or to support [the jurisdiction’s] administration of this ordinance and related educational activities.

Discussion: With respect to the language in this provision addressing disinvested communities, the intent is to ease the burden of compliance for properties such as affordable multifamily buildings located in areas with a concentration of low-income or minority residents or that have experienced a historical lack of public and private investment.

- b. The DEPARTMENT shall recommend a five-year plan to the [Mayor/Governor] regarding how these funds should be allocated.

Sec 13. Severability

If any provision, section, subsection, sentence, clause, phrase, or other portion of this ordinance is for any reason found or declared to be unconstitutional or otherwise invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining provisions or portions of this ordinance, which remaining portions shall continue in full force and effect and can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. The [jurisdiction] hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

Sec 14. Liberal Construction

This ordinance shall be liberally construed to give maximum power to the DEPARTMENT to improve building performance.

Sec 15. Maintenance of Records

OWNERS shall maintain records as the DEPARTMENT determines necessary for carrying out the purposes of this ordinance, including, but not limited to, energy and water bills and reports or forms received from tenants and/or utilities, BPAPs, and records demonstrating compliance with INTERIM or FINAL PERFORMANCE STANDARDS. Such records shall be preserved for a period of [five] years. At the request of the DEPARTMENT, such records shall be made available for inspection and audit by the DEPARTMENT.

When a COVERED PROPERTY is sold, the records shall be given to the new OWNER.

Sec. 16. Timing

This ordinance shall become effective [X] days after the date of enactment.

Discussion: This suggested language makes the ordinance effective a certain number of days after adoption by the jurisdiction's legislative body, assuming it is not vetoed. Jurisdictions with standard language used for mandating when an adopted ordinance takes effect should substitute that language here.

About IMT

This model ordinance is a produce of the Institute for Market Transformation (IMT). IMT is a national 501(c)(3) nonprofit organization that aims to decarbonize buildings by catalyzing widespread and sustained demand for high-performance buildings. Founded in 1996 and based in Washington, D.C., IMT leverages its expertise in the intersection of real estate and public policy to make buildings more productive, affordable, valuable, and resilient.

A trusted, non-partisan leader, IMT focuses on innovative and pragmatic solutions that fuel greater investment in high-performance buildings to meet local market priorities. IMT offers hands-on technical assistance and market research, alongside expertise in policy and program development and deployment and promotion of best practices and knowledge exchange. Its efforts lead to important policy outcomes, widespread changes in real estate practices, and lasting market demand for energy efficiency—resulting in greater benefits for all people, the economy, and the environment.

IMT's full suite of building performance standard resources is available at www.imt.org/bps. In addition, IMT welcomes feedback on this model ordinance. Please contact IMT Senior Advisor Cliff Majersik at cliff@imt.org.

Visit us at www.imt.org and follow us on Twitter [@IMT_speaks](https://twitter.com/IMT_speaks).