City of Chicago

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Office of the City Clerk

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Sponsor(s): Mendoza, Susana A. (Clerk)

Type: Communication

Title: Amendments (the "Proposed Amendments") to June 26, 2013 Proposed Building Energy Use Benchmarking Ordinance (Chapter 18-14) (the "Ordinance") submitted by East Point Condo Assn.

Committee(s) Assignment:

EAST POINT
CONDOMINIUM ASSOCIATION

August 23, 2013

City of Chicago
Office of the Mayor
Room 507
121 N. LaSalle Street
Chicago, IL 60602

Re: Request for Amendments (the **"Proposed Amendments"**) to the June 26, 2013[1] Proposed Building Energy Use Benchmarking Ordinance (Chapter 18-14)[2] (the **"Ordinance"**)

Attn: Hon. Rahm Emanuel (the **"Mayor"**)
Members of the City Council (the **"City Council"**)

Introduction

During its August 22, 2013, Board of Directors Meeting, the East Point Condominium Association (**"East Point"**), consisting of a 160-unit, 43-story, pre-1975 building, in the Edgewater Neighborhood of the City of Chicago, voted to approve the filing of this letter of Proposed Amendments before the Mayor and the City Council of the City of Chicago requesting that the Mayor or the City Council cause the above-referenced benchmarking ordinance, presently scheduled to come before the City Council during its September 11, 2013 meeting, to be remanded to the Committee on Zoning, Landmarks and Building Standards (the **"Committee"**) for further review and amendment consistent with the Proposed Amendments set forth below prior to any final vote on the matter by the City Council.

East Point's Position

As is the case with the Building Owners and Managers Association International organization [3], East Point supports voluntary energy use benchmarking and encourages its Association members to participate in its annual benchmarking activities using

[1] **See Mayor's Office June 26, 2013 Press Release. Retrieved at:** http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2013/June/6.26.13IntroBench.pdf.
[2] **See Copy of June 26, 2013 Building Energy Use Benchmarking Ordinance. Retrieved at:** http://chicagocouncilmatic.org/legislation/1450727.
[3] **See BOMA International information at:** http://www.boma.org/industry-issues/energy/Pages/Mandatory-Benchmarking--.aspx.

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automated data-collection programs, where available, such as the EPA's ENERGY STAR Portfolio Manager platform or other similar programs (the **"Tool"**).

Also, while East Point acknowledges that energy efficiency is a key component of the Sustainable Chicago 2015 Action Agenda[4], it supports Alderman Brendan Reilly's call for amendments to the Ordinance necessary to "better shield condominium and co-op owners from the financial burden" associated with the Ordinance.[5]

Additionally, East Point desires that Chicago's energy benchmarking efforts, which will be among a few leading cities[6] in the country with such programs intended to incentivize building owners to reduce their energy profiles and costs, should be performed in a manner that supports and does not include excessive unfunded mandates and costs, does not impede the market for private real estate transactions[7] and adequately protects the privacy of individual homeowners while fostering a consistent level of competitiveness among like properties.[8]

Therefore, East Point seeks to have the Ordinance remanded to the Committee and amended in accordance with the following Proposed Amendments.

Proposed Amendments

A. **General.** Unless the Commissioner of Business Affairs and Consumer Protection has the staff and budgetary support to commence the development of the rules, regulations, procedures, forms, educational tools and support systems promptly after passage of the Ordinance that are necessary and appropriate for the proper implementation of the Ordinance, the Committee should amend all deadlines set forth in the Ordinance by extending them by one calendar year each.

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[4] See "*Sustainable Chicago 2015*" at: http://www.cityofchicago.org/city/en/progs/env/sustainable_chicago2015.html.

[5] See Alderman Reilly's "*Update on City Energy Benchmark Mandate*" at: http://www.ward42chicago.com/in_the_news.html#Benchmark.

[6] For example, see Local Law 84 of the City of New York; Code Sec. 9-3402 of the City of Philadelphia; the San Francisco Environmental Code, Chapter 20, Secs. 2000, et seq.; Chapter 47 of the Minneapolis Code of Ordinances (Energy and Air Pollution); and, Austin's Chapter 6-7 (Energy Conservation).

[7] See "*Cost concerns delay Chicago energy disclosure ordinance*" by Kari Lydersen, July 30, 2013 quoting an excerpted statement by BOAMA Chicago ("It will simply impose yet another competitive burden on an already challenged sector.") . Retrieved at: http://www.midwestenergynews.com/2013/07/30/cost-concerns-delay-chicago-energy-disclosure-ordinance/.

[8] See "*Benefits of Benchmarking,*" City of Seattle, Office of Sustainability and Environment. Retrieved at: http://www.seattle.gov/environment/benchmarking.htm

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B. Definitions (18-14-101.3).

(1) There is no definition for what constitutes a "Tenant." Define "Tenant" to mean a person or entity occupying, holding possession of or in control of a building or premises pursuant to a rental agreement.

(2) The definition of "Building" is very broad. To preclude its application to residential or industrial usage, its definition should be limited in scope. Define "Building" to mean a structure, or part thereof, enclosing any non-residential or non-industrial use or occupancy.

C. Solicitation of Compliance Information (18-14-101.4).

(1) First Paragraph is overly broad as to "all information that cannot otherwise be acquired by the building owner." Amend to read: "...all information that cannot otherwise be acquired by the building owner with the exercise of reasonable diligence at nominal costs..."

(2) Third Paragraph's language may create unintended, harsh results for building owners where Tenants fail to or are unable to provide the required information in a timely fashion. Amend the language to read: "The failure of any Tenant to provide the information required under this section to the owner of a covered building shall not relieve such owner of the obligation to benchmark the building as provided in Section 18-14-102.1, provided that such owner shall not be required to benchmark such information not reported by a Tenant unless otherwise available to such owner with the exercise of reasonable diligence at nominal costs."

D. Enforcement (18-14-101.5).

(1) Subsection (a) is too weak and indefinite. Amend the Second Sentence to read: "The commissioner shall adopt rules and regulations for the proper administration and enforcement of this chapter not later than 120 days after the date this ordinance takes effect."

(2) In order to ensure small building owners are not unduly impacted in a punitive manner by the fines structure, include an annual limit and initial period to remedy the violation before subsequent fines commence. Amend Subsection (b) to read: "Any person who violates this chapter shall be subject to a fine of up to $100.00 for the first violation during the entire first 30-day period after the failure in compliance, and an additional fine of up to $25.00 for each day that the violation continues after such initial 30-day period; provided, however, that no person may be fined more than $1,500.00 during any calendar year.

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E. Data Verification (18-14-102.2). It is not clear why a licensed professional (i.e., professional engineer or registered architect) is needed to verify the data entered during the benchmarking process.[9] The building owners have sufficient competitive and legal incentive to ensure that they are entering the proper type and amount of information during the benchmarking process and should not have to incur further costs associated with having third parties look over their shoulders. However, the proposed language does make sense in the following scenario. Amend the First Paragraph to read: "In the event the owner of a covered building is eligible for and desires to register for ENERGY STAR certification, then prior to the first benchmarking deadline prescribed by Section 18-14-102.1, and prior to each fifth deadline thereafter, the owner of a covered building shall ensure that reported benchmarking information for that year is verified by a licenses professional."

F. Benchmarking (18-14-102.3). The Committee should give consideration to amending this provision so that utility companies are required to develop and maintain the capability for a "direct upload" of benchmark data from the Tool so that owners and tenants can be released from the manual benchmarking obligation.

G. Disclosure (18-14-102.3). While it is a clear incentive for the competitive market place among buildings of like size and usage to prescribe that the commissioner shall report "summary" statistics to the public on benchmarking information, energy efficiency trends, cost savings and job creation effects resulting from energy efficiency improvements, and except for private-party sales transaction, there is no legitimate public need to know "individually-identifiable" benchmarking information about owners and tenants.[10]

It is recommended that the Committee amend this section as follows: (1) change Subsection (c) to read: "The commissioner is authorized to make only summary benchmarking information readily available to the public." (2) Amend the First Exception to read: "Except to the extent required by applicable law, the commissioner shall not make available to the public any individually-attributable reported benchmarking information [*words* removed] that a covered building is required to

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[9] See *"How to Apply for ENERGY STAR Certification."* **Retrieved at:** http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/earn-recognition/energy-star-certification/how-app-1

[10] **See City of Minneapolis Ordinance, Title 3, Chapter 47, Section 47.190 (d), Disclosure and Publication of Benchmarking Information.**

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benchmark; provided, however, that such information may be required to be provided among the parties to a private sales transaction involving a covered building."

Relief Requested

We respectfully request that, prior to final passage by the Chicago City Council, the June 26, 2013 proposed Building Energy Use Benchmarking Ordinance (Chapter 18-14) be remanded back to the Committee on Zoning, Landmarks and Building Standards for revisions consistent with the above-stated Proposed Amendments.

Respectfully submitted,

Thomas E. Fraser, President
East Point Condominium Association

cc: City of Chicago, City Council Members (via E-Mail)

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