**TO:** Philipp Muessig

Program Coordinator

Minnesota Pollution Control Agency

**FROM:** Ben Rabe

Senior Policy Associate

Fresh Energy

**DATE:** February 15, 2017

**SUBJECT:**  Sample Municipal Ordinance Requiring Disclosure of Energy Usage for Residential Rental Properties

Fresh Energy has prepared the attached sample municipal ordinance requiring the disclosure of energy usage for residential rental properties as part of a GreenStep Cities grant from the Minnesota Pollution Control Agency. It was drafted with feedback from a stakeholder group in Bemidji, Minnesota including the City Manager, the city’s rental inspector, the regional planning director, two representatives from the local economic development organization, sustainability director from Bemidji State University and the Northwest CERTs regional director.

Disclosing energy costs to potential renters helps creates market clarity so renters can more accurately budget housing costs and choose potentially more energy-efficient apartments. Landlords who are required to disclose energy costs to potential renters are incentivized to make energy efficiency improvements as well – confronting the “split incentive” efficiency issue between renters and landlords.

After contacting utilities around the state - investor owned utilities, municipal utilities and cooperative utilities - we learned that utilities of all three types would provide tenant monthly average energy usage and costs to landlords and property managers over a twelve or more month period. However, currently, most utilities would not provide, without altering their internal data sharing policies, individual monthly data to landlords on tenant usage - the highest billed month and lowest billed month of service during the previous 12 months.

SAMPLE ORDINANCE

**RESIDENTIAL DISCLOSURE OF UTILITY COSTS TO TENANTS**

**Residential Lease Energy Disclosure and acknowledgement required – Exceptions**

a) Within the City, a building or dwelling unit owner, or agent thereof, shall not execute an oral or written lease, contract to lease, or accept any money or other valuable consideration in an application for an oral or written lease for a dwelling unit in which utility service for natural gas or electricity is individually metered to the dwelling unit while the tenant is directly responsible to the utility company for paying these costs without disclosing to the tenant or applicant in written form:

1) That the cost of natural gas or electric service shall be the responsibility of the tenant; and

2) The average monthly cost of service from the utility company or companies providing natural gas and electricity based on energy consumption during the previous 36 months; and

3) The highest billed month and lowest billed month of service during the previous 12 months.

The tenant or applicant shall be required to execute a receipt acknowledging that these written disclosures have been made.

A building or dwelling unit owner, or agent thereof may provide prospective tenants with additional information to demonstrate how future energy cost may differ from previous tenants. This could take the form of a home energy audit or proof of energy efficiency improvements made to the unit.

b) The above Subsection (a) shall not apply to:

1) oral or written leases for rental dwelling units in which the contracting tenant continues his or her previous occupancy, providing that the tenant, during that previous term, was directly responsible to the utility company for paying the costs of natural gas or electricity; or

2) oral or written leases units in which natural gas or electricity is provided centrally by the landlord or building management and the costs of energy are shared and indirectly billed on some basis not directly related to individual dwelling unit usage, such as allocation based on floor space.

3) oral or written leases for dwelling units which have been newly converted to natural gas or electric individually metered systems within the last year, or for new construction of a property which does not have any energy consumption history.

**Acquisition of information required to be disclosed**

The information required to be disclosed in Subsection (a) shall be provided at no direct cost to the requestor or intended recipient, by the utility company or companies that supply to the dwelling unit upon the written or electronic request of the building or dwelling unit owner or his or her agent. Every such request shall contain an affirmative statement that the person or entity making the request possesses title or in the case of trust, is the owner of the power of direction to the property in which the dwelling unit is located or is the agent of such person or entity.

The utility company receiving such request shall be entitled to rely on the affirmative representation of such owner or agent and shall not be obligated to do anything further to ascertain or confirm the identity of the owner and/or agent of the property.

The utility company shall devise written and electronic forms to be used for requesting and providing the energy report. The city shall undertake a program to educate the public and shall make request forms and information available online and at City Hall. Under no circumstance shall the information provided to building or dwelling unit owners, tenants or prospective tenants under this process disclose payment records of or the name to whom the account was formerly billed. The utility company shall provide such information within two weeks of the receipt of a properly executed request.

Once received by the owner or agent, the information provided by the utility company shall be considered valid for the disclosure purposes of this chapter for six months from the date that it was obtained or provided. If the unit was not leased for the entire prior 36 months, the landlord must provide potential tenant with required information for the period of last occupancy.

The information disclosed pursuant to subsection Sec. XX-XX shall not be construed as an offer or guarantee by the utility company to provide energy for the cost reported in the information, and the utility company shall not be liable for any difference between the reported cost and the actual cost incurred by the tenant or owner to whom the information is disclosed. Nothing in this chapter shall be construed as relieving any person of the responsibility of paying the amounts billed them for utility service by a utility company.

**Administration**

The City shall administer Sec. XX-XX and may adopt rules and regulations for the effective administration of Sec. XX-XX.

**Penalties**

1) (a) Any building or dwelling unit owner, or agent thereof, who fails to provide or who falsifies information required to be provided by (Subsection #Above) commits an offense and shall be subject to a fine not exceeding $500.00 for each offense.

(b) Any person who falsely claims or misrepresents himself or herself to be an owner or agent in any disclosure or request for information made with regard to Sec. XX-XX commits an offense and shall be subject to a fine not exceeding $500.00 for each offense.

(c) It shall be an affirmative defense to any prosecution for a failure to disclose information required by this chapter that the utility company failed to timely comply with a properly executed written request.

**Severability**

If any section of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.