DRAFT Ordinance/Resolution NO. ___

WHEREAS, the ____ [legislative body] of _____ [state/county/city/town] desires to grow the twenty-first century economy by removing barriers to smart decisionmaking that will enable investment in, and returns from, better building systems, management and operations; and

WHEREAS, the ____ [legislative body] recognizes the value of measurement and transparency as important tools to enable effective management of resources,

WHEREAS, in order to have a significant impact on community-wide energy and water use in the coming decades [add other metrics as appropriate], it is imperative that efficiency savings be achieved in buildings constructed prior to the adoption of current codes; and

WHEREAS, systems for lighting, heating, cooling, ventilation, plumbing, sewage conveyance, irrigation and other services [add as appropriate] in commercial buildings require regular tuning to operate as designed, as well as periodic retrofits to meet modern standards for efficient use of energy and water; and

WHEREAS, by ensuring that building owners, operators, managers, tenants, and their agents are informed about the full set of opportunities to cost effectively improve energy energy and water use efficiency [add other metrics as appropriate], and how their building is performing relative to a national baseline, non-residential building decision makers will have incentive to make decisions in their own interest, to reduce utility costs and improve the competitiveness of properties in the [state/county/city/town].

WHEREAS, the evaluation, upgrade, and optimized operation of commercial buildings will expand opportunities for skilled jobs in construction trades, engineering, operations, sales, and innovative technologies. Investing in energy efficiency will contribute to stable, long-term economic growth, encourage job creation, and enhance stewardship of natural resources.

WHEREAS, cost-effective energy and water efficiency improvements are proven to increase housing affordability and lower business operating costs; and

WHEREAS, building energy and water efficiency is a core strategy to avoid the need for additional electric generating capacity and reduces the otherwise increasing strain on precious water resources; and

WHEREAS, the U.S. EPA's ENERGY STAR Portfolio Manager is both the widely accepted as the national benchmarking tool of choice for both building energy use and building water use, and also free of charge; and

WHEREAS, public policy that promotes healthy, resilient, high-performing building operations and management complements existing policies relating to development and environemental stewardship; including _____ [list relevant policies such as energy efficiency/ solid waste/ recycling/ stormwater policies and specific provisions from current version of master plan];

NOW THEREFORE BE IT RESOLVED BY THE _____ [legislative body of state/county/city/town]:

Section 1: Enabling Informed Decisionmaking Through Benchmarking Building Energy Use and Building Water Use
[consider additional metrics such as building waste, vehicle miles traveled, and use of toxic materials]

(a) **Requirements:** All Public Buildings and Covered Buildings shall be annually benchmarked for building energy use and building water use [add additional metrics to be benchmarked, as appropriate] for the previous calendar year, by the owner or entity primarily responsible for managerial oversight of building operations. Benchmarking shall be conducted in accordance with the schedule outlined in this section. Disclosure of benchmarking information shall be in accordance with Section 2.

(b) **Schedule:** Beginning in ___ [next calendar year, i.e. 2013], all Public Buildings and Covered Buildings shall be benchmarked on an annual basis on or before ____ [i.e. May first] in accordance with the rules and procedures promulgated by the ____ [appropriate government agency]. The following shall be required by ____ [i.e. December first] for the first year in which a Public Building or Covered Building is to be benchmarked:

   i. All available Benchmarking Information from ____ [previous year] collected and accessible to the building owner.
   ii. Building Benchmarking Plan.

Section 2. Reporting and Public Disclosure of Benchmarking Information

(a) **Annual Reporting for Public Buildings:** No later than ___ [six months] after completing annual benchmarking _____ [appropriate government authority] shall publish a plan of action to unlock the cost savings potential of information gathered from the benchmarking process, recommending improvements to building systems, equipment, materials, policies and procurement.

(b) **Disclosure of Benchmarking Information for Public Buildings:** ____ [appropriate government authority] shall publish and make available to the public the Benchmarking Information in accordance with rules and procedures promulgated by the ____ [appropriate government agency] no later than one month after the date required for benchmarking completion in Section (1)(b). Annual reporting information required in Section (2)(a) shall be made public and available at the time of its publication, as required in Section (2)(a).

(c) **Annual Reporting for Covered Buildings**: To track compliance, policy impacts and effectiveness, this ordinance requires that the building owner annually provide Benchmarking Information to the ___ [appropriate government agency], in accordance with rules and procedures promulgated by the ____ [appropriate government agency] no later than one month after the date required for benchmarking completion in Section (1)(b).

[Note: while USGBC does not take a position on additional requirements for disclosure of benchmarking information for private buildings, reporting Benchmarking Information provides the means compliance tracking, policy impacts and effectiveness. Public buildings disclosure is an important method of leadership by example, making more available information that is – in many cases – already part of the public record.]

(d) [optional] **Disclosure of Benchmarking Information for Covered Buildings** [public disclosure policy for private buildings is being implemented in Washington, DC, New York City and San Francisco] The building owner shall provide, not before 12 months after the adoption date of this ordinance, and in accordance with the rules and procedures promulgated by the ____ [appropriate government official], Benchmarking Information for the previous calendar year or for the most recent continuously occupied 12-month period to:

i. Prospective lessees, within 7 days of a request by the prospective lessee, and not later than the time a lease contract is presented by the building owner if no such request is made;

ii. Prospective buyers, within 7 days of a request by the prospective buyer, and not later than the time a sale contract is presented by the building owner if no such request is made;

iii. Prospective lenders, at or before the time a loan application is presented by the building owner to finance or refinance the building; and

iv. Current tenants, at least once per calendar year.

(e) [optional safe harbor clause, if (2)(d) is selected] If the Benchmarking Information is delivered to a prospective buyer, lessee, or lender as outlined in this section, the information shall be deemed sufficient and no additional information shall be required from the property owner, operator or their agent.

(f) [optional safe harbor clause, if (2)(d) is selected] Nothing in this section increases or decreases the duties, if any, of a buildingowner, operator, or his or her broker or agent under this chapter or alters the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property.

Section 3: Definitions

(a) **Benchmark**, and its derivitaves, means the input of critical building information observed and recorded from building operations and use into a tool intended for comparative analysis off established baselines for building type, size, use and location. [modify list as appropriate, and add additional guidance in other sections as needed]

i. **Benchmarking building energy use** means to input the total energy consumed for a building during a twelve month period and other benchmarking information as required by the ENERGY STAR Portfolio Manager tool and to display results.

ii. **Benchmarking building water use** means to input the total water consumed for a building during a twelve month period and other benchmarking information as required by the ENERGY STAR Portfolio Manager tool and to display results.

[Note: while benchmarking building energy and water use is fairly common and commonly understood, USGBC promotes the expansion of this idea of evaluation and assessment against a common baseline to a more comprehensive set of metrics that can illuminate human and environmental health impacts of our buildings that need attention. The San Francisco Department of Public Health's Healthy Development Measurement Tool (HDMT) may be helpful as you explore unlocking the benefits of benchmarking in these new areas.]

iii. **[optional] Benchmarking building waste generation** means to input the total amount of waste [trash, recycle, compost, etc. – by weight or by volume] leaving a building during a twelve month period, and other benchmarking information as required by [appropriate tool to benchmark building waste] and to display results.

iv. **[optional] Benchmarking vehicle miles traveled** means to input the total number of vehicle miles traveled by building occupants [calculating Full-Time Equivalents and possibly also guests] for commuting to and from the building during a twelve month period, and other benchmarking information as required by [appropriate tool to benchmark commuter VMT for buildings] and to display results.

v. **[optional] Benchmarking building toxic materials** means to input the total toxic chemicals, in name and in quantity, and other benchmarking information as required by [appropriate tool to benchmark toxic materials use and consumption in buildings – note the Living Building Challenge's Red List] and to display results.

(b) **Benchmarking information** means information related to a building's energy consumption and a building's water consumtion, _____ [add as appropriate: waste generation, associated vehicle miles traveled, use of toxic materials] as generated by ENERGY STAR Portfolio Manager [add also tools associated with the benchmarking requirements of this ordinance], and descriptive information about the physical building and its operational characteristics. The information shall include at minimum: building address; weather-normalized energy use intensity (EUI); annual greenhouse gas emissions; water use per gross square foot; and the Energy Performance Score [and other data points associated with other tools for beyond-energy and –water benchmarking as required or encouraged by this ordinance] that compares the the building's performance in the area[s] benchmarked to that of similar buildings, where available.

(c) **Building Benchmarking Plan** means a written strategy to measure building-related information associated with the benchmarking requirments of this ordinance, and establish protocols for informing action when benchmarking results suggest a need for action. A Building Benchmarking Plan must be updated once every five years.

(d) **Public Building** means any building of at least ____ [10,000 gross sq. ft.] that is owned by the ____ [state/county/ city/town] and occupied for ___ [18 months] or a building of at least ____ [10,000 gross sq. ft.] where more than 5,000 rentable square feet is leased or rented by the ___ [state/county/city/town] and occupied for ___ [18 months].

(e) **Covered building:** means any of the following structures:

i. Non Residential buildings as defined by _____ [state or relevant building code], greater than ____ [50,000 sq. ft., though flexible to suit local preferences] and occupied for ___ [18 months].

ii. Any structure containing ___ [50, though flexible to suit local preferences] or more dwelling units composed of occupancy types _____ [list appropriate] as defined by _____ [state or relevant building code] and occupied for ___ [18 months].

(f) **Energy** means electricity, natural gas, steam, heating oil, or other product sold by a utility to a customer of 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.

(g) **ENERGY STAR Portfolio Manager** means the industry-accepted tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance and water performance of buildings nationwide.

(h) **Energy Performance Score** means a 1-100 numeric rating that compares the energy usage of the building to that of similar buildings and applied through the ENERGY STAR Portfolio Manager.

Section 4: Violations, Enforcement, and Rules

(a) **Violations:** It shall be unlawful for any entity, person or building manager to fail to comply with the requirements of this law or misrepresent any material fact in a document required to be prepared or disclosed by law.

(b) **Enforcement**: If the ____ [appropriate government authority] determines a Covered Building to be non-compliant, failing to report accurate ____ [energy, water, other] benchmarking information pursuant to Section (1), the ____ [appropriate government authority] may seek the following remedies:

i. A written warning may be issued for the first violation.

ii. If benchmarking information is not reported within 15 business days of the date the written warning is issued, the ____ [appropriate government authority] may issue a notice of violation with a penalty of $___ per quarter until compliance is achieved.

(c) **Rules**: The appropriate Agency shall promulgate such rules as deemed necessary to carry out the provisions of this law.

Find more benchmarking resources and policies at: http://www.imt.org/PDF/BenchmarkingModelStatutoryLanguage.pdf.
Also find out about the City of Austin's benchmarking legislation here: http://www.imt.org/rating-austin.html