

Offered by Councilor Matt O'Malley



**ORDINANCE AMENDING CITY OF BOSTON  
CODE, ORDINANCES, CHAPTER VII, SECTIONS  
7-2.1 AND 7-2.2, BUILDING ENERGY REPORTING  
AND DISCLOSURE (BERDO)**

- WHEREAS:** Buildings contribute to three-quarters of greenhouse gas emissions in the City of Boston; and
- WHEREAS:** Low-income and communities of color in Boston are disproportionately impacted by climate change through increasing heat island exposure, rising sea levels, and stormwater flooding; and
- WHEREAS:** In May 2013, the Boston City Council passed CBC Chapter VII, Section 7-2.2 Building Energy Reporting and Disclosure Ordinance (BERDO) proposed by Mayor Thomas M. Menino; and
- WHEREAS:** BERDO requires that all commercial and residential buildings that are 35,000 square feet or have 35 units or more report their energy and water use to the City of Boston every year; and
- WHEREAS:** The purpose of the ordinance was to reduce emissions including greenhouse gases from energy production, encourage efficient use of energy and water, and develop investment in a green economy by requiring the reporting and disclosure of annual energy and water use in all large buildings; and
- WHEREAS:** The ordinance was then updated on May 14, 2014 by Mayor Martin J. Walsh with an amendment to extend the reporting deadline from May 15 to September 15, 2014; and
- WHEREAS:** The City of Boston's 2019 Climate Action Plan Update details strategies to reduce carbon emissions from buildings over the next five years, including introducing an amendment to BERDO to replace energy action and assessment requirement with a building emissions performance standard by 2021; and
- WHEREAS:** The Boston City Council unanimously passed a resolution in January 2020 declaring that the climate crisis is a health emergency; and
- WHEREAS:** The City of Boston historically exhibited leadership in combating global climate change as the first city in the nation to deploy a green building standard through municipal zoning requirements; and **THEREFORE BE IT**

**ORDERED:** That the City of Boston Code, Ordinances, Chapter VII, Section 7-2.1 and 7-2.2 shall be amended as follows:

SECTION 1. City of Boston Code, Ordinances, Chapter VII, Section 7-2.2 is hereby by stricken in its entirety, and shall be replaced with the following:

Section 7-2.2 Building Emissions Reduction and Disclosure.

**(a) Purpose.**

It is the intent of this Subsection to reduce the emissions of air pollutants, including greenhouse gases, from building energy production and consumption, and thereby to encourage efficient use of energy and water, develop further investment in building a green economy, including by encouraging the hiring and training of green jobs, protect public health, and promote equitable access to housing. To do so, the provisions of this Subsection require the reporting and disclosure of annual energy use, disclosure of annual water use in all covered buildings, and compliance with emissions requirements in accordance with this article.

The Air Pollution Control Commission has enforcement authority pursuant to, inter alia, Article 89 of the Massachusetts Constitution, M.G.L. c. 111, s. 31C, MG.L. c. 40, s. 21D, MG.L. c. 40U, and this Subsection.

**(b) Definitions.**

When used in this Subsection 7-2.2, unless a contrary intention clearly appears, the following terms shall have the following meaning:

*Building* means a City Building, Non-Residential Building, or Residential Building as defined in this Subsection or by regulation.

*Building Portfolio* means two or more Buildings, on one or more properties, with the same Owner. For purposes of defining a Building Portfolio, management companies shall not constitute Owners.

*Building Use* shall mean (i) space type as defined in the Regulations, which refers to the primary activity for which a given space is utilized, as entered into the Portfolio Manager, or (ii) other activities as defined in the ENERGY STAR Portfolio Manager or by the Regulations as may be updated from time to time.

*Carbon Dioxide Equivalent (CO<sub>2</sub>e)* means greenhouse gas Emissions, including carbon dioxide, methane and nitrous oxide. CO<sub>2</sub>e shall be calculated according to regional Energy and greenhouse gas factors as set forth in the ENERGY STAR Portfolio Manager and as may be amended from time to time by the Regulations.

*City* means the City of Boston.

*City Building* means a Building, as it appears in the records of the Boston Assessing Department, that is owned by the City, or for which the City regularly pays all of the annual Energy bills. City Buildings shall include Buildings that are owned or managed by the Boston Housing Authority.

*Commission* means the Air Pollution Control Commission.

*Community-Based Organization* means a non-profit organization that is driven by community residents, that is the majority of the governing body and staff consists of local residents, the main operating offices are in the community of service, priority issue areas are identified and defined by residents, solutions to address priority issues are developed with residents, and program design, implementation, and evaluation components have residents intimately involved and in leadership positions.

*Days* means consecutive calendar days.

*Electrical Vehicle Supply Equipment (EVSE)* means equipment for the purpose of transferring electric Energy to a battery or other Energy storage device in an electric vehicle, including but not limited to “electric vehicle charging stations” as defined in MGL ch. 25. sec. 16.

*Emergency Backup Generation/Backup Power* means a device or mechanism, such as battery storage, reciprocating internal combustion engine, or turbine, that serves solely as a secondary source of mechanical or electrical power whenever the primary Energy supply is disrupted or discontinued during power outages or natural disasters that are beyond the control of the Owner, occupant or operator of a Building.

*Emissions* means the emission of greenhouse gases, measured in units of Carbon Dioxide Equivalent associated with the generation and transmission of Energy used by a Building.

*Emissions Factor* means CO<sub>2</sub>e calculated according to regional Energy and greenhouse gas factors as set forth in the Regulations, as may be amended from time to time.

*Employment Plan* means a plan submitted to the Mayor’s Office of Workforce Development by a Building Owner establishing training protocols and minimum employment standards.

*Energy* means electricity, heating and cooling from any fuel source including, but not limited to, natural gas, fuel oil, propane, and power used to generate steam and hot and chilled water, and any other sources of Energy that the Commission may designate.

*ENERGY STAR Portfolio Manager* or *Portfolio Manager* means the U.S. Environmental Protection Agency's online tool for reporting and managing Building Energy data.

*Environment Department* means the City of Boston Environment Department.

*Environmental Justice Population* means a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 percent or more of the population; (iii) 25 percent or more of households lack English language proficiency; or (iv) minorities comprise 25 percent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the state annual median income; or such other meaning as is adopted or amended by the Commonwealth's Executive Office of Energy and Environmental Affairs or by state statute.

*Gross Floor Area (GFA) or Area* means the total number of square feet measured between the principal exterior surfaces of enclosing fixed walls.

*Hardship Compliance Plan* means alternative Emissions reduction targets and/or timelines for a Building or Building Portfolio.

*Individual Compliance Schedule* means an alternative timeline for complying with the Emissions Standards outlined in this Subsection, as may be updated by the Regulations.

*Non-Residential Building* means, as it appears in the records of the Boston Assessing Department, either:

- (i) a Building that equals or exceeds twenty thousand (20,000) square feet in gross Building Area, and of which fifty percent (50%) or more of the gross Building Area, excluding parking, is used for commercial, retail, office, professional, educational or other non-residential purposes;
- (ii) a parcel with a single Owner and multiple Buildings whose gross Building Areas cumulatively equal or exceed twenty thousand (20,000) square feet, and of which fifty percent (50%) or more of the cumulative gross Building Area, excluding parking, is used for commercial, retail, office, professional, educational or other non-residential purposes. Each such Building shall individually comply with the requirements of this Subsection, including reporting and complying with Emissions standards, unless part of a Building Portfolio; or
- (iii) any grouping of Non-Residential Buildings designated by the Review Board as an appropriate reporting unit. Each such Building shall individually comply with the requirements of this Subsection, including reporting and complying with Emissions standards, unless part of a Building Portfolio.

The term "*Non-Residential Building*" shall not include any Building that is a City Building.

*Owner* means a Building's Owner of record, provided that the "Owner" may be deemed to include (i) multiple Owners in common ownership; (ii) the association or organization of unit Owners responsible for overall management in the case of a condominium; and (iii) the board of directors in the case of a cooperative apartment corporation. In the case of a Building subject to a lease that assigns maintenance, regulatory compliance and/or capital improvement costs to Tenants with a term of at least thirty (30) years, inclusive of all renewal options, the Owner may designate the lessee as "Owner" for purposes of compliance with this Section; such designation must be provided in writing to the Commission as required by the Regulations. An Owner may designate an agent to act on its behalf, including reporting as required by this Section; provided, however, that such designation (i) must be provided in writing to the Commission, and (ii) does not relieve the Owner of any compliance obligation under this Section.

*Power Purchase Agreement* means a contract by which an Owner agrees to purchase electricity from a generating facility over a fixed term of years.

*Regulations* means the Air Pollution Control Commission's Building Emissions Reduction and Disclosure Regulations.

*Residential Building* means, as it appears in the records of the Boston Assessing Department, either:

- (i) a Building with fifteen (15) or more total individual dwelling units that, together with hallways and other common space serving residents, comprise more than fifty percent (50%) of the gross Building Area, excluding parking;
- (ii) a parcel with a single Owner and multiple Buildings that cumulatively have fifteen (15) or more total individual dwelling units or that cumulatively equal or exceed twenty thousand (20,000) square feet in gross Building Area. Each such Building shall individually comply with the requirements of this Subsection, including reporting and complying with Emissions standards, unless part of a Building Portfolio; or
- (iii) any grouping of Residential Buildings designated by the Review Board as an appropriate reporting unit. Each such Building shall individually comply with the requirements of this Subsection, including reporting and complying with Emissions standards, unless part of a Building Portfolio.

The term "*Residential Building*" shall not include a City Building or a Non-Residential Building.

*Renewable Energy Certificate (REC)* means a certificate representing the positive environmental attributes associated with the production of one (1) megawatt hour (MWh) of electricity by a renewable Energy facility.

*Review Board* means the board established pursuant to section (r) of this Subsection.

*Tenant* means any tenant, tenant-stockholder of a cooperative apartment corporation, and condominium unit Owner.

*This Subsection* shall refer to Chapter VII, Section 7-2.2 of the City of Boston Code.

**(c) Energy, Emissions, and Water Disclosure Required for City Buildings.**

No later than May fifteenth (15th) of each year, the City shall publicly disclose (i) the previous year's Energy and water use by each City Building and (ii) the Emissions compliance status of each City Building.

The Commission shall coordinate the performance of this requirement.

**(d) Energy, Emissions, and Water Reporting Required for Non-City Buildings.**

**(i) Data Reporting Requirements.**

No later than May fifteenth (15th) of each year, the Owner of each Building subject to reporting requirements shall accurately report to the Commission, via the Portfolio Manager or as required by the Regulations, the following information for the previous calendar year:

- (a) Energy and water use of each Building and other Building characteristics necessary to evaluate absolute and relative CO<sub>2</sub>e Emissions intensity as required by the Commission. Energy and water use data shall not include its associated cost. Building Owners shall report this information by using the ENERGY STAR Portfolio Manager or such alternative as the Commission may designate.
- (b) The primary Building Use(s) of each Building in accordance with the categories listed in the Portfolio Manager and the Regulations. Multiple primary Building Uses can be reported, provided that each use occupies at least ten percent (10%) of the Building's square footage or accounts for at least ten percent (10%) of the Building's annual Energy use or CO<sub>2</sub>e Emissions.
- (c) If applicable, any Renewable Energy Certificates (RECs) used to comply with the Emissions standards set forth in this Subsection, including proof of retirement of the RECs.
- (d) If applicable, any Energy purchased via a Power Purchase Agreement(s) that was used at the Building and/or used to comply with the Emissions standards set forth in this Subsection, including, if relevant, proof of retirement of associated RECs and the Emissions Factor of the grid where the generating facility is located, if on a grid other than ISO New England. Owners must

provide a copy of an executed Power Purchase Agreement that demonstrates (i) the quantity of Energy purchased in the relevant calendar year, (ii) the type and generation location of the Energy purchased, and (iii) the ownership of any RECs associated with the Energy, if relevant. Business confidential information, including price, may be redacted.

- (e) Any CO<sub>2</sub>e Emissions Factors for Energy used by the Building if different from the Emissions Factors in the Regulations.
- (f) Contact information for Owners and any designated agents.

Building Owners may choose to report additional metrics, including but not limited to, Building waste, occupancy, density, operational hours, net lessees, Boston Resident Jobs Policy compliance, energy storage, and indoor air quality.

(ii) Reporting Schedules.

The initial reports shall occur according to the following schedule:

1. For every Non-Residential Building equal to or greater than fifty thousand (50,000) gross square feet or two (2) or more Buildings on the same parcel that equal or exceed one hundred thousand (100,000) gross square feet, the first report shall be submitted no later than September 15, 2014.
2. For every Non-Residential Building equal to or greater than thirty-five thousand (35,000) gross square feet but less than fifty thousand (50,000) gross square feet, the first report shall be submitted no later than May 15, 2016.
3. For every Non-Residential Building, or two (2) or more Buildings on the same parcel, equal to or greater than twenty thousand (20,000) gross square feet but less than thirty-five thousand (35,000) gross square feet, the first report shall be submitted no later than May 15, 2022.
4. For every Residential Building equal to or greater than fifty (50) units or fifty thousand (50,000) gross square feet, or two (2) or more Buildings held in the same condominium form of ownership that are governed by the same board of managers that together equal or exceed fifty (50) units or fifty thousand (50,000) gross square feet, the first report shall be submitted no later than May 15, 2015.
5. For every Residential Building equal to or greater than thirty-five (35) units or thirty-five thousand (35,000) gross square feet, the first report shall be submitted no later than May 15, 2017.
6. For every Residential Building, or two (2) or more Buildings on the same parcel, equal to or greater than fifteen (15) units or twenty thousand (20,000) gross square feet

but less than thirty-five (35) units or thirty-five thousand (35,000) square feet, the first report shall be submitted no later than May 15, 2022.

Notwithstanding the foregoing, the Review Board shall develop a procedure for establishing alternative reporting dates for Building Owners who supply timely notification of extenuating circumstances.

**(e) Direct Upload.**

Provided that the necessary mechanisms already exist, Building Owners may authorize an Energy or water utility or other third party to report Building-specific data on their behalf to the Commission. Such authorization shall not create an obligation on the part of Energy or water utilities or remove the obligation of Building Owners to comply with reporting requirements.

**(f) Equitable Emissions Investment Fund.**

The City auditor shall establish the Equitable Emissions Investment Fund as a separate account and credit to the fund all Alternative Compliance Payments and penalties made pursuant to this Subsection; the City or Environment Department may direct other funds to the Equitable Emissions Reduction Fund at its discretion. The Review Board is responsible for evaluating local carbon abatement proposals, and making recommendations for expenditures from the Fund.

Money in the Fund shall be expended for the support, implementation, and administration of local carbon abatement projects that benefit the City of Boston prioritizing Environmental Justice Populations, including by improving or promoting:

- low-income affordable housing and housing where tenants are at risk of displacement and in need of rent stabilization;
- local air quality improvement;
- indoor environmental quality and health for building tenants;
- economic inclusion, training, and technical assistance for Minority, Women, and Disadvantaged Business Enterprises (MWDBE) and cooperative contractors;
- workforce development training programs for residents who have been disproportionately impacted by the effects of climate change;
- projects with community ownership of housing and renewable energy infrastructure;
- reduced energy burdens; or
- any further environmental initiatives.

The Regulations will address conditions for expenditure, which may include but are not limited to compliance with employment and contracting standards, living wage standards, language access, rent stabilization, air quality monitoring and improvements, housing stability, tenant transparency and compliance with Fair Housing standards.



During each fiscal year, the Review Board may incur liabilities against and spend monies from the Equitable Emissions Reduction Fund, which shall operate for fiscal years that begin on or after the date of implementation. Money in the Fund may be used for administrative costs incurred by the Review Board, including compensation for members as provided in subsection (r), or by the Environment Department in supporting the Review Board.

**(g) Data Verification.**

- a. Building Owners shall self-certify their reporting data every year.
- b. In the first year of reporting 2021 data starting in 2022 and the first year of compliance in the 2025-2029 compliance period for Emissions standards starting in 2026, and every fifth year thereafter, Building Owners shall provide a third-party verification of their reporting data for the five calendar years prior to, but not including, the current year. Verifications must be performed by qualified Energy professionals, as defined by the Regulations of the Commission, and submitted by June 15<sup>th</sup> of the relevant year.
- c. Any Building completed after the date of implementation and any building equal to or greater than twenty thousand (20,000) square or fifteen (15) units but less than thirty-five thousand (35,000) square feet or thirty-five (35) units shall be subject to this third-party data verification requirement in the first year of reporting and the first year of compliance with Emissions standards.
- d. In the event that there is a discrepancy between third-party verified data and an Owner's self-certified reporting data, any resulting lack of compliance with the Emissions standards in this Subsection shall be subject to fines as outlined in the Regulations.

The Commission may revise requirements for data verification and qualified Energy professionals via the Regulations.

**(h) Emissions Requirements.**

Each Building subject to the reporting requirements of this Subsection shall comply with the CO<sub>2</sub>e Emissions standards set forth in Table 1 below; provided, however, that Building Owners may develop and request approval for Individual Compliance Schedules pursuant to the requirements in section (j) or request a Hardship Compliance Plan pursuant to section (k). Buildings must comply with the Emissions standards on an annual basis and compliance shall be measured as a total of metric ton of CO<sub>2</sub>e Emissions per square foot. Buildings equal to or greater than twenty thousand (20,000) square or fifteen (15) units but less than thirty-five thousand (35,000) square feet or thirty-five (35) units shall not be subject to the Emissions standards until 2031, reporting for 2030 emissions. Any Building that has been completed after date of implementation shall comply with Emissions Standards consistent with zoning approvals, which shall be

considered binding and supersede any less stringent Emissions standards set out in this Subsection.

Upon recommendation from the Environment Department, the Review Board shall propose to the Commission an update to the CO<sub>2</sub>e Emissions Factors and the CO<sub>2</sub>e Emissions standards and compliance periods set forth in Table 1, to ensure the City is achieving its emissions reduction goals.

Table 1: CO<sub>2</sub>e Emissions Standards by Building Use

<b>Building use</b>	<b>Emissions standard (kgCO<sub>2</sub>e/SF/yr.)</b>					
	<b>2025 - 2029</b>	<b>2030-2034</b>	<b>2035-2039</b>	<b>2040-2044</b>	<b>2045-2049</b>	<b>2050-</b>
<u>Assembly</u>	7.8	4.6	3.3	2.1	1.1	0
<u>College/ University</u>	10.2	5.3	3.8	2.5	1.2	0
<u>Education</u>	3.9	2.4	1.8	1.2	0.6	0
<u>Food Sales &amp; Service</u>	17.4	10.9	8.0	5.4	2.7	0
<u>Healthcare</u>	15.4	10.0	7.4	4.9	2.4	0
<u>Lodging</u>	5.8	3.7	2.7	1.8	0.9	0
<u>Manufacturing/ Industrial</u>	23.9	15.3	10.9	6.7	3.2	0
<u>Multifamily housing</u>	4.1	2.4	1.8	1.1	0.6	0
<u>Office</u>	5.3	3.2	2.4	1.6	0.8	0
<u>Retail</u>	7.1	3.4	2.4	1.5	0.7	0
<u>Services</u>	7.5	4.5	3.3	2.2	1.1	0
<u>Storage</u>	5.4	2.8	1.8	1.0	0.4	0
<u>Technology/Science</u>	19.2	11.1	7.8	5.1	2.5	0

(i) Blended Emissions Standards for Individual Buildings.

Buildings with more than one primary use may comply with a blended CO<sub>2</sub>e Emissions standard; provided, however, that a use may constitute a primary use only if it (i) occupies at least ten percent (10%) of a Building’s square footage, or (ii) accounts for more than ten percent (10%) of a Building’s total annual Energy use or CO<sub>2</sub>e Emissions. Building Owners using a blended CO<sub>2</sub>e Emissions standard must (i) designate the blended standard in annual reports to the Commission, and (ii) provide documentation verifying the qualification of each primary use in annual reports to the Commission for the first year a blended CO<sub>2</sub>e Emissions standard is used and in any subsequent year when the blended Emissions standard or primary use(s) change.

(ii) Blended Emissions Standards for Building Portfolios.

Owners of Building Portfolios may apply for a blended CO<sub>2</sub>e Emissions standard for all Buildings in the Portfolio, provided that (i) all Buildings within the Portfolio have the same Owner; for this purpose, a Building management company does not constitute an Owner, or (ii) all Buildings within the Portfolio are part of an approved Institutional Master Plan. Such blended CO<sub>2</sub>e Emissions standard may reflect multiple primary uses in a Building in accordance with the procedure described in this Subsection. The City may use a blended Emissions standard for any Building Portfolio of City Buildings and may create multiple Building Portfolios.

Blended Emissions standards for Building Portfolios must be approved by the Review Board, and Building Portfolio Owners must submit documentation confirming eligibility as a Building Portfolio when requesting a blended Emissions standard from the Review Board. Notwithstanding the approval of a blended Emissions standard for a Building Portfolio, Owners must continue to report the water and Energy use, Emissions data, and any other information required by this Subsection for each individual Building. If a Building is removed from a Building Portfolio for any reason, including transfer to a different Owner, the Building shall retain its individual reporting data and be subject to the Emissions standards in table 1 and the blended Emissions standard rate for the Building Portfolio shall be adjusted to reflect the removal of the Building. The Review Board may require that the Owner submit a portfolio emissions reduction plan that prioritizes emissions reductions in Buildings located in or near Environmental Justice Populations, and may set further conditions on the approval of a Building Portfolio consistent with the Regulations.

**(i) Energy Use Exempt from Emissions Requirements.**

Building Owners may choose to deduct Energy used by Emergency Backup Generation/Backup Power and Electrical Vehicle Supply Equipment (EVSE) from a Building's total Energy use subject to this Subsection's CO<sub>2</sub>e Emissions standard, provided that:

- i. Emergency Backup Generation/Backup Power provides Energy only to the Building or Building Portfolio. In the event that Emergency Backup Generation/Backup Power or EVSE serve, or have the potential to serve, multiple Buildings in a Building Portfolio, the Energy use from such activities shall be deducted in reporting for individual Buildings in proportion to the square footage of each Building;
- ii. Electrical Vehicle Supply Equipment is separately metered; and
- iii. Building Owners annually report (i) Energy used by Emergency Backup Generation / Backup Power and Electrical Vehicle Supply Equipment; (ii) the date(s), hour(s) and conditions that required the use of Emergency Backup Generation/Backup Power; and (iii) any other information required by the

Regulations. Such reporting shall be subject to the self-certification and third-party verification procedures in subsection (f).

Upon recommendation from the Review Board, the Commission may revise the availability and use of these exemptions or add additional exemptions via the Regulations. Energy used by Emergency Backup Generation / Backup Power may no longer be exempted after 2030, unless otherwise amended in the Regulations.

**(j) Individual Compliance Schedules.**

Owners of Buildings or Building Portfolios may apply for an Individual Compliance Schedule as an alternative to the CO<sub>2</sub>e Emissions standard reduction schedule in Table 1. Individual Compliance Schedules must establish declining CO<sub>2</sub>e Emissions standards in five- (5-) year increments, provided that such standards must (i) decline on a linear or better basis, (ii) reduce Emissions 50% by 2030, and (iii) reduce Emissions 100% by 2050; and

- a. Use the year that a Building was first required to report Energy use pursuant to this Subsection as the baseline for emissions, provided, however, that (i) the Building's or Building Portfolio's Energy use, Gross Floor Area, and any relevant Emissions Factors have been reported to the Commission in accordance with this Subsection or is retroactively reported in accordance with the data verification requirements of this Subsection and the Regulations; or
- b. Use a baseline from any year starting in 2005 to the first required reporting year, provided, however, that the Building or Building Portfolio Owner provides documentation of Energy use, Gross Floor Area and relevant Emissions Factors by the Building or Building Portfolio for the selected baseline year and the year in which an Individual Compliance Schedule is requested in accordance with the data verification requirements of this Subsection and the Regulation. The Commission may make such information publicly available.

A Building or Building Portfolio that failed to comply with previous reporting requirements may use an Individual Compliance Schedule, provided, however, that the necessary data is submitted to the Review Board and any applicable penalties for past non-compliance are paid in full.

Individual Compliance Schedules must be approved by the Review Board. Building and Building Portfolio Owners must submit the information required in this Subsection, and any other documentation specified in the Regulations, when requesting an Individual Compliance Schedule from the Review Board. The Review Board may include additional conditions on the approval of Individual Compliance Plans consistent with the Regulations.

**(k) Hardship Compliance Plans.**

A Building Owner may apply to the Review Board for a Hardship Compliance Plan if there are Building characteristics or circumstances that present a hardship in complying with the Emissions standards in this Ordinance. Such characteristics or circumstances, to be detailed in the Regulations, may include historic Building designations, affordable housing refinancing timelines, pre-existing long-term Energy contracts without reopeners, or financial hardship. The application, review process and conditions for Hardship Compliance Plans shall be set forth in the Regulations. The Review Board shall have sole discretion in issuing Hardship Compliance Plans; such plans may include alternative timelines for meeting Emissions standards, and alternative Emissions standards. At its discretion, the Review Board may also allow the use of compliance mechanisms additional to those outlined in section (l) consistent with achieving the purpose of the Subsection as laid out in section (a). The Review Board may include additional conditions on the approval of Hardship Compliance Plans consistent with the Regulations, including Employment Plans, housing stabilization, air quality monitoring, energy cost-sharing and transparency measures, as appropriate.

**(l) Compliance Mechanisms.**

- a. Municipal Aggregation: Buildings may use electricity obtained through the Boston municipal aggregation program, at either the base rate or higher rate, and have the appropriate Emissions Factor applied to such electricity.
  
- b. Renewable Energy Certificates: Buildings may mitigate CO<sub>2</sub>e Emissions from electricity use by purchasing bundled or unbundled Renewable Energy Credits that:
  - (i) Are generated by non-CO<sub>2</sub>e emitting renewable sources and meet the RPS Class I eligibility criteria outlined in 225 CMR 14.05, as may be amended from time to time;
  - (ii) Are tracked by the New England Power Pool Generation Information System;
  - (iii) Are generated in the compliance period in which they are used;
  - (iv) Are retired within six (6) months after the end of the compliance period in which they are used; and
  - (v) Comply with any additional or different requirements set forth in the Regulations, as may be amended from time to time. In the event of a conflict between the requirements for Renewable Energy Credits in this provision and the Regulations, the requirements in the Regulations shall prevail.
  
- c. Power Purchase Agreements: Buildings may mitigate CO<sub>2</sub>e Emissions from electricity use by entering Power Purchase Agreements for Energy generated by renewable non-emitting fuel sources, provided that:

- (i) The Energy purchased pursuant to a Power Purchase Agreement is generated during the compliance period for which a Building is mitigating CO<sub>2</sub>e Emissions;
  - (ii) The Renewable Energy Credits associated with the Energy purchased under a Power Purchase Agreement are retired by the Building Owner within six (6) months after the end of the compliance period in which used; and
  - (iii) The Power Purchase Agreement complies with any additional or different requirements set forth in the Regulations, as may be amended from time to time, including but not limited to additionality criteria. In the event of a conflict between the requirements for Power Purchase Agreements in this provision and the Regulations, the requirements in the Regulations shall prevail.
- d. Alternative Compliance Payments: Buildings may mitigate CO<sub>2</sub>e Emissions from Energy use by making Alternative Compliance Payments. The price of an Alternative Compliance Payment shall be based on the average cost per metric ton of CO<sub>2</sub>e to decarbonize Buildings subject to this Subsection. The initial cost of an Alternative Compliance Payment shall be \$234 per metric ton of CO<sub>2</sub>e. The cost of an Alternative Compliance Payment shall be reviewed at least every five (5) years by the Review Board, with input from the Environment Department, and may be adjusted by the Regulations.

Upon recommendation from the Review Board, the Commission may revise the availability and use of these compliance mechanisms or add additional compliance mechanisms via the Regulations, consistent with the purpose of the Subsection as laid out in section (a).

**(m) Preservation of Documents.**

Building Owners shall preserve records and information (i) required to be submitted by this Subsection and/or (ii) submitted pursuant to this Subsection in order to demonstrate compliance with the Emissions standard, including but not limited to information regarding Building Uses, Emissions Factors, compliance mechanisms outlined in section (l), Individual Compliance Schedules or Hardship Compliance Plans, for such time as set forth in Regulations, and shall make such records available for inspection and audit by the Commission and Review Board upon request.

**(n) Obligation to Request and Report Information.**

Where a unit or other space in a Building is occupied by a Tenant and such unit or space is separately metered by a utility company, the Owner of such Building may request from such Tenant information relating to such Tenant's separately metered Energy and water use, purchase of renewable energy or RECs, use of space, and operating hours, and other information required for Portfolio Manager reporting, for the previous calendar year, and such Tenant shall report such information to such Owner. The Commission may

designate and make available a form to be used to request and report such information. Notwithstanding the foregoing, individual residential Tenants shall have no obligation to report Energy and water use to Building Owners.

1. Such Owner may request information related to such Tenant's metered Energy and water use and other related information for the previous calendar year no earlier than January 1 and no later than January 31 of any year in which the Owner is required to report such information.
2. Upon receiving such a request, a Tenant shall report information relating to the Tenant's separately metered Energy and water use for the previous calendar year no later than February 28 of any year in which the Owner is required to report such information.
3. If a Tenant vacates a unit or other space before the end of the calendar year without reporting metered Energy and water use, such Owner may immediately request such information for any period of occupancy relevant to such Owner's obligation to report and the Tenant shall respond within thirty (30) Days.
4. Failure of any Tenant to report the information required in this Subsection does not relieve such Owner of the obligation to report pursuant to this article.
5. Where an Owner of a Building is unable to obtain complete Energy and water use data due to the failure of any Tenant to report the information required by this Subsection, the Owner shall use values or formulas established by the Commission to estimate whole Building Energy and water use.

**(o) Disclosure.**

The Commission shall make Energy, water, and Emissions information for Buildings available to the public on the City of Boston website in multiple languages consistent with City of Boston language standards no later than October 1 of every year, except for 2014 in which it shall make such information available to the public no later than December 1, 2014. Such disclosure shall include, at a minimum, Building identification, Energy intensity, CO<sub>2</sub>e Emissions per square foot, Emissions compliance status, ENERGY STAR rating, where available, and water consumption per square foot. Such disclosures may include information voluntarily reported to the Commission. Before any such disclosure, the Commission shall subject all data to a quality-assurance/quality-control process.

1. At least thirty (30) Days prior to disclosure, the Commission shall provide Building Owners an opportunity to review the accuracy of information to be disclosed.
2. The Commission shall invite Building Owners to submit contextual information related to Energy and water use in their Buildings, and shall disclose contextual information in such form as it shall determine.
3. The Commission shall also, from time to time, publicly report on implementation of, compliance with, and overall results from this ordinance; however, the first such report shall be issued no later than December 31, 2014.

To the extent available to the Commission, the Commission shall disclose information relevant to air quality, Energy cost burdens, fair housing and housing displacement, jobs, and other qualitative and quantitative metrics related to Environmental Justice Populations and equitable implementation of this Subsection. Within one year, the Environment Department shall identify appropriate metrics and research mechanisms for (i) measuring and collecting this type of information and (ii) analyzing the impact, if any, of this Subsection on such metrics.

The Commission shall issue regular reports on the Equitable Emissions Reduction Fund, including balance of funds, expenditures, funded projects and anticipated impacts relative to greenhouse gas emissions, air quality, and local employment. These reports will be available for the public on the City of Boston website.

**(p) Enforcement for Failure to Comply with this Subsection.**

1. Failure to comply with the provisions of this Subsection shall result in the imposition of penalties by the Review Board. For any failure to comply, the Review Board shall have the authority to: (i) issue a notice of violation subject to penalties if not corrected; and (ii) seek an injunction from a court of competent jurisdiction requiring a Building Owner or Tenant to comply with the requirements of this Subsection; provided, however, this provision shall not apply to residential Tenants.

2. Notice of violation. The Review Board shall issue a written notice of violation to any Building Owner or Tenant violating this Subsection by failing to comply with any of the provisions of this Subsection or any Regulation issued pursuant to this Subsection. The notice of violation shall indicate which obligations the Building Owner or Tenant has not fulfilled and provide the Building Owner or Tenant with thirty (30) days to either: (i) correct the notice of violation by complying with this Subsection and associated Regulations; or (ii) send a written request to the Executive Director of the Commission for a hearing by the Review Board for a determination of whether the Building Owner or Tenant violated this Subsection.

3. Request for a Hearing. If a Building Owner or Tenant requests a hearing, the Review Board shall hold such hearing within sixty (60) days of the Executive Director of the Commission's receipt of a written request for hearing. The hearing shall be conducted according to the requirements of M.G.L. c. 30A. If the Review Board determines that the Building Owner or Tenant violated this Subsection, that person shall have thirty (30) days from the issuance of a final decision to correct the violation.

4. Failure to comply with notice of violation. If a person who does not request a hearing fails to correct a noticed violation of this Subsection within thirty (30) days after the Executive Director of the Commission issues a written notice of violation, that person shall be deemed to have failed to comply with the notice of violation. If a person who requested a hearing fails to correct a noticed violation of this Subsection within thirty (30) days after the issuance of an adverse decision after a hearing, that person shall be



deemed to have failed to comply with the notice of violation. Any person who has failed to comply with a notice of violation shall be subject to a fine as set forth in section (p):

5. Injunctive relief. Upon recommendation from the Review Board, the Commission shall seek an injunction from a court of competent jurisdiction instructing a Building Owner or Tenant who has failed to comply with a notice of violation to comply with this Subsection and regulations issued pursuant to this Subsection. The Review Board shall have discretion in deciding whether to recommend seeking an injunction.

6. Fines. All fines and penalties issued under this Subsection may be enforced pursuant to M.G.L. c. 40, s. 21D, provided however, that this permission to utilize the noncriminal disposition procedures of section 21D shall not deprive the Review Board or the Commission of any other remedy or means of collecting the fine, including by indictment or complaint. For any fines or penalties that remain unpaid thirty (30) Days following the receipt of a notice of violation the Commission shall, upon recommendation from the Review Board, take steps to place an assessment on the Building Owner's tax bill or a lien on the Building pursuant to M.G.L. c. 40U, s. 12. The Review Board shall have discretion in deciding whether to recommend placing assessments or liens.

**(q) Penalties and Fines for Failure to Comply with this Subsection.**

The fines outlined in this Subsection may be revised by the Regulations upon advisement by the Environment Department. References to Buildings in this subclause shall be deemed to include Building Portfolios. The Regulations shall provide a Building Owner with an opportunity to administratively appeal any such fine pursuant to an appeal mechanism that is consistent with that required by G. L. c. 40U.

**(i) Failure to Comply with Reporting Requirements.**

Each Day that a Building Owner is out of compliance with the reporting requirement of this Subsection, in whole or in part, shall be deemed a separate violation of this Subsection and subject to a fine of:

1. Three hundred dollars (\$300) a Day for:
  - a. Non-Residential Buildings equal to or greater than thirty-five thousand (35,000) gross square feet or two (2) or more Buildings on the same parcel that equal or exceed one hundred thousand (100,000) gross square feet; and
  - b. Residential Buildings equal to or greater than thirty-five (35) units or thirty-five thousand (35,000) gross square feet.
2. One hundred-fifty dollars (\$150) a Day for:
  - a. Non-Residential Buildings equal to or greater than twenty thousand (20,000) gross square feet but less than thirty-five thousand (35,000) gross square feet; and

- b. Residential Buildings equal to or greater than fifteen (15) units or twenty thousand (20,000) gross square feet, but less than thirty-five (35) units or thirty-five thousand (35,000) gross square feet.

No penalty shall be assessed prior to thirty (30) Days after receipt of a notice of violation by a Building Owner or if a Building Owner corrects the violation within thirty (30) Days of receipt of a notice of violation.

(ii) Failure to Comply with Emission Standards.

If a Building Owner did not comply with the applicable Emissions standard in a calendar year, each Day of that calendar year and each subsequent Day when the violation is not corrected shall be deemed a separate violation of this Subsection and subject to a fine of:

1. One thousand dollars (\$1,000) a Day for:
  - a. Non-Residential Buildings equal to or greater than thirty-five thousand (35,000) gross square feet or two (2) or more Buildings on the same parcel that equal or exceed one hundred thousand (100,000) gross square feet; and
  - b. Residential Buildings equal to or greater than thirty-five (35) units or thirty-five thousand (35,000) gross square feet.
2. Three hundred dollars (\$300) a Day for:
  - a. Non-Residential Buildings equal to or greater than twenty thousand (20,000) gross square feet but less than thirty-five thousand (35,000) gross square feet; and
  - b. Residential Buildings equal to or greater than fifteen (15) units or twenty thousand (20,000) gross square feet, but less than thirty-five (35) units or thirty-five thousand (35,000) gross square feet.

For any Building Owner that has failed to report any or all information required by this Subsection to calculate compliance with the Emissions standard, the Building shall be deemed to be in non-compliance with the Emissions standard and subject to the fines in this subclause. A Building Owner may correct such non-compliance by providing the information required by this Subsection to calculate compliance with the Emissions standard and, if necessary, make use of relevant Compliance Mechanisms to account for any failure to meet the Emissions standard. No penalty shall be assessed prior to thirty (30) Days after receipt of a notice of violation by a Building Owner or if a Building Owner corrects the violation within thirty (30) Days of receipt of a notice of violation.

(iii) Failure to Accurately Report Information

In the event that third-party verification of information reported by a Building Owner identifies a discrepancy with a Building Owner's self-certified reporting, such discrepancy shall be deemed a violation of this Subsection and subject to a fine between one thousand dollars (\$1,000) and five thousand dollars (\$5,000). The Review Board

shall, in its sole discretion, determine the fine taking into account whether the failure to accurately report information impacted a determination of compliance with an Emissions standard. An Owner may petition the Review Board for a reduction in such a penalty in accordance with the conditions outlined in the Regulations, which shall include circumstances in which a third-party verification was filed by a prior Owner. The Review Board may, in its discretion, reduce such penalty through the process as laid out in the regulations.

In the event that a failure to accurately report information resulted in inaccurately determining that a Building Owner complied with an Emissions standard, the penalties from subclause (ii) above shall apply.

(iv) Penalty reductions and waivers

The Review Board may grant penalty reductions or waivers. Details regarding petitions, review process and conditions for penalty reductions or waivers may be set forth in the Regulations. In determining whether to grant any reduction in penalty for failure to comply with Emission standards, the Review Board shall consider an Owner's plans for bringing a Building into full compliance and whether there are Building characteristics or circumstances that present a hardship in complying with the Emissions standards in this Ordinance. Such characteristics or circumstances could include historic Building designations, affordable housing, or financial hardship. The Review Board shall have sole discretion in granting penalty reductions or waivers.

Section (q) shall not apply to the City or any City Building.

**(r) Review Board.**

There is established an independent Review Board appointed by the Mayor and approved by the Boston City Council. Members of the Review Board shall have expertise in environmental justice, affordable housing, labor, workers' rights and workforce development, building engineering and energy, real estate development and management, public health and hospitals, historic preservation, or any combination thereof.

Two-thirds of the members of the Review Board shall be nominated by Community-Based Organizations. The Chair of the Boston City Council's Environment, Resiliency and Parks Committee, or their designee shall serve as a member of the Review Board. The Regulations shall establish the number of seats on the Review Board and designate community groups and organizations to nominate individuals to serve on the Review Board, subject to the Mayor's review and the Council's approval.

Members shall serve for a term of three (3) years. As the term of any member expires, their successor shall be nominated by the organizations identified in the Regulations and appointed by the Mayor. Vacancies in the Review Board shall be filled by the Mayor, subject to Council approval for the unexpired term. Every three (3) years, the Mayor shall designate a member to be the Chair of the Review Board.

The Review Board shall meet a minimum of four times per year and may meet more often as it deems necessary to fulfill its obligations under this Section. Members of the Review Board for whom participation is not part of a full- or part-time job may request compensation for their service on the Review Board. The Regulations shall establish a rate of compensation per meeting and a cumulative compensation per year.

The Review Board must draft Regulation revisions and may issue guidance to the Environment Department to ensure equitable implementation of this Subsection.

Funding, capacity-building and staff support shall be provided to the Review Board by the Environment Department. The Environment Department shall also be responsible for annual disclosure and policy administration and carry out enforcement actions as directed by the Review Board. The Review Board may delegate responsibilities, such as, but not limited to, the approval of requests for blended Emissions standards and Individual Compliance Schedules, to the Environment Department.

**(s) Advisory Committee.**

Any Advisory Committee previously established pursuant to this Subsection shall be disbanded.

**(t) Review and Power to Suspend.**

The Commission shall direct the Environment Department to review the implementation of the Subsection every five (5) years. As part of such review, the Environment Department shall hold at least one (1) public hearing and solicit comments from the public. Such request for comments shall include a request for information regarding how, if at all, implementation of the Subsection has impacted air quality, Energy cost burdens, and other qualitative and quantitative metrics related to Environmental Justice Populations and equitable implementation of this Subsection; to the extent such information is available from other City departments, the Environment Department shall take all reasonable steps to collect and analyze such information.

The Commission may suspend all or part of the requirements of this Subsection upon a written finding from the Environment Department that a significant obstacle interferes with implementation or that implementation has a significant negative effect on Energy cost burdens, equitable access to housing or other factors set forth in the Regulations. The Commission may lift such suspension upon a written finding from the Environment Department that the obstacle has been removed or the negative effect addressed. The Commission shall suspend the requirements of this Subsection as necessary to ensure that at least ninety (90) Days passes between the promulgation of Regulations and any reporting deadline.

Notwithstanding the foregoing, the Environment Department may recommend revisions to the Regulations as needed.

**(u) Regulatory Authority.**

In accordance with recommendations from the Environment Department, the Commission shall promulgate rules and regulations, including amending the existing Regulations, necessary to implement and enforce this Subsection, pursuant to M.G.L., c. 30A.

**(v) Applicability.**

If any provision of this Subsection imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy, then the provisions of this Subsection control.

**(w) Implementation.**

The provisions of this Subsection are effective immediately upon passage.

**(x) Notice.**

Within three months of the adoption of this Subsection, notification concerning reporting and disclosure procedures shall be provided to Owners subject to the requirements of this Subsection. This notice, and any other notice required by this Subsection, including notices of violation, shall be delivered to the contact information in the Assessor's database unless an Owner provides alternative contact information to the Commission.

SECTION 2. The City of Boston Code, Ordinances, Chapter VII, Section 7-2.1, first paragraph shall be amended as follows:

- a. Section 7-2.1 is amended in the first sentence, by adding the phrase- "the Environment Commissioner, ex officio" after the phrase- "the Commissioner of Transportation, ex officio".
- b. Section 7-2.1 is further amended in the first sentence by striking the phrase- "three (3) members appointed by the Mayor", and inserting in its place the phrase and following sentence- "four (4) members appointed by the Mayor. Of the four (4) members appointed by the Mayor, at least one (1) member shall serve for a three- (3)-year term."

SECTION 3. If any provision of this ordinance is held invalid by a court of competent jurisdiction, then such provision should be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 4. These provisions shall be in effect immediately following passage.

Filed in Council: June 11, 2021