



# BOSTON CITY COUNCIL

Committee on Government Operations  
Lydia Edwards, Chair

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## REPORT OF COMMITTEE CHAIR

September 22, 2021

Dear Councilors:

*Docket #0775, Ordinance Amending City of Boston Code, Ordinances, Chapter VII, Sections 7-2.1 and 7-2.2, Building Energy Reporting and Disclosure (BERDO)*, was sponsored by Councilor Matt o'Malley, and referred to the Committee on June 16, 2021. The Committee held a hearing on this matter on July 22, 2021 and working sessions on August 23, 2021 and September 13, 2021.

### **Summary of Legislation.**

Docket #0775 sets emissions targets and reporting requirements for buildings greater than or equal to 20,000 square feet, establishes the Emissions Review Board with community representation to increase accountability and transparency, and establishes an environmental justice Buildings Emissions Investment Fund. The ordinance also includes performance standards for large buildings to decrease carbon targets with flexibility to assist companies in complying.

### **Information Gathered at the July 22, 2021 Hearing.**

The following individuals from the Administration participated : Rev. Mariama White-Hammond, Chief of Environment, Energy, and Open Space; Dr. Alison Brizius, Director of Climate and Environmental Planning, Environment Department; Jessica Boatright, Deputy Director, Department of Neighborhood Development; Rich McGuinness, Deputy Director of Waterfront Planning at Boston Planning & Development Agency; and Eugene Barros, Division Director of Healthy Homes Division, Boston Public Health Commission. The Committee discussed that 4% of buildings account for 70% of Boston's greenhouse gas emissions and that the City of Boston needs to act now because emissions are not decreasing fast enough and the City needs to accelerate carbon reductions.

The Administration reviewed the powerpoint presentation which highlighted the main points of the ordinance. Administration officials explained that the proposal is designed to achieve equity by developing workforce opportunities and establishing the emissions reduction equitable investment fund. The fund is designed to improve public health and affordable housing opportunities by prioritizing environmental justice populations and housing stabilization. Administration officials explained that requiring performance standards is a necessary and immediate step. Administration officials further explained that building owners have flexibility with how targets are met which include portfolio options, individual compliance schedule, and a hardship compliance plan. The Administration discussed the importance of the Review Board

that will have strong community participation and governance. Chief White-Hammond discussed the importance of the goals of the policy and stated that with regard to environmental justice there must be equity with the benefits and burdens.

The Committee heard from panelists representing the healthcare industry, corporations, and advocacy groups that supported the docket. The Committee also heard testimony from the public that supported the docket. Public testimony reflected support of the docket because of bad air quality and air pollution problems in the City of Boston as well as high asthma rates.

Members of the Green Ribbon Commission testified in support of the docket and its passage in order to achieve carbon neutrality and carbon neutral goals. The panel explained that environmental justice communities are disproportionately impacted from the effects of climate change. The panel stated that the ordinance established reasonable measures and is a critical step to reduce carbon emissions and that the ordinance will improve the efficiency of existing building stock.

#### **Information Gathered at the August 23, 2021 Working Session.**

The following individuals from the Administration participated in the working session: Chief Mariama White-Hammond, EEOS, Chief of Environment, Energy, and Open Space; Commissioner Alison Brizius, Environment Department; Sheila Dillon, Chief of Housing and Director of Neighborhood Development; Richard McGuinness, Deputy Director for Climate Change & Environmental Planning, BPDA.

The Committee discussed that the purpose of the ordinance is to create clear pathways with regard to what accountability measures will be through the reporting and disclosure of emissions. Commissioner Brizius reviewed the definition sections and discussed district energy plans, ENERGY STAR Portfolio Manager, and the definition of environmental justice population. The Administration indicated that the intent is to keep the reporting deadline consistent moving forward. The Committee discussed the Equitable Emissions Investment Fund in Section f. The Committee reviewed comments received regarding the governance structure and discussed payments that would be placed in the fund. The Committee discussed that payments from alternative compliance and fines from penalties going into the fund. The Committee inquired about funds received from penalties and whether such fines from penalties are required to go into the general fund. The Committee discussed data verification, emissions requirements, working groups interacting with the review board, definition of financial hardship, renewable energy certificates, alternative compliance payments, the obligation of building owners and the fine schedule

#### **Information Gathered at the September 13, 2021 Working Session.**

Chief Mariama White-Hammond, EEOS, Chief of Environment, Energy, and Open Space and Commissioner Alison Brizius, Environment Department participated at the working session. The Committee reviewed the proposed changes to the proposal. The changes included amendments to the alternative compliance payments, building portfolios, environmental justice population, and the verification year. The Committee discussed that the changes will provide consistency with the regulations. The changes also add a compliance mechanism to the hardship compliance plans. The Committee discussed the Review Board and its structure which will consist of nine members with  $\frac{2}{3}$  being nominated by community based organizations and

discussed compensation provisions. The Committee discussed the working group section and recognized its significance to the health care sector.

### Summary of Amendments.

Based upon information gathered at the hearing and working sessions the docket is amended from its initial filing as follows:

- In the definitions section, Section 7-2.2(b), the term “*Alternative Compliance Payment*” is added; the definition of “*Building Portfolio*” is amended to include language about building ownership and approved Institutional Master Plan; the definition of “*Carbon Dioxide Equivalent*” is amended by deleting language about the ENERGY STAR Portfolio Manager and adding language referring to the Regulations in order to allow calculations using a methodology provided for in the Regulations; the definition of “*Community-Based Organization*” is amended to not-for-profit from non-profit; the definition of “*Environmental Justice Population*” is amended to correct an error in the numbering and adding language at the end concerning the Regulations which will allow the regulations to define criteria; the definition of “Owner” is amended to change the references to Section to Subsection for clarity and there are no substantive changes to this definition; and, the term “*Verification Year*” is added to the definition section.
- A new section, c, Building Portfolios is added. This section establishes requirements for building portfolios. The other sections have been relabeled to reflect the addition of this new section.
- In section d, Energy, Emissions, and Water Disclosure Required for City Buildings, language is added concerning energy reporting and water use. The new section appears as follows with the amended language in bold: No later than May fifteenth (15th) of each year, the City shall **report to the Commission the previous year’s Energy and water use by each City Building. No later than October first (1st) 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.
- In section e, Energy, Emissions, and Water Reporting Required for Non-City Buildings, (i) *Data Reporting Requirements* (a) is amended by deleting the last sentence; and (d) is amended by adding language requiring owners to provide “the material terms” of an executed Power Purchase Agreement and adding a new provision (iv) allowing other information required by the Regulations and deleting the sentence about business confidential information and price being redacted.
- In section e, Energy, Emissions, and Water Reporting Required for Non-City Buildings, (ii) *Reporting Schedules*, language is added at the end as follows: “In 2022, Building Owners may apply for a one-time six-month extension on their reporting deadline.”
- In section g, Equitable Emissions Investment Fund, the first sentence is amended to add language that the Equitable Emissions Investment Fund will be referred to as the Fund throughout the provisions of the ordinance; the second clause in the first sentence is amended to delete the term “Equitable Emissions Reduction”; in the second paragraph, language is added about the funds expenditures that includes language that expenditures prioritize projects that benefit Environmental Justice Populations and populations disproportionately impacted by air pollution; the term “building” is added before the word carbon in the first sentence of the second paragraph the term “equitable” is added before workforce development training programs.

- In section g, paragraph three is amended to add language about the scale of anticipated emissions reductions and disclosure of compliance status and mechanisms; and paragraph four is amended to refer to section s.
- In section g, the term “Equitable Emissions Reduction Fund” is stricken from the last paragraph.
- In section h, Data Verification, paragraph b is amended to reporting requirements and third-party verification submission and paragraph c is deleted.
- In section i, the first sentence is amended to refer to section (k) and section (l); the second paragraph removes the following phrases: “CO2e Emissions Factors and the”; “and compliance periods.”
- In section i, (i) is changed to *(i) Blended Emissions Standards* and the words “for Individual Buildings is deleted. Language is also added throughout the paragraph to include Building Portfolios in addition to Buildings. In section i, (ii) has been removed.
- In section j, Energy Use Exempt from Emissions Requirements, paragraph i is amended by deleting the second sentence; paragraph ii is amended by adding the following language after the word metered: “or EVSE is capable of tracking and reporting accurate energy usage, and EVSE meets specifications as defined by the Regulations”; paragraph iii is amended to refer to section h in the last sentence; a new paragraph iv is added about EVSE serve and multiple buildings and allocation; and a new provision is added at the end of the last paragraph that states: “provided, however, that such energy usage by a healthcare institution shall continue to be exempted thereafter for so long as the healthcare institution is required to install and maintain Emergency Backup Generation / Backup Power to ensure reliable operations or as a condition to receiving accreditation.”
- In section l, Hardship Compliance Plans, the fifth sentence is amended to refer to section m and “the” is changed to “this”. The last sentence is amended by adding the words “measures related to” before the term “Employment Plans”; adding the words “and benefit” after the words “energy cost” and adding the following phrase “and disclosure of compliance status and mechanisms to tenants.”
- In section m, the word “Additional” is added, so the section is section m, Additional Compliance Mechanisms. Under a, the word “electricity” is added before aggregation program. In b, the words “bundled or” are deleted and the word “Certificates” is added and replaces the word Credits in the subsections b and c. In d, the words “at least” are deleted in the last sentence. The last paragraph in section m is amended in the last line by changing the word “the” to “this”.
- In section n, Preservation of Documents is amended to refer to section m.
- In section p, Disclosure is amended by changing the date to 2022 from 2014. In 3, the word ordinance is changed to “Subsection”. The last paragraph is amended to add language requiring the City to consult with the Review Board and to issue annual reports on the Equitable Investment Fund. Language is also added that Administrative costs, Review Board Compensation, and other liabilities incurred against and spent from the Fund be included in the report and that the report follow current City of Boston language and accessibility guidelines.
- In section q, enforcement, language is added in the first sentence to include compliance with the Regulations; language is added that provides clarity to the Review Board’s authority by adding that the Review Board could recommend seeking an injunction; in paragraph 4, the reference to the Executive Director of the Commission is deleted and replaced with “Review Board”. The last line in paragraph 4 is amended to refer to section r. In paragraph 5, the word Commission is stricken and replaced with City and a

new provision is added at the end of paragraph 5 relating to residential tenants that states that the provisions do not apply to residential tenants. The new provisions at the end of paragraph 5 is as follows: “provided, however, this provision shall not apply to residential Tenants.”

- In paragraph 6, a reference to M.G.L. c. 111, s. 31C is added in the first sentence.
- In section r regarding penalties the word “Subsection” is added in the first sentence. In section r (iii) the following phrase is added to the first sentence after the word reporting: “and such discrepancy is not reconciled pursuant to a process to be outlined by Regulation”. In paragraph (iv), the last line is amended to refer to Section r.
- Section s, Review Board, is amended regarding the composition and expertise of the Board to include nine members and adds experience with architecture. Paragraph two is amended to include language that members must be residents of the City and subject to the appointment of the mayor. New sentences are added at the end of paragraph two that allows members of the Board to request compensation if participation is not part of a full or part time job. The regulations will establish a rate of compensation. Paragraph three is amended to add the words “or their renewal” in the second sentence and “subject to Council approval” at the end of the second sentence. Paragraph 4 is amended to refer to “Subsection” in the first sentence and deleting the second sentence.
- In section s, a new paragraph is added authorizing working groups to make recommendations for Regulations changes or sector-specific criteria for Hardship Compliance Plans. Language is added that a working group will be convened to address the specific needs of healthcare institutions connected to district energy systems. Section s is amended regarding the Review Board to give discretion about drafting Regulation revisions and issuing guidance to the Environment Department by changing the word “must” to “may”.
- In section u, Review and Power to Suspend, paragraph one is amended to change the word “the” in the first and third sentences to “this”.

### **Rationale and Recommended Action.**

This proposal sets emissions targets, performance standards, and reporting requirements for buildings greater than or equal to 20,000 square feet, establishes the Emissions Review Board with public input to increase accountability and transparency, and establishes an environmental justice Buildings Emissions Investment Fund. Passage of this docket is necessary in order to achieve carbon neutrality and carbon neutral goals. The docket establishes reasonable measures and is a critical step to reduce carbon emissions and will improve the efficiency of existing building stock.

This docket is designed to achieve equity by developing workforce opportunities and establishing the emissions reduction equitable investment fund. The fund is designed to improve public health and affordable housing opportunities by prioritizing environmental justice populations and housing stabilization. Requiring performance standards is a necessary and immediate step in order to achieve carbon neutrality and carbon neutral goals. Building owners have flexibility with how targets are met which include portfolio options, individual compliance schedule, and a hardship compliance plan.

By the Chair of the Committee on Government Operations, to which the following was referred:

***Docket #0775, Ordinance Amending City of Boston Code, Ordinances, Chapter VII, Sections 7-2.1 and 7-2.2, Building Energy Reporting and Disclosure (BERDO),***

submits a report recommending that this docket ought to pass in a new draft.

For the Chair:

A handwritten signature in black ink that reads "Lydia Edwards". The signature is written in a cursive style with a large initial "L".

Lydia Edwards, Chair  
Committee on Government Operations