

R E A L E S T A T E

A L E R T

SEPTEMBER
2013ARE YOU READY FOR PHILADELPHIA'S OCTOBER 31,
2013 BUILDING BENCHMARKING DEADLINE?*By Joyce C. Sun*

In 2012, the City of Philadelphia enacted Section 9-3402 of the Philadelphia Code. The new section requires annual reporting of energy usage, water usage, and other attributes for all buildings in the City with more than 50,000 square footage of commercial space. The new Section defines commercial space broadly, and additional guidance issued by the City suggests that all non-residential space is potentially commercial space. While certain industrial buildings and buildings where 50 percent or more of the commercial floor space has been vacant for more than 180 days are eligible for an exemption from the City's Office of Sustainability, the commercial portions of mixed-use buildings are subject to reporting if they contain more than 50,000 square feet of commercial space. Earlier in 2013, the City's Office of Sustainability sent letters to the approximately 2,000 buildings in the City that it believes to be subject to Section 9-3402.

Section 9-3402 imposes a variety of obligations. Primary among them is the requirement that owners of qualifying buildings submit an annual report on energy usage, water usage, and other attributes for their building. The annual report will be provided to the City through the EPA's ENERGY STAR Portfolio Manager website. Except for owners that receive an exemption from public disclosure from the Office of Sustainability, reports will be publicly available on the Internet.

The first compliance deadline for reporting is for data for calendar year 2012, which must be submitted to ENERGY STAR Portfolio Manager by October 31, 2013. For subsequent calendar years, the deadline is June 30 of the following year. Failure to submit benchmarking data within 30 days of the deadline will incur a penalty of \$300. Each day after the 30-day

period that the report remains outstanding is a separate violation subject to an additional fine of \$100 per day. While some commercial buildings in Philadelphia already use the ENERGY STAR Portfolio Manager system, owners and landlords should review the additional guidance provided by the City on Section 9-3402, including the Data Collection Worksheet that sets forth the City's requirements that owners of certain buildings provide information for fields marked as "optional" by ENERGY STAR Portfolio Manager.

The new benchmarking requirements impose a variety of other obligations, including ones not described in this *Alert*. Owners of qualifying buildings will want to familiarize themselves not only with Section 9-3402, but also the associated regulations and the forms and worksheets issued by the City, all of which are available at <http://www.phillybuildingbenchmarking.com>. For example, owners and landlords of qualifying buildings must give a copy of the most recent benchmark report to any prospective buyer or tenant that asks for it. In addition, the regulations require that upon the sale of an occupied qualifying building, the former owner must turn over all information necessary for the buyer to report benchmarking information for the entire year. The regulations also require owners of qualifying buildings to retain for three years utility readings, confirmation of their submissions to ENERGY STAR Portfolio Manager, copies of submitted data, and documentation supporting any exemption from the requirements of Section 9-3402.

Commercial landlords will particularly want to familiarize themselves with Section 9-3402 and associated documentation, as they contain detailed requirements for benchmarking tenant-occupied space in qualifying buildings. For example, Section 9-3402(3) states

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that landlords are not automatically relieved of the obligation to report energy and water usage data for leased commercial space, even if the space is being separately submetered. Section 9-3402(3) goes on to specify deadlines by which landlords must request benchmarking information from tenants, when tenants must respond, and how landlords must obtain benchmark information upon tenant vacating. Among other matters, the regulations also provide that even if the entirety of a qualified building is leased to a single tenant, the landlord is not relieved of benchmarking obligations unless tenant has assumed the obligation in writing using the Single Tenant Delegation Form issued by the City.

In conclusion, while many commercial buildings in the City already conduct some form of benchmarking, Section 9-3402, the associated regulations and the supplementary materials issued by the City impose new obligations. Building property managers should determine whether their buildings are subject to Section 9-3402, as well as familiarize themselves with the associated guidance. In addition, given the range of obligations imposed by Section 9-3402, owners, landlords, and purchasers of commercial space in the City may want to revise their forms and document retention policies to ensure compliance. ♦

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