



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
THOMAS M. MENINO

February 25, 2013

TO THE CITY COUNCIL

Dear Councilors:

I hereby transmit for your approval an amendment to Chapter, Section 7-2 of the City of Boston Code (Air Pollution Control Commission). The proposed amendment to Section 7-2 will require property owners and tenants to report annual energy use data to the Air Pollution Control Commission and require the Commission to establish the procedures and mechanisms necessary for such reporting, to enforce this requirement through fines, and to disclose reported data to the public. In addition, the proposed amendments would allow the Commission to require some property owners to periodically obtain and report additional information regarding opportunities for reducing energy consumption and concomitant emissions. Finally, the proposed amendments would require the City of Boston to publicly disclose energy and emissions data for its own facilities. By making these changes, the City will be better able to encourage energy efficiency and the reduction of greenhouse gas emissions in and by Boston businesses, institutions, and residents, and meet its climate action goals.

I urge your Honorable Body to pass this ordinance as soon as possible so that the City of Boston may continue to make progress toward its climate action goals and to reduce the risks of future climate change.

Sincerely,

Thomas M. Menino
Mayor of Boston

CITY OF BOSTON
IN CITY COUNCIL

**AN ORDINANCE AMENDING THE AIR POLLUTION CONTROL COMMISSION
ORDINANCE IN RELATION TO REPORTING AND DISCLOSING THE ENERGY
AND WATER EFFICIENCY OF BUILDINGS.**

City of Boston Code, Ordinances, Chapter VII, Section 7-2 is hereby amended by inserting the following language after subsection 7-2.1:-

7-2.2 Energy Reporting and Disclosure.

(a) Purpose. It is the intent of this subsection to reduce the emissions of air pollutants, including greenhouse gases, from energy production, encourage efficient use of energy and water, and develop further investment in building a green economy by requiring the reporting and disclosure of annual energy and water use in all large buildings 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, 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:

City means the City of Boston.

Commission means the Air Pollution Control Commission.

Days means consecutive calendar days.

Owner means the owner of record, or designated agent, provided that the "owner" shall be deemed to include: (i) the net lessee in the case of a building subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options, (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.

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

Energy means electricity, natural gas, fuel oil, steam, and any other sources of energy that the Commission may designate.

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.

Non-residential building means, as it appears in the records of the Boston Assessing Department, a parcel with one or more buildings that equal or exceed 25,000 square feet in gross building area, and of which 50 percent or more of the gross building area, excluding parking, is used for commercial, retail, office, professional, educational or other non-residential purposes. *The term "non-residential building" shall not include any building that is a City building.*

Residential building means, as it appears in the records of the Boston Assessing Department, a parcel with one or more buildings with 25 or more total individual dwelling units that, together with hallways and other common space serving residents, comprise more than 50 percent of the gross building area, excluding parking, or any parcel with one or more buildings that equal or exceed 25,000 square feet in gross building area and that is not a City building or a non-residential building.

ENERGY STAR® Portfolio Manager means the U.S. Environmental Protection Agency's online tool for reporting and managing building energy data, used to create a U.S. EPA Energy Star Performance Rating.

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

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

- (c) *Energy and Water Disclosure Required for City Buildings.*** No later than May fifteenth of each year, the City shall publicly disclose the previous year's energy and water use of each City building.

The Commission shall coordinate the performance of this requirement.

- (d) *Energy and Water Reporting Required for Non-City Buildings.*** No later than May fifteenth of each year, building owners of each building subject to reporting requirements shall accurately report to the Commission the previous calendar year's energy and water use of each building and other building characteristics necessary to evaluate absolute and relative energy use intensity. Building owners shall report this information by using the Energy Star Portfolio Manager or such alternative as the Commission may designate. The initial reports shall occur according to the following schedule:

- (i) For every non-residential building equal to or greater than 50,000 gross square feet or two or more buildings on the same parcel that

equal or exceed 100,000 gross square feet, the first report shall be submitted no later than May 15, 2014.

- (ii) For every non-residential building equal to or greater than 25,000 gross square feet but less than 50,000 gross square feet, the first report shall be submitted no later than May 15, 2016.
- (iii) For every residential building equal to or greater than 50 units or 50,000 gross square feet, or two 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 50 units or 50,000 gross square feet, the first report shall be submitted no later than May 15, 2015.
- (iv) For every residential building equal to or greater than 25 units or 25,000 gross square feet, the first report shall be submitted no later than May 15, 2017.

(e) **Direct upload.** 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 remove the obligation of building owners to comply with reporting requirements.

(f) **Energy audit.** Each non-City owned building subject to reporting requirements in *clause (d)* of this subsection shall complete an energy audit or such other actions as the Commission shall specify within five (5) years of its first energy reporting deadline and within every five- (5-)year period thereafter. Energy audits and other actions shall be conducted by, or under the supervision of, a qualified energy professional, as determined by the Commission. In specifying audit requirements, the Commission shall look to the Level II Energy Survey and Engineering Analysis described in the most recent edition of Procedures for Commercial Building Energy Audits published by ASHRAE as the basic standard, but may vary these requirements based on building size, age, and other characteristics. Results of audits or other required actions shall be reported to the Commission in such form as the Commission shall specify.

The Commission shall establish criteria for exempting non-City buildings from the energy-audit requirement. Such criteria shall be based, wherever possible, on the U.S. Environmental Protection Agency's Energy Star performance ratings, with a goal of incentivizing buildings to attain a rating of at least the 75th percentile. The Commission may also establish additional criteria, including criteria for buildings not eligible for an Energy Star rating, based on:

- (i) LEED (the Leadership in Energy and Environmental Design rating system published by the U. S. Green Building Council) designations;

- (ii) patterns of significant and consistent improvements in energy and water efficiency;
- (iii) a building's inclusion in an Institutional Master Plan, as described in Article 80.D. of the Boston Zoning Code, and a corresponding comprehensive energy management plan; or
- (iv) other factors that recognize the complexity of building management, the costs and benefits of energy efficiency, and the City of Boston's climate goals.

(g) *Obligation to Request and Report Information.* Where a unit or other space 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, 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.

- i. 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 first and no later than January thirty-first of any year in which the owner is required to report such information.
- ii. Upon receiving such 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 twenty-eighth of any year in which the owner is required to report such information.
- iii. 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 30 days.
- iv. 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, provided that such owner shall not be required to report such information not reported by a tenant.

(h) *Preservation of documents.* Owners reporting energy and water use shall maintain such records and for such time as the Commission shall determine are necessary as set forth in regulations of the Commission, and shall make such records available for inspection and audit by the Commission upon request.

(i) Disclosure. The Commission shall make energy- and water-use information for non-City buildings available to the public on the Internet no later than October first of every year. Such disclosure shall include, at a minimum, building identification, energy intensity, greenhouse gas emissions per square foot, Energy Star rating, where available, and water consumption per square foot. Before any such disclosure, the Commission shall subject all data to a quality-assurance/quality-control process. Notwithstanding the foregoing, the Commission may choose to disclose more limited information in the first year of required reporting for each class of buildings.

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.

(j) Enforcement and Penalties.

- (1) Failure to comply with the provisions of this subsection shall result in the imposition of penalties by the Air Pollution Control Commission. For any failure to comply, the Commission, acting through its Executive Director, 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.
- (2) Notice of Violation. The Executive Director of the Commission 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 by the Air Pollution Control Commission 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 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 for a hearing for a determination of whether the building owner or tenant violated this subsection.
- (3) If a building owner or tenant requests a hearing, the Commission or its designee shall hold such hearing within 60 days of the Executive Director'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 Commission determines that the building owner or tenant violated this subsection, that person shall have 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 30 days after the Executive Director issues a written notice of violation, that person has 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 30 days after the issuance of an adverse decision after a hearing, that person has 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 below:

- i. For owners of non-residential buildings of 50,000 square feet or greater, up to \$250.00 per violation.
- ii. For owners of non-residential buildings of 25,000 to 49,999 square feet square feet, up to \$100.00 per violation.
- iii. For owners of residential buildings equal to or greater than 50 units or 50,000 gross square feet, up to \$250.00 per violation.
- iv. For owners of residential buildings equal to or greater than 25 units or 25,000 gross square feet but less than 50 units or 50,000 square feet, up to \$100.00 per violation.
- v. For tenants of non-residential buildings, up to \$50.00 per violation.
- vi. For tenants of residential buildings, up to \$25.00 per violation.

Each day of noncompliance shall count as a separate violation.

(5) Injunctive Relief. The Commission may 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.

(6) Fines. All fines and penalties issued under this subsection may be enforced pursuant to G. L. c. 40, section 21D, provided however, that this permission to utilize the noncriminal disposition procedures of section 21D shall not deprive the Commission of any other remedy or means of collecting the fine, including by indictment or complaint.

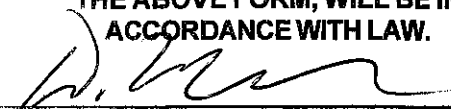
This *clause (j)* shall not apply to the City or any municipally owned buildings.

(k) Power to Suspend. The Commission may suspend all or part of the requirements of this subsection upon a written finding that a significant obstacle interferes with

their implementation, and may lift such suspension upon a written finding that the obstacle has been removed.

- (l) **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.
- (m) **Regulatory Authority.** The Commission shall promulgate rules and regulations necessary to implement and enforce this subsection, pursuant to M.G.L., c. 30A.
- (n) **Severability.** If any provision of this subsection 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.
- (o) **Implementation.** The provisions of this subsection are effective immediately upon passage.
- (p) **Notice.** Notification or attempted notification concerning reporting and disclosure procedures will be provided to all property owners subject to the requirements of this section.

I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.



WILLIAM F. SINNOTT
CORPORATION COUNSEL 