

City and County of Denver
DRAFT Rules & Regulations Governing
Energize Denver Building Energy Performance Requirements

SECTION 1 – INTRODUCTION

1.1 Authority

This rule is adopted by the City and County of Denver Office of Climate Action, Sustainability, and Resiliency in accordance with the authority in Article XIV of Chapter 10 of the Denver Revised Municipal Code (“D.R.M.C.”).

1.2 Scope and Purpose

The purpose of this rule is to implement the High-Performance Existing Building Program that requires Covered Building Owners to Benchmark building energy performance, and to make such energy performance information publicly available in order to raise awareness and drive action. The purpose of this rule is also to require Covered Building Owners to address existing building performance through energy efficiency, renewables, and/or renewable heating and cooling (electrification) to reduce greenhouse gas emissions from the built environment to help the City and County of Denver achieve its climate action goal of zero greenhouse gas emissions in existing buildings by 2040.

SECTION 2 – DEFINITIONS

Except as noted below, words and phrases shall have the meaning assigned by the Charter of the City and County of Denver and the D.R.M.C. As used in this rule, the terms listed below shall have the following meanings:

- 2.1** *“Administrative Citation”* means a citation for a violation of the Code, the rules and regulations adopted by the Director and promulgated by the Manager, or noncompliance with an Order issued by the Manager by which a civil penalty for the violation or noncompliance is assessed.
- 2.2** *“Annual Site Energy Usage”* means the total energy consumed by the building in one year measured in kBtu, including all equipment and fixtures attached to the building energy meters.
- 2.3** *“Benchmarking”* means measuring a Covered Building’s energy performance using the ENERGY STAR Portfolio Manager tool or other similar platforms as CASR may designate.
- 2.4** *“Benchmarking Submission”* means the data submitted each year via the ENERGY STAR Portfolio Manager tool, or other similar platforms as CASR may designate, using a template and submission link to be distributed and publicized by CASR. All information expressly denoted as mandatory by either ENERGY STAR Portfolio Manager or CASR shall be included in the submission.
- 2.5** *“Campus”* means a collection of two or more buildings, of any building type or size, that act as a single cohesive property with a single shared primary function and are owned and operated by the same party, such as, but not limited to, higher education or hospital campuses.
- 2.6** *“CASR”* means the Office of Climate Action, Sustainability, and Resiliency.

2.7 ***“Common Space”*** means the entire common interest development except the separate interests therein. Common space includes any part of a building or complex that is not owned by one specific resident. Common spaces may include, but are not limited to entrances, exits, doorways, stairwells, common terraces, basements, rooftops, parking areas, elevators and elevator lobbies, gardens, common storage spaces, waste disposal areas, central service installations, and any other portions of land or property with purpose for common use.

2.8 ***“Covered Building”***

- A.** For purposes of Benchmarking, means any commercial or multifamily individual building in the City and County of Denver except the following:
 - i.** A building that was not occupied and did not have a certificate of occupancy or temporary certificate of occupancy for all twelve (12) months of the calendar year for which Benchmarking is required;
 - ii.** A building that was not occupied, due to renovation, for all twelve (12) months of the calendar year for which Benchmarking is required;
 - iii.** A building for which a demolition permit for the entire building has been issued and for which demolition work has commenced on or before the date the Benchmarking report is due;
 - iv.** A building that is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages; (2) the building is controlled by a court appointed receiver; or (3) the building has been acquired by a deed in lieu of foreclosure;
 - v.** A stand-alone parking garage.
- B.** For purposes of Existing Building Performance requirements, means any commercial or multifamily individual building in the City and County of Denver except the following:
 - i.** A building for which a demolition permit for the entire building has been issued and for which demolition work has commenced on or before the particular compliance date.
- C.** Covered buildings include Covered Manufacturing/Agricultural/Industrial Buildings and Covered Municipal Buildings.

2.9 ***“Covered Manufacturing/Agricultural/Industrial Building” or “Covered MAI Building”*** is a subset of the Covered Building definition, and means a facility where energy is consumed in process loads for manufacturing, agricultural, or industrial purposes. Process loads are energy consumed for bona fide purposes other than comfort heating and cooling, ventilation, domestic hot water, cooking, lighting, appliances, office equipment, small, or other plug loads. This classification includes buildings with Class A data centers, food manufacturing, and the ENERGY STAR Portfolio Manager building types Drinking Water Treatment & Distribution, Energy/Power Station, Other – Utility, and Wastewater Treatment Plant. Multi-use buildings with at least one tenant that meets this definition may be classified as a Covered MAI Building.

2.10 ***“Covered Municipal Building”*** means a Covered Building that is owned and/or operated by the City and County of Denver.

- 2.11** ***"Data Center"*** means a room or series of rooms that share data center systems, whose primary function is to house equipment for the processing and storage of electronic data and that has a design total Information Technology Equipment (ITE) power density exceeding 20 watts per square foot (20 watts per 0.092 m²) of conditioned area and a total design ITE load greater than 10 kW. A Class A data center is where 15% or more of the building's Gross Floor Area is a data center. A Class B data center is where less than 15% of the building's Gross Floor Area is a data center.
- 2.12** ***"ENERGY STAR Portfolio Manager"*** means the online tool created by the US Environmental Protection Agency used to measure and track a building's energy use, water consumption, and greenhouse gas emissions. For purposes of this rule "ENERGY STAR Portfolio Manager" may also mean another platform as CASR may designate.
- 2.13** ***"Executive Director"*** or ***"Director"*** means the executive director of the Office of Climate Action, Sustainability, and Resiliency.
- 2.14** ***"Existing Building Performance"*** The energy efficiency and renewable energy of a Covered Building measured by site Energy Use Intensity (EUI), or EUI adjusted for renewable energy and/or electrification using data reported via the ENERGY STAR Portfolio Manager tool or other platforms as CASR may designate.
- 2.15** ***"Final Decision"*** for an appeal of a Notice or Order means the Director's decision arrived at after review of the Recommended Decision or its decision after hearing the matter or review of written briefs in the first instance or a Recommended Decision for which Director review is not timely filed.
- 2.16** ***"Fossil Fuel"*** means a hydrocarbon-containing form of energy consumed in a building, such as natural gas, fuel oil, propane, or coal/coke.
- 2.17** ***"Gross Floor Area"*** or ***"GFA"*** means the total building square footage, measured between the outside surface of the principal exterior fixed walls of a building. GFA should include lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. GFA should not include exterior spaces, balconies, patios, exterior loading docks, driveways, covered walkways, outdoor play courts, parking, or crawl spaces.
- 2.18** ***"Hearing Officer"*** means the person the Director delegates pursuant to the Code to conduct a hearing or review a case that has been submitted for determination based on written argument and written statement of facts.
- 2.19** ***"High Performance Existing Buildings Program"*** means the administrative program implemented by CASR requiring the Benchmarking, reporting, and Existing Building Performance in commercial and multifamily buildings that are located within the City and County of Denver.
- 2.20** ***"Lighting Load"*** means the energy used to power electric lights in a building's interior, exterior, and parking areas as measured in kilowatt hours. The calculation of lighting load shall include all lighting that is connected to the building's electrical meter(s).
- 2.21** ***"Lighting Power Density"*** or ***"LPD"*** means the lighting power in watts per square foot.

- 2.22 **"Manager"** means a Manager within the Office of Climate Action, Sustainability, and Resiliency of the City or the Manager's designee.
- 2.23 **"New Covered Building"** means a building that received its certificate of occupancy after November 22, 2021 and meets the definition of a covered building.
- 2.24 **"New Covered MAI Building"** means a building that received its certificate of occupancy after November 22, 2021 and meets the definition of a covered MAI building.
- 2.25 **"Notice" or "Order"** means any notice or order, civil penalty assessment, or administrative citation issued pursuant to the Director's authority under the Code.
- 2.26 **"Owner"** means the person or entity having a legal or equitable interest in real property and its fixtures and appurtenances, which shall explicitly include but not be limited to a homeowner's association.
- 2.27 **"Percent Electricity"** means the percent of total site energy use that is electricity. Calculated in kBtu, it combines grid-purchased electricity with renewable electricity used at the building and divides it by the total energy used.
- 2.28 **"Petition"** as used in Section 7 means a petition for review of a Notice or Order.
- 2.29 **"Petitioner"** means any person who has filed a petition with the Director to appeal a Notice or Order issued by the Office.
- 2.30 **"Production Efficiency"** means the annual site energy usage in a Covered MAI building divided by a standard manufacturing or agricultural production unit(s), such as kBtu per widgets produced or kBtu per pounds of flower produced.
- 2.31 **"Production Efficiency Improvement"** means a reduction in energy use intensity from baseline where energy use intensity is calculated as the annual site energy usage divided by a standard manufacturing or agricultural production unit(s).
- 2.32 **"Recommended Decision"** means a Hearing Officer's findings of fact, conclusions of law, and the decision he or she recommends to the Director following a hearing or review of written briefs.
- 2.33 **"Site Energy Use Intensity" or "EUI"** means a building's weather-normalized energy use expressed as energy per square foot per year as a function of its size, normalized for weather as feasible with the reporting platform used. A building's EUI is calculated by dividing the total energy consumed by the building in one year (measured in kBtu) by the total Gross Floor Area of the building.
- 2.34 **"Tenant"** means a person or entity entitled to the possession, occupancy, or the benefits of any rental unit owned by another person or entity.

SECTION 3 – BENCHMARKING AND REPORTING REQUIREMENTS FOR COVERED BUILDINGS WITH A GROSS FLOOR AREA EQUAL TO OR GREATER THAN 25,000 SQUARE FEET

3.1 Compliance Dates

Owners of Covered Buildings shall Benchmark the building's energy usage annually using the ENERGY STAR Portfolio Manager tool, or other platform as CASR may designate, and by June 1 each year, shall accurately report energy performance information to CASR for the previous calendar year, as set forth in D.R.M.C. § 10-403.

3.2 Compliance Process

Owners of Covered Buildings must report each Covered Building's energy use annually for the previous calendar year using the ENERGY STAR Portfolio Manager in accordance with the ENERGY STAR Portfolio Manager's instructions (located at the following web address: <https://www.energystar.gov/buildings/benchmark>), unless otherwise specified by CASR. No later than June 1 of each year, Owners of Covered Buildings must complete the following steps in the ENERGY STAR Portfolio Manager for each such building, unless otherwise specified by CASR:

- A.** Create or update a building profile with all building details, including the Denver Building ID (DBID) supplied by CASR.
- B.** Enter all space types, with applicable Gross Floor Area, calculated in accordance with the ENERGY STAR Portfolio Manager's definition of Gross Floor Area, and any further guidance that CASR may provide.
- C.** Enter energy use data for the whole building for the previous calendar year such that it encompasses January 1 to December 31 of that year.
 - i.** If whole-building data are unavailable from a utility for a given energy type, or if an Owner wishes to verify utility-supplied data, then for any tenant-occupied or resident-owned space that is separately metered for such energy type, Owners of Covered Buildings shall request such data from such tenants or residents for the previous calendar year. Tenants and residents shall be obligated to provide this data to Owners.
 - ii.** If an Owner required to request tenant/resident data under this section receives notice that a tenant/resident intends to vacate a building before the end of the calendar year, the Owner must request from said tenant/resident any necessary energy use or space use data from January 1 of that year to the date the tenant/resident vacates the space.
- D.** For multiple buildings on a single tax parcel, buildings on multiple tax parcels that share energy meters, and campuses, Owners shall report energy use as follows:
 - i.** Owners must report individually in the ENERGY STAR Portfolio Manager any buildings that are separately metered or sub-metered for all energy types.
 - ii.** Owners must report individually in the ENERGY STAR Portfolio Manager any buildings for which one or more types of energy are not separately metered or sub-metered, with any energy use that is not separately metered or sub-metered apportioned by Gross Floor Area, whenever such energy use can be reasonably

apportioned by this method. The apportioned data shall be marked as an estimation.

- iii. For any building that does not fit within either of the above circumstances, or any building within a campus type that is eligible for an ENERGY STAR Portfolio Manager score as a campus, the Owner shall report as a campus in the ENERGY STAR Portfolio Manager.
- E. Submit a complete and accurate Benchmarking Submission to CASR by June 1 of each year. The submission shall be through the ENERGY STAR Portfolio Manager, or other platforms as CASR may designate, using a template and submission link to be distributed and publicized by CASR. Owners must report all information expressly denoted as mandatory by either the ENERGY STAR Portfolio Manager or CASR, which may include but is not limited to:
- i. Basic descriptive information to track compliance with this rule, including the building address, Gross Floor Area, all use types, and the name of the individual or entity making the submission;
 - ii. Annual and monthly energy usage information, including, but not limited to, energy usage by individual fuel source, ENERGY STAR Portfolio Manager score, where available, site EUI, source EUI, weather-normalized site EUI, weather-normalized source EUI, and total annual greenhouse gas emissions; and
 - iii. The fields needed for each building type to verify the accuracy of an ENERGY STAR Portfolio Manager score.
- F. Before making a Benchmarking Submission, the Owner shall run all automated data quality checker functions available within the ENERGY STAR Portfolio Manager tool and shall correct all identified missing or incorrect information. If CASR identifies concerns with data quality CASR may at its discretion require third-party verification of Benchmarking reports at the Owner's expense.
- G. Any Owner requesting an exemption from Benchmarking shall provide CASR any and all documentation requested to substantiate the request or otherwise assist CASR in determining whether an exemption applies. Any exemption approved by CASR shall be limited to the Benchmarking Submission for which the request was made and shall not extend to past or future submissions.
- H. If an Owner can demonstrate that the building's energy performance is a confidential business practice that includes trade secrets, privileged, or confidential commercial information, the Owner can submit a request for the Benchmarking Submission to be kept confidential and will not be subject to Colorado Open Records Act requests or included in open data disclosures.
- I. When a building changes ownership, the previous Owner shall transfer any existing ENERGY STAR Portfolio Manager property profile to the new Owner along with any energy and space use data that has been collected and is necessary for completing the next required Benchmarking Submission. Each new Owner shall request that the property profile be transferred to their ENERGY STAR Portfolio Manager account.

3.3 Data Verification

- A. For the Benchmarking Submissions in the years where evaluation for the performance requirements in Section 4 are being performed, a CASR-defined data verification checklist completed by an approved third-party will be required to be submitted at the same time as the Benchmarking Submission.
- B. Owners of Covered Buildings shall maintain the following records for a period of at least five (5) years, and shall make such records available for inspection during business hours upon reasonable notice from CASR:
 - i. ENERGY STAR Portfolio Manager account data;
 - ii. Proof of tenant data requests for energy or space use attribute data from any separately metered tenants; and
 - iii. Information substantiating the energy data and space use attribute information entered into the ENERGY STAR Portfolio Manager.

SECTION 4 –EXISTING BUILDING PERFORMANCE REQUIREMENTS FOR COVERED BUILDINGS WITH A GROSS FLOOR AREA EQUAL TO OR GREATER THAN 25,000 SQUARE FEET

4.1 In General

Owners of Covered Buildings with a Gross Floor Area equal to or greater than 25,000 square feet must meet energy performance targets in calendar years 2024, 2027 and 2030, unless a timeline adjustment has been approved per Section 4.7.A. Final 2030 targets will be set for every Covered Building type in Denver such that 30% total weather-normalized site energy savings across all Covered Buildings is achieved. Buildings will be assigned a building type and final and interim targets as set forth below.

4.2 Establishing Building Types

- A. Building types are defined by ENERGY STAR Portfolio Manager definitions of property types.
- B. If a building type is designated as ‘other’ or if CASR suspects the incorrect type was selected, then CASR will assign the most accurate building type. CASR shall identify buildings that have been incorrectly designated a building type through methodologies that may include, but are not limited to, a reviewing a web-based street view platform or reviewing the distribution of energy consumption within a building type to find buildings whose energy performance is significantly different relative to other buildings within the building type. CASR will reassign a building type that CASR determines to be more accurate based on available data. The Owner will have the opportunity to dispute the building type before CASR’s final decision on building type.
- C. If a building’s type changes over time, then CASR shall update the building’s 2030 EUI target to align to the new building type.
- D. CASR has the final authority to assign a building type to a Covered Building.

4.3 Establishing 2030 Targets for Every Building Type

Final 2030 targets shall be established for every building type such that 30% total weather-normalized site energy savings across all covered buildings is achieved.

- A. Table 1 set forth the EPA Portfolio Manager building types and the 2030 site EUI target for each building type. These are based upon 2019 Benchmarking data and national CBECS data. Building types with insufficient Benchmarking and CBECS data will have a target that is 30% below their baseline EUI by 2030. If additional building types are found, or new buildings of types without specific EUI targets in Table 1 are built, then CASR will set targets for such buildings based on best available local and national data. 2030 EUI targets are as follows for each building type.

Table 1.

| EPA Portfolio Manager Building Type | 2030 EUI Target (kBtu/sf/yr.) |
|--|--------------------------------------|
| Adult Education | 37.2 |
| Ambulatory Surgical Center | 60.7 |
| Aquarium | 30% EUI Reduction |
| Automobile Dealership | 42.8 |
| Bank Branch | 63.6 |
| Bar/Nightclub | 86.6 |
| Barracks | 46.3 |
| Bowling Alley | 50.5 |
| College/University | 60.6 |
| Convention Center | 30% EUI Reduction |
| Courthouse | 51.2 |
| Distribution Center | 25.4 |
| Enclosed Mall | 45.6 |
| Fast Food Restaurant | 311.3 |
| Financial Office | 48.3 |
| Fire Station | 45.6 |
| Fitness Center/Health Club/Gym | 50.5 |
| Food Sales | 144.3 |
| Food Service | 76.9 |
| Hospital (General Medical & Surgical) | 165.2 |
| Hotel | 61.1 |

| | |
|---|-------------------|
| Ice/Curling Rink | 30% EUI Reduction |
| Indoor Arena | 30% EUI Reduction |
| K-12 School | 48.0 |
| Laboratory | 153.9 |
| Library | 52.9 |
| Lifestyle Center | 66.6 |
| Mailing Center/Post Office | 46.5 |
| Medical Office | 69.0 |
| Movie Theater | 53.2 |
| Multifamily Housing | 44.2 |
| Museum | 30% EUI Reduction |
| Non-Refrigerated Warehouse | 27.2 |
| Office | 48.3 |
| Other | 49.2 |
| Other - Education | 37.2 |
| Other - Entertainment/Public Assembly | 30% EUI Reduction |
| Other - Lodging/Residential | 51.3 |
| Other - Mall | 60.3 |
| Other - Public Services | 49.2 |
| Other - Recreation | 50.5 |
| Other - Restaurant/Bar | 194.1 |
| Other - Services | 34.6 |
| Other - Specialty Hospital | 165.2 |
| Other - Technology/Science | 30% EUI Reduction |
| Outpatient Rehabilitation/Physical Therapy | 60.7 |
| Performing Arts | 53.2 |
| Personal Services (Health/Beauty, Dry Cleaning, etc.) | 34.6 |

| | |
|--|-------------------|
| Police Station | 45.6 |
| Pre-school/Daycare | 38.9 |
| Prison/Incarceration | 83.0 |
| Refrigerated Warehouse | 63.9 |
| Repair Services (Vehicle, Shoe, Locksmith, etc.) | 32.3 |
| Residence Hall/Dormitory | 46.3 |
| Residential Care Facility | 63.3 |
| Restaurant | 194.1 |
| Retail Store | 43.5 |
| Roller Rink | 50.5 |
| Self-Storage Facility | 7.7 |
| Senior Care Community | 63.3 |
| Senior Living Community | 63.3 |
| Social/Meeting Hall | 33.0 |
| Stadium (Closed) | 75.3 |
| Stadium (Open) | 75.3 |
| Strip Mall | 66.6 |
| Supermarket/Grocery Store | 164.4 |
| Transportation Terminal/Station | 30% EUI Reduction |
| Urgent Care/Clinic/Other Outpatient | 60.7 |
| Veterinary Office | 60.7 |
| Vocational School | 37.2 |
| Wholesale Club/Supercenter | 43.5 |
| Worship Facility | 42.1 |
| Zoo | 30% EUI Reduction |

- B.** Mixed-use buildings will have a blended target based on the percentage of Gross Floor Area assigned to each building type.

- C. For a covered building that receives MAI building designation approval in Section 4.7.D.i and does not apply for the Alternate Compliance Option in Section 4.7.D.ii or 4.7.D.iii, the 2030 target for the Covered MAI Building will be a 30% reduction in Site EUI.
- D. For a covered building that benchmarks as a “Manufacturing/Industrial Plant” building type but does not apply for MAI building designation in Section 4.7.D.i, the building will be reclassified as the “Other” building type.

4.4 Establishing Interim Targets

CASR will establish each Covered Building’s required interim targets for 2024 and 2027 as set forth below.

- A. Establishing baseline EUI for each Covered Building
 - i. For existing Covered Buildings that reported for Benchmarking in 2019, the baseline shall be the EUI that was reported for the Covered Building that year.
 - ii. For existing Covered Buildings where no baseline data was received for 2019, CASR shall establish a reasonable baseline based on the building type and Benchmarking data from other years for that Covered Building if available.
 - iii. For existing Covered Buildings that have never completed a Benchmarking Submission, CASR shall establish a reasonable baseline based on information from the Assessor’s Office and median Denver benchmarking data for the building’s type.
 - iv. For new Covered Buildings, CASR shall establish a reasonable baseline based on the building type. CASR may set the baseline as the predicted EUI for that Covered Building if one was submitted as part of energy code compliance.
 - v. If 2019 does not reflect the building’s normal business operations, the covered building owner may apply to use 2018 or 2020 as their baseline.
- B. CASR will establish each Covered Building’s required interim targets for 2024 and 2027 by drawing a straight line from that Covered Building’s baseline EUI to the final EUI target for that building type.
- C. The timeline for establishing interim targets based on each Covered Building’s baseline and final target for the building type is as follows:
 - i. For existing Covered Buildings for which Benchmarking data for calendar year 2019 was properly reported, CASR will set required interim targets by May 1, 2022.
 - ii. For an existing Covered Building where no baseline data was received for 2019, CASR will set required interim targets by September 1, 2022.
 - iii. If CASR has determined a building type may be incorrect and has assigned a new building type, then CASR will set required interim targets for that building by September 1, 2022.
 - iv. For new Covered Buildings, CASR will set required interim targets within 6 months of receiving the first Benchmarking report for that building.

4.5 Target Adjustments.

- A. For buildings that have reached 80% whole building electrification by demonstrating 80% for the percent electricity metric, CASR will apply a 10% increase to the 2030 EUI target. CASR will evaluate the 2019 baseline of all buildings in December 2022 and apply this credit if applicable. Covered MAI buildings that have an approved alternate compliance option are not eligible for this credit.
- B. The Owner of a Covered Building may apply to adjust the final energy performance target of a Covered Building to account for significant variations in operations of the building, inherent characteristics of the building itself, Class B data centers, previous inaccurate benchmarking reports, or other reasons as defined by CASR. To apply for this adjustment, the Owner of a Covered Building must submit an application that provides the following:
 - i. Third-party data verification checklist
 - ii. Resubmission of benchmarking data for 2019, or other year as approved by CASR.
 - iii. Narrative detailing the building characteristics or functional variations that qualify for an adjustment

4.6 Performance Requirements

- A. Each Owner of a Covered Building shall maintain the interim targets each subsequent year and shall maintain the final energy performance target indefinitely.
- B. If the baseline for a new covered building is already below the 2030 EUI target for that building type, then the building must perform at or below the 2030 EUI target each year and must maintain the target indefinitely.
- C. A building owner shall, in the process of complying with this chapter, be in compliance with current building codes when perform renovations or upgrades.

4.7 Alternate Compliance Options

A Covered Building Owner may apply for one of the following alternate compliance options. CASR will review and, subject to CASR's discretion, approve alternate compliance applications. If CASR denies an alternate compliance application, the Covered building owner may appeal the decision.

A. Timeline Adjustment Option

The Owner of a Covered Building may apply to change the compliance timeline due to end of major equipment system life, the timing of a major renovation, change of building ownership or tenant, financial distress, electrification, benchmarking exemptions, or other similar reason.

- i. Equity Priority buildings may have additional reasons available to justify a timeline adjustment, such as limited access to capital due to restrictions on the financing of the building, or other similar reasons
 - a) The determination of a Covered Building's status as an equity priority building shall be at CASR's discretion. CASR's evaluation of a building's status shall include, but not be limited to, consideration of the following: presence of affordable housing; presence of non-profits and human service providers; and presence of building in area with high energy burden, asthma rates, low-income residents, and other social equity indicators.

- ii. To apply for this alternate compliance option, the Owner of a Covered Building must submit an application addressing each the following three components:
 - a) An Energy Audit that meets CASR-defined minimum requirements
 - b) A retrofit plan articulating which improvements will be made in the building, when such improvements will be made, and how those improvements will result in the building reaching its 2030 EUI target. The improvements should include the timely completion of measures that have a typical pay back of less than five years, operations and maintenance procedure improvements, and how the building will implement long-term payback measures. The plan should also include electrification feasibility for natural gas equipment and how the installation of renewables, on- or off-site could help the building achieve its 2030 EUI target.
 - c) Supporting documentation that validates the reason for requesting the timeline adjustment
- iii. To apply for this alternate compliance option, the Owner of a Campus can either submit an application for each building as outlined in Rule 4.7.A.ii, or submit a campus application addressing each of the following components:
 - a) A campus level Energy Audit that meets CASR-defined minimum requirements
 - b) A strategic energy management plan for the campus that includes operations and maintenance improvements, how the buildings will implement long and short term energy efficiency retrofits, and how the installation or purchase of renewables will enable the buildings 25,000 square feet and larger to meet their EUI targets. If the campus receives energy from a central energy plant, the plan may include improvements or replacement to the system and how that plan will help the buildings to meet their EUI targets.
 - c) Supporting documentation that validates the reason for requesting the timeline adjustment.

B. Electrification Option

The Owner of a Covered Building may apply to adjust the 2030 target with a 10% increase if at least 80% electrification of the whole building is an improvement goal by 2030. Covered MAI buildings are not eligible for this alternate compliance option. Achievement of this alternate compliance option will be measured by the building's percent electricity metric reaching 80% and demonstrating the adjusted 2030 EUI target (Rule 4.5.A). To apply for this alternate compliance option, the Owner of a Covered Building must submit an application addressing each the following two components:

- i. An electrification feasibility report that meets CASR-defined minimum requirements.
- ii. A retrofit plan articulating which improvements will be made in the building, when such improvements will be made, and how those improvements will result in the building reaching the goal of 80% whole building electrification and the adjusted 2030 EUI target. The improvements should include the timely completion of measures that have a typical pay back of less than five years,

operations and maintenance procedure improvements, and how the building will implement long-term payback measures. The plan should also include how the installation of renewables, on- or off-site could help the building achieve its 2030 EUI target.

C. 30% Reduction Property Type Adjustment Option

The Owner of a Covered Building that was issued a 30% reduction goal as the 2030 EUI Target, or a building that has been limited by the Landmark Preservation Board in what energy efficiency measures can be implemented, may apply for an adjustment to the 2030 EUI Target.

- i. To apply for this alternate compliance option, the Owner of a Covered Building must submit an application addressing each the following two components:
 - a) A completed Form D in Normative Annex C of ASHRAE 100 or equivalent ASHRAE Level 1 audit
 - b) Supporting documentation that validates the reason for the request
- ii. CASR will review the submission and meet with the Covered Building Owner to propose an adjusted target. If the Owner disagrees with the proposed target, the Owner will follow the instructions for the timeline adjustment application (Rule 4.7.A.ii) to request a different target assessment.

D. Manufacturing/Agricultural/Industrial (MAI) Option:

- i. To be eligible for the MAI Option, the Owner of a Covered MAI Building must apply for a MAI designation. Distribution centers and warehouses do not qualify unless a portion of the energy used in the building is consumed for manufacturing, agriculture, industrial process loads.
- ii. Owners of existing Covered MAI Buildings with an MAI designation may apply to use a compliance pathway and metric outlined in this section. The Owner of the Covered MAI Building must submit an application specifying the selection of one pathway, a corresponding metric, and additional information requested by CASR:
 - a) Performance Pathway
 - 1. The Owner of a Covered MAI Building must choose one of the following metrics to serve as the Covered MAI Building's 2030 target:
 - A. 30% EUI Reduction;
 - B. 30% Production Efficiency Improvement: Covered MAI Buildings pursuing this metric must report the Production Efficiency metric(s) in the annual Benchmarking Submission following CASR instructions;
 - C. EUI Target of 30; or
 - D. ENERGY STAR Energy Performance Indicator (EPI) Score of 75: only eligible plant types, as defined by the U.S. EPA's ENERGY STAR industrial program, may use this metric. Covered MAI Buildings pursuing this metric must submit a complete EPI Score spreadsheet with the annual Benchmarking Submission. Covered MAI Buildings pursuing this metric are not eligible for supplemental credits in Section

4.7.D.iv.

2. The Owner of a Covered MAI Building using the 30% EUI Reduction, the 30% Production Efficiency Improvement, and the EUI Target of 30 metrics are eligible to use renewable power generation long-term installations or contracts as a credit against the building's total energy usage per Section 4.8.C.i.
3. The Owner of a Covered MAI Building using the 30% EUI Reduction, the 30% Production Efficiency Improvement, and the EUI Target of 30 metrics are eligible for a Fossil Fuel Reduction Credit. Before the interim and final target evaluations, CASR will evaluate the Covered MAI Building's fossil fuel site energy usage using this calculation:
$$\frac{((\text{baseline year annual fossil fuel site energy usage}) - (\text{performance evaluation year annual fossil fuel site energy usage}))}{(\text{baseline year annual total site energy usage})} \times 100\%$$
. If the fossil fuel usage calculation is positive, the percent calculated will be credited to the 2030 target. The maximum possible credit is 10%.
4. Interim targets will be established per Section 4.4.A and 4.4.B using the baseline from the Benchmarking Submission for the 2022 calendar year, or other baseline year as approved by CASR.
5. Each Owner of a Covered MAI Building following this pathway shall maintain the interim targets each subsequent year and shall maintain the final energy performance target indefinitely.
6. In the Benchmarking Submission due on June 1, 2027, the Owner of a Covered MAI building will demonstrate that the Covered Building has met the interim energy performance target for calendar year 2026.
7. In the Benchmarking Submission due on June 1, 2031, the Owner of a Covered MAI building will demonstrate that the Covered Building has met the final energy performance target for calendar year 2030.

b) Prescriptive Pathway

1. The Owner of a Covered MAI Building must choose one of the following metrics to measure compliance through the completion of energy efficiency measures that equal to:
 - A. an estimated 30% EUI Reduction; or
 - B. an estimated 30% Production Efficiency Improvement.
2. Demonstration of compliance shall be as follows:
 - A. The Owner of the Covered MAI Building must submit an application by December 1, 2024 that addresses the following components: an energy audit that meets CASR-defined minimum requirements and Action Plan that articulates how the building will meet the metric chosen in Section 4.7.2.b.1. The Owner of a Covered MAI Building may use renewable power generation per Section 4.8.C.i as part of their Action Plan.
 - B. The Owner of the Covered MAI Building must submit an Interim

Implementation Report by March 1, 2027 demonstrating that the energy efficiency measures due by this date have been completed.

- C. The Owner of the Covered MAI Building must submit a Final Implementation Report by March 1, 2030 demonstrating that all energy efficiency measures in the Action Plan have been completed.
 - D. The Owner of the Covered MAI Building must submit an Evaluation, Monitoring, and Verification Report by June 1, 2031 demonstrating the building's progress towards the metric chosen in Section 4.7.2.b.1.
 - E. If the Evaluation, Monitoring, and Verification Report demonstrates less than a 20% reduction, the Owner of the Covered MAI Building must implement a Corrective Action Plan. The Owner of the Covered MAI Building must submit a Corrective Action Plan Report by June 1, 2032; and
 - F. Following the completion of the Prescriptive Pathway, the Owner of a Covered MAI Building shall maintain the efficiency of the chosen metric in Section 4.7.D.ii.b.1 indefinitely. The efficiency level shall be equal to the metric achieved in the 2030 calendar year Benchmarking Submission. If the building owner must complete the actions in Section 4.7.D.ii.b.2.E, the efficiency level to maintain shall be determined with the 2031 calendar year Benchmarking Submission.
3. If an Owner of a Covered MAI Building following the Prescriptive Pathway does not demonstrate compliance with any action in Section 4.7.2.b.2, the building will default to the Performance Pathway in Section 4.7.2.a with the 30% EUI Reduction metric for compliance evaluation purposes.
- iii. Owners of New Covered MAI Buildings that have received a MAI designation may apply to use a compliance pathway outlined in this section. The Owner of the New Covered MAI Building must submit an application addressing the selection of one pathway, a copy of the certificate of occupancy, and additional information requested by CASR:
- a) Performance Pathway, Renewable Power Generation
 - 1. The Owner of a New Covered MAI Building must demonstrate that at least 30% of annual site energy usage is covered by renewable power generation long-term installations or contracts per Section 4.8.C.i in the second full calendar year of benchmarking and annually thereafter, due at the time of the benchmarking submission.
 - b) Performance Pathway, Efficiency Maintenance
 - 1. The Owner of a New Covered MAI Building must choose one of the following metrics to maintain through 2030 and annually thereafter, with the metric choice due to CASR at the time the covered MAI building's second benchmarking report is due.
 - A. EUI
 - B. Production Efficiency

C. ENERGY STAR Energy Performance Indicator Score of 75

4.8 Demonstration of Compliance

Compliance with targets shall be demonstrated through the weather-normalized site EUI via Benchmarking Submissions with credits from other metrics and/or submissions outlined in this section.

A. Reporting energy performance

- i. Owners of Covered Buildings with a Gross Floor Area equal to or greater than twenty-five thousand (25,000) square feet shall use the ENERGY STAR Portfolio Manager tool, and report to CASR the following:
 - a) In the Benchmarking Submission due on June 1, 2025, a demonstration that the Covered Building has met the interim energy performance target for calendar year 2024.
 - b) In the Benchmarking Submission due on June 1, 2028, a demonstration that the Covered Building has met the interim energy performance target for calendar year 2027.
 - c) In the Benchmarking Submission due on June 1, 2031, a demonstration that the Covered Building has met the final energy performance target for calendar year 2030.
 - d) If the Covered Building has an approved timeline adjustment, the demonstration of compliance method and due dates will be stated in the timeline adjustment agreement.
- ii. Maintenance of the interim and 2030 EUI targets shall be demonstrated annually using the Covered Building's Benchmarking Submission.
- iii. If a Covered Building is exempt from Benchmarking in a given compliance year, then the building must comply through an alternate compliance option.

B. Electrification Credit Application

Before each interim and final target evaluation, CASR will evaluate the percent electricity metric of all eligible buildings. If the building reaches 80%, CASR will apply a 10% increase to the 2030 EUI Target.

C. Reporting Renewable Power Generation

Renewable power generation on-site or off-site, as measured in kWh delivered to the grid by the system, will be credited towards the building's total energy use. To report renewable generation, a Covered Building Owner shall submit one of the following:

- i. Long-term Installations or Contracts:
 - a) For on-site renewable installations, the kWhs generated each year shall be reported along with proof that the equipment is installed in the form of a bill from the developer or other means.
 - b) For off-site renewable installations, the kWhs generated each year shall be reported along with proof of an off-site renewable capacity contract or interconnection agreement for the off-site solar equipment.

1. For off-site renewables owned by the Covered Building Owner, proof of interconnection must be submitted in addition to the kWh delivered annually.
 2. For off-site renewables owned by a third party, the Covered Building Owner must provide evidence of a subscription, lease, or purchase of a share in either a voluntary renewable energy program offered by Xcel Energy or a community solar project for which a dedicated renewable energy resource located in Public Service Company of Colorado territory is built for that customer program, and which has dedicated customer capacity or energy to fulfill that customer's subscription. The term of purchase must be at least five (5) years and must be renewed a minimum of every five (5) years for the life of the Covered Building for purposes of compliance with this rule. In addition to providing such evidence, the Owner shall also annually report to CASR the kWh delivered each year under the contract.
- ii. Short-term Contracts:
- a) The Covered Building Owner must report the kWhs generated each year along with evidence of a subscription, lease, or purchase of a share in either a voluntary renewable energy program offered by Xcel Energy or a community project for which a dedicated renewable energy resource located in Public Service Company of Colorado territory and which has dedicated customer capacity or energy to fulfill that customer's subscription.
 - b) Short-term contract renewable generation is allowed on the following scale:
 1. 2024, 2025, 2026 performance periods: up to 20% of the building's electricity usage
 2. 2027, 2028, 2029 performance periods: up to 10% of the building's electricity usage
 3. 2030 and beyond: short-term contracts not allowed
- iii. If an Owner can demonstrate that the building's renewable energy sources are a confidential business practice that includes trade secrets, privileged, or confidential commercial information, the Owner can submit a request for the renewable generation submission to be kept confidential and not subject to Colorado Open Records Act requests or included in open data disclosures.
- iv. CASR may request copies of contracts, agreements, or generation reports at any time to verify compliance.

SECTION 5 – EXISTING BUILDING PERFORMANCE REQUIREMENTS FOR COVERED BUILDINGS WITH A GROSS FLOOR AREA OF 5,000-24,999 SQUARE FEET

5.1 Prescriptive Performance Requirements

Owners of Covered Buildings with a Gross Floor Area of 5,000-24,999 square feet that had received their Certificate of Occupancy or Temporary Certificate of Occupancy on or before November 22, 2021 must complete one of the following prescriptive requirements:

- A. certify that a minimum of 90% of the building's total lighting load is provided by LED lights, or that all lighting meets 2019 Denver Building and Fire Code for lighting power density, or
- B. utilize on- or off-site renewable power generation to meet a minimum of 20% of the building's annual site energy usage.

5.2 Compliance Schedule

Owners of Covered Buildings will be required to comply with the following schedule:

- A. December 31, 2025: buildings 15,001-24,999 square feet in gross floor area
- B. December 31, 2026: buildings 10,001-15,000 square feet in gross floor area
- C. December 31, 2027: buildings 5,000-10,000 square feet in gross floor area

5.3 Alternate Compliance Options

An Owner of a Covered Building may apply for one of the following alternate compliance options. CASR will review and, subject to CASR's sole discretion, may approve alternate compliance applications.

A. Timeline Adjustment Option

The Owner of a Covered Building may apply to change the compliance timeline due to the timing of a major renovation, Landmark Preservation Commission reviews, change of building ownership or tenant, financial distress, buildings with business activities that would require major interruption to production to implement compliance measures, delays in obtaining an interconnection agreement from Xcel Energy for on-site renewable energy systems that have been installed, or other similar reason.

- i. Equity Priority buildings may have additional reasons available to justify a timeline adjustment, such as limited access to capital due to restrictions on the financing of the building, or other similar reasons.
 - a) The determination of a Covered Building's status as an Equity Priority building shall be at CASR's discretion. CASR's evaluation of a building's status shall include, but not be limited to, consideration of the following: presence of affordable housing; presence of non-profits and human service providers; and presence of building in area with high energy burden, asthma rates, low-income residents, and other social equity indicators.
- ii. To apply for this alternate compliance option, the Owner of a Covered Building must submit an application addressing each the following two components:
 - a) A retrofit plan articulating which improvements will be made in the building, when such improvements will be made, and how those improvements will result in the building reaching its chosen prescriptive target.
 - b) Supporting documentation that validates the reason for requesting the timeline adjustment.

- iii. To apply for this alternate compliance option, the Owner of a Campus can submit a single application for the campus that details each building as outlined in Section 5.3.A.ii.

B. Residential Condominium Building Option

Residential condominium homeowner associations, boards, or a group of condominium owners may apply to perform specific energy efficiency measures listed below in all common spaces. No actions would be required for individual condominium units.

- i. The required energy efficiency measures are:
 - a) 100% of the lighting load of common spaces provided by LED lights
 - b) Occupancy sensors (with or without step-dimming) installed on all lighting in common spaces as allowed by the City and County of Denver's Building and Fire Codes
 - c) 100% of annual electricity usage for common spaces provided by on- or off-site renewables. Use of on- or off-site renewables shall follow the requirements as outlined in Section 5.4.B, with the exception that renewable energy must cover 100% of the common space annual electricity usage.
- ii. To apply for this alternate compliance option, the Owner(s) of a Covered Building must submit an application addressing each the following components:
 - a) A completed ASHRAE Level 1 audit report that meets CASR-defined minimum requirements
 - b) A retrofit plan that articulates the common spaces covered under this option, what energy efficiency measures will be installed in these common spaces to demonstrate compliance, and when the improvements will be made
 - c) Other supporting documentation that would help CASR make an approval determination.
- iii. The Owner(s) of a Covered Building must demonstrate compliance with this alternate compliance option by submitting:
 - a) Documentation from a certified, third-party lighting professional verifying that a minimum of 100% of the lighting load of the building's common spaces, is provided by LED lights, and occupancy sensors (with or without step-dimming) have been installed on all lighting in common spaces as allowed by the Denver Building & Fire Codes.
 - b) Renewable Power Generation:
 - 1. For on-site renewables: the annual electricity usage of the building's common spaces, as reported through ENERGY STAR Portfolio Manager Statement of Energy Use or other CASR-approved reporting platform; interconnection agreement with Xcel Energy; and documentation from the installer that verifies the kW capacity of the system and the estimated kWh generated by the system annually.
 - 2. For off-site renewables owned by the Covered Building Owner: the annual site electricity of the building's common spaces, as reported

through ENERGY STAR Portfolio Manager Statement of Energy Use or other CASR-approved reporting platform; interconnection agreement with Xcel Energy; and documentation from the installer that verifies the kW capacity of the system and the estimated kWh generated by the system annually.

3. For off-site renewables owned by a third party, the Covered Building Owner must provide the annual electricity usage of the building's common spaces, as reported through ENERGY STAR Portfolio Manager Statement of Energy Use or other CASR-approved reporting platform, as well as evidence of a subscription, lease, or purchase of a share in either a voluntary renewable energy program offered by Xcel Energy or a community solar project for which a dedicated renewable energy resource located in Public Service Company of Colorado territory is built for that customer program, and which has dedicated customer capacity or energy to fulfill that customer's subscription. The term of purchase must be at least five (5) years. Month-to-month subscriptions do not meet the criteria for compliance. Existing subscriptions can be retroactively credited from November 22, 2021.

- c) CASR may conduct on-site audits of buildings or request copies of contracts or generation reports to verify compliance.

C.15% Energy Usage Reduction Option

The Owner of a Covered Building may apply to implement an alternate energy efficiency measure that would result in a minimum 15% reduction in annual site energy usage for a continuous 12-month period after the energy efficiency measure is completed.

Operational and/or behavior improvements, or installation of fossil-fuel powered space and water heating equipment cannot be proposed alternate energy efficiency measures. Energy efficiency measures completed on or after November 22, 2021 may be counted for compliance if the requirements listed below can be demonstrated.

- i. To apply for this alternate compliance option, the Owner of a Covered Building must submit an application addressing each the following components:
 - a) An energy audit that meets CASR-defined minimum requirements, specifically addressing the estimated energy savings from the proposed energy efficiency measures.
 - b) Total annual site energy usage of the building for one previous calendar year, using ENERGY STAR Portfolio Manager or CASR-approved reporting platform. The owner may choose any 12-month calendar year from 2022 onwards to serve as the baseline year.
 - c) A retrofit plan articulating which improvements will be made in the building, when such improvements will be made, and how those improvements will result in the building reaching a minimum 15% reduction in annual site energy usage.
- ii. The Owner(s) of a Covered Building must demonstrate compliance with this alternate compliance option by submitting:
 - a) Copy of original invoice(s) which confirms installation of all improvements articulated in the retrofit plan

- b) Copy of relevant City & County of Denver building permits required for installation of approved improvements
- c) Total annual site energy usage of the building for one calendar year after the installation is complete, using ENERGY STAR Portfolio Manager or CASR-approved platform.

5.4 Demonstration of Compliance

A. Lighting

Owners of Covered Buildings must verify that a minimum of 90% of the building's total lighting load is provided by LED lights by submitting documentation from a certified, third-party lighting professional. Buildings that were constructed or completely remodeled since August 1, 2020 and were permitted under the City and County of Denver's 2019 or subsequent Building and Fire Codes may submit a copy of their final construction permit as proof of compliance.

B. Renewable Power Generation

To demonstrate that a building has installed renewable power generation capacity, or purchased off-site renewables that generate enough power to meet a minimum of 20% of the building's annual energy usage, the Owner of a Covered Building must submit the following:

- i. For new installations of on-site renewables: the annual site energy usage of the building, as reported through ENERGY STAR Portfolio Manager Statement of Energy Performance or other CASR-approved reporting platform; interconnection agreement with Xcel Energy; and documentation from the installer that verifies the kW capacity of the system and the estimated kWh generated by the system annually.
- ii. For existing installations of on-site renewables: the annual site energy use of the building, as reported through ENERGY STAR Portfolio Manager Statement of Energy Use or other CASR-approved reporting platform; interconnection agreement with Xcel Energy; and a copy of the invoice and/or installation contract with the installer that details the estimated annual kWh produced by the system.
- iii. For off-site renewables owned by the Covered Building Owner: the annual site energy usage of the building, as reported through ENERGY STAR Portfolio Manager Statement of Energy Performance or other CASR-approved reporting platform; interconnection agreement with Xcel Energy; and documentation from the installer that verifies the kW capacity of the system and the estimated kWh generated by the system annually.
- iv. For off-site renewables owned by a third party: the annual site energy usage of the building, as reported through ENERGY STAR Portfolio Manager Statement of Energy Performance or other CASR-approved reporting platform, as well as evidence of a subscription, lease, or purchase of a share in either a voluntary renewable energy program offered by Xcel Energy or a community solar project for which a dedicated renewable energy resource located in Public Service Company of Colorado territory is built for that customer program, and which has dedicated customer capacity or energy to fulfill that customer's subscription. The term of purchase must be at least five (5) years. Month-to-month subscriptions do not meet the criteria for compliance. Existing subscriptions can be retroactively credited from November 22, 2021.

- C. Verification.** CASR reserves the right to conduct on-site audits of buildings or request

additional information to verify compliance.

- 5.5** Owners of Covered Buildings are required to retain contracts, invoices, reports, or any documentation used to prove compliance for a minimum of two (2) years after compliance is approved. CASR may request copies of contracts, agreements, or generation reports at any time to verify compliance.

SECTION 6 – DISCLOSURE UPON SALE.

The Owner of a Covered Building shall disclose the Covered Building’s compliance status, including any energy usage data or energy audits completed on the building, any information, plans, or reports submitted to CASR for compliance, the current compliance status of the building, any approved alternate compliance option paperwork, and any penalties assessed to a prospective buyer prior to the sale of the Covered Building.

The Owner shall disclose to all prospective buyers the Covered Building’s compliance status in all documentation or advertising concerning the sale of the Covered Building including, but not limited to, any listings, notices, advertisements of sale, term sheets, and contracts of sale.

SECTION 7 – ENFORCEMENT AND PENALTIES

- 7.1** CASR will notify an Owner of errors in data the Owner has submitted to CASR in the Benchmarking Submission, including but not limited to, energy use data, renewable generation and capacity, use attributes, building information, calculations, or results. The Owner shall correct such errors, submit the updated report to CASR, and notify CASR of the updated submission. Failure to correct the errors or failure to submit a Benchmarking Submission shall be a violation of this rule.
- 7.2** It is unlawful for any person to violate any provision of this rule.
- 7.3** If CASR finds that an Owner has not complied with any provision of this Rule, a Notice or Order may be issued.
- 7.4** If the Owner appeals an Order, the Director will appoint a hearing officer to review the complaint and render a decision concerning the facts supporting the alleged violation with the appeals process in Rule 7.5 and D.R.M.C. Chapter 2, Article XII.
- 7.5** This section pertains to filing an appeal and the hearing process. This section governs all proceedings initiated after the effective date of these Rules. All documents to be filed with the Director must be submitted through the online form or delivered to CASR at 201 W. Colfax Avenue, 7th floor, Denver, CO 80201.
- A. Initiating an Appeal**
- i.** Any person aggrieved by a Notice or Order issued by CASR, who believes the same to be factually or legally contrary to the ordinances of the city, or the policies and regulations of the department, may appeal the Notice or Order to the Director in the manner set forth in this section.
 - ii.** An appeal is initiated by filing a Petition for Review of a Notice or Order. The Petition, together with a nonrefundable filing fee, must be filed within thirty (30) days from the date of service of the Notice or Order being appealed, or within a time period outlined in the Notice or Order.

- iii. The filing fee for an appeal of a Notice or Order is \$25.00. Payments by check must be payable to the Manager of Finance.
 - iv. Timely filing of the Petition and payment of the filing fee are jurisdictional prerequisites to an appeal.
- B. Petition for Review**
- i. Content. All petitions, briefs, and other papers must be written or typed, and if any of these papers are illegible, the Manager may refuse to accept the filing. No particular form of Petition is required, provided the information set forth below is included:
 - a) Petitioner's name, mailing address, and telephone number.
 - b) If Petitioner has legal representation, the name, mailing address, and telephone number of that representative.
 - c) The Code provision(s) and, if any, the rule and regulation at issue; the dollar amount in controversy; and the time during which the matter at issue accrued or occurred. A copy of the Notice or Order under appeal.
 - d) The reason(s) Petitioner believes the Notice or Order is factually or legally contrary to the ordinances of the city, or the policies and regulations of the department.
 - e) A statement of the relief requested (i.e., outcome desired).
 - f) If appropriate, any exhibits (including any drawings, floor plans, or pictures) supporting Petitioner's position.
 - g) The signature of the Petitioner or Petitioner's legal representative.
- C. Sufficiency.**
- If a legible Petition is timely filed with the filing fee and substantially complies with Rule 7.5(B)(i)(a), the hearing clerk shall accept the Petition. If the Petition is illegible or does not substantially comply with Rule 7.5(B)(i)(a), the hearing clerk may refuse to accept the filing, but must provide written notice to the Petitioner describing the deficiency.
- D. Parties; Representation; and Service of Documents.**
- i. Parties. The parties to a hearing are member(s) of the CASR program staff on behalf of the City as the Respondent, and the Petitioner (the person or entity, to whom the appealed Notice or Order was issued..
 - ii. Representation. A natural person may represent himself or herself or be represented by an attorney admitted to practice in any of the United States. If the Petitioner is not a natural person or sole proprietor, it must be represented by an attorney admitted to practice in any of the United States unless the Director allows a shareholder, member, partner, board member, or officer to represent the business entity. In this case, the representative of the business entity must submit a properly executed power of attorney at or before the hearing.
 - iii. Service of Documents. Upon filing any document with the Director, the party filing the document shall provide a copy of all documents filed to the other.
- E. Responsibilities of the Director and/or Hearing Officer.**

- i. **Determination of Each Appeal.** The Director and/or Hearing Officer shall conduct a hearing on each accepted Petition, including those submitted for determination based on written argument and written statement of facts.
 - ii. **Assignment of Hearing Officer.** The Director, at their sole discretion, may delegate the conduct of the hearing or the review of a matter submitted for determination based on written argument and written statement of facts to a Hearing Officer.
 - iii. **Necessary and Incidental Duties and functions.** The Hearing Office and/or Manager shall perform the duties and functions necessary and incidental to determining the matter, hearing all evidence, examining all documents, ruling on evidentiary questions, and generally conducting a quasi-judicial proceeding in conformance with the Code, these Rules, and other applicable rules and regulations.
 - iv. **Subpoenas.** Upon request by any party, the Director and/or Hearing Officer may issue a subpoena. The party requesting the subpoena shall serve it upon the person whose attendance is required and provide notice to all other parties and interested persons in accordance with Rule 45 of the Colorado Rules of Civil Procedure. All costs related to the subpoena, including witness and mileage fees, must be paid by the requesting party in accordance with Rule 45.
 - v. **Hearing Date.**
 - a) Generally, hearings will be scheduled in the order petitions are filed but may be scheduled out of order as the hearing clerk finds appropriate. If requested, the hearing clerk may grant each party one rescheduling request. At the request of either party, the Director may grant continuances for good cause shown.
 - b) No later than ten (10) days before the hearing, the hearing clerk shall provide written notice of the date, time, and place of all hearings to the parties. Written notice must be sent to the Petitioner via first class mail at the address specified in the Petition and to the Manager of the appropriate division.
 - vi. **Ex Parte Communications.** All oral and written communications between any party with the Director or the Hearing Officer that are not on the record, concern the subject matter of the appeal, and are made without the other party present or copied on written correspondence are prohibited.
- F. The Hearing.**

The following rules apply to all hearings on petitions for review of a Notice or Order. The Director, as that term is used in this Rule, includes an appointed Hearing Officer.

- i. **CASR Response.** CASR may file a response to the Petition and provide other information to the Hearing Officer that it believes will assist in deciding the matter. The response is due within 14 days of the Office's receipt of the Petition.
- ii. **Petitioner's Appearance/Failure to Appear.** Any Petitioner who fails to appear at a scheduled hearing waives the right to a hearing and adjudication of issues related to the hearing, provided that notice of the hearing was mailed in the time and manner set forth in Rule 7.5(E)(v). Failure to appear at a hearing that is noticed in accordance with those requirements, may result in dismissal of the Petition and affirmation of the Notice or Order.

- iii. Prehearing Statement. At the request of any member or upon a motion from a party, the Director may require the parties to file a prehearing statement. The purpose of a prehearing statement is to define the issues to be presented; identify the witnesses and exhibits to be presented, the time required for the hearing; and disclose generally the nature of the testimony to be presented to allow a fair hearing of the issues. The prehearing statement must be filed at least five (5) business days before the hearing date, or as otherwise ordered by the Hearing Officer. The prehearing statement must present the issues raised by the Petition, agreed and disputed facts, copies of exhibits not included with the Petition, names of witnesses with a brief statement summarizing their testimony, and if either party expects that more than 15 minutes will be needed to present their case, a request for a specific amount of time. Petitioner's exhibits must be numbered and the Office's exhibits must be lettered. If a prehearing statement is required and a party fails to list witnesses or to provide copies of exhibits to the prejudice of the other party or the Hearing Officer's consideration of the issues, the Hearing Officer may disallow testimony by unlisted witnesses and may refuse to admit unlisted exhibits into evidence, except for purposes of rebuttal.
- iv. Order of proceedings. The order of proceedings will be:
 - a) Docket call by the Hearing Officer.
 - b) Administration of Oath.
 - c) Opening statement by a representative of the Office, unless waived or reserved until the opening of CASR's case.
 - d) Opening statement by Petitioner, unless waived.
 - e) Presentation of testimony and other evidence by Petitioner, allowing cross-examination by CASR (exhibits shall be lettered for identification).
 - f) Presentation of testimony and other evidence by CASR with cross-examination by Petitioner (exhibits shall be numbered for identification).
 - g) Rebuttal testimony and evidence, if any.
 - h) Sur-rebuttal testimony and evidence, if the Hearing Officer chooses.
 - i) Argument, if is desired by the Hearing Officer:
 - (i) Closing argument by Petitioner summarizing the evidence, legal basis, and argument in support of its position. If the Petitioner chooses not to present a closing argument, none shall be allowed by CASR.
 - (ii) Closing argument by CASR summarizing the evidence, legal basis, and argument in support of its position.
 - j) Instead of or in addition to argument, the Hearing Officer may request the submission of written briefs.
- v. Testimony under Oath. All oral testimony must be given under oath administered by the Hearing Officer in substantially the following form: "Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?" with a required affirmative response.

vi. Rules of Procedure and Rules of Evidence. The hearings shall be conducted generally in accordance with these Rules regardless of whether it conforms to common law or statutory rules of procedure or rules of evidence. The Director may receive and consider evidence not admissible under the Colorado Rules of Evidence if it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The Hearing Officer may use the experience, technical competence, and specialized knowledge of any of its members in the evaluation of evidence presented.

vii. Burden of Proof.

- a) Notices and Orders of the Manager are presumed to be correct. The Notice or Order serves as prima facie evidence of the existence of the violation.
- b) The Petitioner has the burden of persuasion and must prove by a preponderance of the evidence (presented at the hearing or submitted by written brief and supporting material) that the Notice or Order is legally contrary to the applicable ordinances, rules, and regulations or that the facts presented do not show a violation of the applicable ordinance or rules and regulations.
- c) For procedural efficiency, the order of proceedings may be altered to require the Office to present its case in support of the Notice or Order first. The burden of persuasion, however, remains with the Petitioner to show the correctness of its position by a preponderance of the evidence.

viii. Expert Witnesses. A witness intending to give opinion testimony must first be qualified as an expert.

ix. Recordings and Transcripts. All hearings must be recorded or transcribed. A copy of the recording or transcript of a recording will be provided at the expense of the party who requests it.

G. Presentation of Case at Hearing.

- i. Time Allowed. The Petitioner and the CASR will each have fifteen minutes to present their respective cases (opening statement, presentation of evidence, rebuttal evidence, and closing statement) to the Hearing Officer unless one of the parties has requested more time to present its case. Cross-examination time is not included in the fifteen-minute time limit. A request for additional time must be made in the prehearing statement if one is required. Otherwise, the request must be made in writing at least seven days before the hearing. In determining whether and how much additional time to allow, the Hearing Officer shall consider the complexity of the case, the needs of due process, and fairness to the Parties. This Rule is intended to afford a full and fair hearing of each Petition in an orderly and expeditious manner that will allow for prompt hearing of Petitions.
- ii. Copies. Copies made by printers and by duplicating and facsimile machines may be admitted into evidence or substituted in evidence in place of original documents.
- iii. Electronic Documents. An electronic document, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature may be admitted into evidence or substituted in evidence in place of original documents.

H. Submission on Written Briefs.

A Petitioner may choose to submit the case on written briefs, supporting data, affidavits, or stipulated facts rather than through oral testimony at a hearing. If the Petitioner chooses to submit a case on written briefs:

- i. He or she must provide written notice of this election to the Manager at least seven (7) days before the hearing;
- ii. CASR is limited to submitting its position in writing.
- iii. The Hearing Officer shall establish a briefing schedule and provide written notice of it to the parties.

I. Recommended Decision.

- i. Timing. The Hearing Officer shall make a written Recommended Decision, which must be sent to Petitioner by first class mail, postage prepaid and provided to CASR within 30 days of the date of the hearing.
 - a) Outcome.
If Petitioner did not carry its burden of persuasion, the Hearing Officer may: uphold the Notice or Order; uphold, suspend, or reduce the civil penalty; and require payment of any outstanding assessed civil penalties and costs by a specified date.
 - b) If Petitioner carried its burden of persuasion, the Hearing Officer may dismiss the Notice or Order and overturn the assessment of civil penalties.
- ii. Effect. Unless a party timely requests the Director to review a Hearing Officer's Recommended Decision in accordance with Rule 7.5(J), the Recommended Decision becomes the Decision of the Director on the date it is served upon Petitioner by personal service, or if served via U.S. Postal Service, ten days after it is sent first class mail, postage prepaid.

J. Petition for Director Review of Recommended Decision.

- i. Any party may file a Petition for Director Review of the Hearing Officer's Recommended Decision. The Petition must be filed with the Director within ten (10) days of mailing of the decision. For the purpose of this filing requirement, for a Petition sent via first class mail, postage prepaid, or via overnight delivery service, the date of filing will be the date postmarked or delivered to the City, respectively.
- ii. No particular form of Petition for Director Review of the Hearing Officer's Recommended Decision is required, provided that the following information is set forth in writing:
 - a) The case number;
 - b) A summary of the party's objections to the Hearing Officer's findings of fact, conclusions of law, and Recommended Decision;
 - c) A statement of the relief requested;
 - d) The name, address and telephone number of the party seeking Director review of the Recommended Decision, and the name, address, and telephone number of that party's legal representative, if any, authorized to present them in the matter; and,

- e) The signature of the party seeking Director review of the Recommended Decision or of that party's legal representative.
 - iii. The Director is not bound by a Hearing Officer's Recommended Decision; the Director's review of Recommended Decisions, however, is limited to the administrative record established at the underlying hearing before the Hearing Officer.
 - iv. The administrative record includes all filings and documents provided to the Hearing Officer before and during the hearing. If the matter was submitted for determination on written briefs, the administrative record includes the Recommended Decision, filings and documents submitted. An index of the administrative record shall be provided to the parties at the time the record is provided to the Director. The administrative record should be provided to the Director at least seven days before the meeting at which it is scheduled for Director review.
- K. Final Decision; Compliance.**
- i. When the Director issues a decision either after hearing or determining an appeal in the first instance or after the Director reviews a Recommended Decision, its decision becomes the Final Decision that is subject to review under Rule 106(a)(4), C.R.C.P.
 - ii. If a Petition for Director review of a Recommended Decision is not filed within ten (10) days, the Recommended Decision becomes the Final Decision.
 - iii. All Final Decisions must be complied with. If a Final Decision includes a conditional waiver of any civil penalty, in whole or in part, and Petitioner does not fully comply with the conditions, the civil penalty is automatically reinstated in its entirety without further Director action.
- 7.6 Severability.** If a court of competent jurisdiction finds any provision of the Enforcement and Penalties section, including any portion of it, or the application of it to be invalid, the invalidity of the remaining provisions, and portions of them, will not be affected. Each provision of this section, including any portion of them, is severable.
- 7.7 Other Requirements.** Mailings, notices, computations of time, time limitations, service and filings must conform to the requirements of the particular law or rule or regulation involved, and in any instance where these Rules are inconsistent or allegedly inconsistent with the provisions in such law, rule or regulation, the Director's determination about which requirement applies controls.
- 7.8** The Director, or the Director's designee, is empowered to enforce the provisions of this rule as provided in Article XIV of Chapter 10 of the D.R.M.C.