



July 28, 2021

The Honorable Councilor Matt O'Malley, City Council President, Pro Tempore
The Honorable Lydia Edwards, Chair, Boston City Council Committee on Government Operations
Distinguished Members of the Government Operations Committee
Boston, MA 02201-2043

RE: A Better City's Comments on 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)

Dear President O'Malley, Chairwoman Edwards, and members of the Government Operations Committee:

On behalf of A Better City's membership representing 130 of Boston's business leaders across multiple sectors of the economy, thank you for the opportunity to comment on Docket #0075, *Ordinance Amending City of Boston Code, Ordinances, Chapter VII, Sections 7-2.1 and 7-2.2, Building Energy Reporting and Disclosure (BERDO)*. We are grateful for the City of Boston's continued climate leadership and for your proactive and constructive engagement with the Greater Boston business community. We are committed to working with you to make the next iteration of BERDO a success.

We are supportive of updating BERDO to align with the City's net zero carbon commitments but urge Committee members to address key issues in the Ordinance Amendment before passage. Namely, we continue to have concerns that the Review Board needs refinement, including to its structure, functions, and responsibilities. Further, we are eager to ensure that its nomination process and resulting membership reflects the expertise required to fulfill the Board's responsibilities. Additionally, members have identified key areas throughout the Ordinance Amendment where additional clarification in the language, including around administrative processes, are needed to ensure successful implementation. They also emphasize the need for the City to dedicate resources to helping building owners, especially smaller ones that will be newly covered under BERDO, with compliance, and to ensure transparency throughout implementation and distribution of financial resources.

Over the past two years, A Better City's Energy & Environment team has engaged member businesses and institutions from A Better City and the Boston Green Ribbon Commission's Commercial Real Estate Working Group to form an Efficient and Resilient Buildings Coalition (Coalition). Throughout 2020 and 2021, the Coalition has engaged extensively with staff from the Office of Energy, Environment, and Open Space (EEO) on the development of amendments to include in the new Building Emissions Performance Standard (BEPS) of the Building Energy Reporting and Disclosure Ordinance (BERDO). A Better City has appreciated the opportunity to speak with EEO staff on numerous occasions and looks forward to remaining in close contact with the Government Operations Committee as this important work in City Council is advanced.

Based on discussion and feedback from Coalition members, please see A Better City's enclosed comments on the Ordinance Amendment. We look forward to continued dialogue in the months ahead.



Sincerely,

A handwritten signature in black ink that reads 'Rick Dimino'.

Rick Dimino
President & CEO, A Better City

Enclosures: 1

cc: Kim Janey, Mayor, City of Boston
Carl Spector, Commissioner of the Environment, City of Boston
Reverend Mariama White-Hammond, Chief of Environment, Energy & Open Space
Alison Brizius, Director of Climate and Environmental Planning, City of Boston



ATTACHMENT A: DETAILED COMMENTS ON DOCKET #0075, ORDINANCE AMENDING CITY OF BOSTON CODE, ORDINANCES, CHAPTER VII, SECTIONS 7-2.1, AND 7-2.2, BUILDING ENERGY REPORTING AND DISCLOSURE (BERDO)

A Better City and its members support the City's goal of achieving net zero emissions by 2050. We appreciate that as the City seeks to implement building programs in line with this goal, EEOS conducted active stakeholder and community engagement. We are grateful that the Government Operations Committee (Committee) is continuing this engagement during the drafting and adoption of the Ordinance.

As you are aware, the real estate market in Boston is facing significant challenges stemming from the COVID-19 pandemic. Despite promising news in recent months around vaccination rates in Massachusetts and a gradual return to the workplace, Boston's building sector remains vulnerable, and the long-term impacts of the COVID-19 pandemic on building owners and tenants are not fully known. Meeting a net zero emissions standard would have presented building owners, operators, and tenants with a challenge at any time, but especially now, must be navigated alongside declining revenues, heightened financial instability, and increased operating costs to ensure the health and safety of remaining tenants.

It is even more critical, therefore, that input from the real estate community be considered to help refine and effectively implement key elements of the Ordinance. Coalition members are eager to ensure that building owners, developers, and tenants can plan for and comply with the declining emissions cap over time. Elements that we believe need additional attention are detailed below.

Definitions

- **Clarification on Non-Residential Buildings:** We have concerns about the language included in section iii of the Non-Residential Building definition that appears to grant the Board the authority to designate any grouping of Non-residential Buildings as an appropriate reporting unit. Without additional specificity in the Ordinance on the purpose or intended use of this authority, it seems to grant the Board undue ability to significantly expand the universe of covered buildings.
- **Alignment with the State:** We encourage the City to consider ways in which to align any requirements in the Ordinance with those building owners, operators, and tenants are subject to at the state level. In particular, we recommend that the City ensure alignment between the definitions of Environmental Justice adopted in S9., An Act creating a next-generation roadmap for Massachusetts climate policy, and align with the associated MEPA Environmental Justice Protocol principles, currently under development and review.

Energy, Emissions, and Water Reporting Required for Non-City Buildings

- **Emissions Factors:** This section includes language that states that building owners must submit, "Any CO_{2e} Emissions Factors for Energy used by the building that is different from the Emissions Factors in the Regulations." Members have shared questions about the circumstances in which this would be permitted and the potential impacts on disclosure. We recommend that the Committee clarify the instances in which alternative emissions factors would be permitted and how that data would be handled.
- **Reporting Methodology:** EPA Portfolio Manager is the method of calculating and reporting emissions under the Ordinance. Portfolio Manager is a national tool that does not always have most current eGRID data and EPA steam emissions factors do not accurately represent the



emissions factors of local steam in Boston. The regulation should very clearly define a methodology for calculating emissions with the most up-to-date and accurate emissions factors that are customized to the actual generation sources serving the local grid in Boston.

Equitable Investment Fund

We support the ways in which this Ordinance seeks to invest in communities that have been and continue to be disproportionately impacted by environmental harms and environmental racism.

- **Connect Benefits Between Environmental Justice Populations and GHG Mitigation:** To engender the transformation necessary to lessen or eliminate such harm going forward, we strongly recommend that the City prioritize the utilization of Equitable Investment Funds for implementation of building decarbonization projects that specifically connect the environmental and health benefits in environmental justice populations and greenhouse gas mitigation. Examples could include energy efficiency and deep energy retrofits by and for environmental justice communities in Boston.
- **Additional Clarity on Further Environmental Initiatives:** We recommend that the Ordinance specifically name deep energy retrofits and electrification of large commercial buildings as among “any further environmental initiatives.” Building owners and operators, particularly those in Class B and C buildings, will undoubtedly need support in achieving the declining emissions cap and Alternative Compliance Payments should also be made available for these purposes.
- **Transparency:** To increase transparency, we recommend adding language that requires the City Auditor, in conjunction with EEOS and the Board, to publish information detailing disbursements of the Equitable Investment Fund, that is made available to the public on an annual basis.

Data Verification

- **3rd Party Verification:** Costs for complying with third-party verification of building owner’s data every five years could be substantial for large campuses. We recommend the Committee consider the credentials required for third-party verifiers and permit certification from a qualified licensed professional employed by the building owner, with appropriate precautions to ensure compliance, such as a random audit or affidavit. Specifically, we support adopting the requirement from BERDO that the individual certifying the data has at least two years’ experience performing building energy efficiency audits and be a Certified Energy Manager (CEM) or registered Professional Engineer (PE). We urge the city to allow these CEMs and PEs to qualify even when employed by the reporting entity providing verification. As independently certified professionals, these individuals have a responsibility for independent analysis but also have a familiarity with their buildings’ energy reporting and operations. Allowing CEMs and PEs to qualify as individual certifiers would significantly reduce the financial burden for large campuses in particular, as this would mean that reporting data could be certified with existing staff, without needing to hire an external independent third-party certifier at an additional cost.
- **Verified Data Discrepancy:** We recommend that the Committee include some flexibility under subsection d, which notes that a discrepancy between third-party verified data and an owner’s self-certified data will result in a lack of compliance and fees. It is highly likely that different parties may develop slightly different emissions estimates. We recommend including a margin of error of no more than 5% to ensure that owners that have done their best to comply appropriately are not unnecessarily penalized.



Emissions Requirements

- **Blended Emissions Standard:** Coalition members agree that allowing buildings to select a blended Emissions standard based on building use type is the right approach and appreciate the flexibility the City is providing through this framework. They have recommended, however, that building owners should be allowed to use a blended Emissions standard for all Buildings in the Portfolio without requiring an application.
- **Calculating New Emissions Standards:** Members have also expressed a series of concerns regarding the new emissions standards. They have questioned how the emissions standards, measured as kgCO₂ e/SF/year, were set and why they are significantly lower, and therefore more stringent, than the standards in New York City. They have expressed concerns that the increase in energy demands on HVAC equipment, especially ventilation, to ensure health and safety amidst and following the pandemic, may not be accounted for in the emissions standards. Information detailing the differences including the Technical Methods Overview¹, as provided by City staff, has been shared with members. We recommend the Committee request the technical experts that conducted the Study be available during the Working Sessions, should there be questions about the appropriateness of the standards.

Energy Use Exempt from Emissions Requirements

Members have expressed significant concerns regarding the phase out of fossil fuel backup generation by 2030. We appreciated that EEOS acknowledged during the drafting stages that this will only move forward if it is possible to provide backup generation through alternative technologies. While we are as hopeful as the City of Boston that new technologies will be available by 2030 to make such a phase out of fossil fuel backup generation possible, we recommend the Committee add language clearly stating that an assessment must be conducted in the latter half of this decade to ensure this is the case. We also urge the City to work with MassCEC and other partners to conduct pilots of clean energy alternatives at critical City facilities to demonstrate the feasibility of phasing out fossil fuel backup generation.

Individual Compliance Schedules

We understand that the individual compliance pathway is akin to BERDO's self-improvement approach, with the change that buildings can set their baseline year, which in turn impacts the percentage reduction year over year. Members appreciate that this individual compliance pathway creates flexibility for buildings and strongly support the ability to select a customized baseline year, given the energy efficiency work that many buildings have already done to voluntarily reduce emissions. That said, members requested more detail regarding the application process associated with the individual compliance pathway. We continue to urge the City to engage with building owners to ensure that the application process for the individual compliance pathway is designed with the end user in mind and does not create unnecessary administrative burden.

Hardship Compliance Plans

- **Flexibility:** We understand that buildings in hardship compliance plans will still be required to reduce emissions over time, in line with a net zero emissions target by mid-century. As noted above, we anticipate that some of these "hardship" buildings may have challenges achieving full

¹ https://www.boston.gov/sites/default/files/file/2021/02/Boston_Performance_Standard_Technical_Methods_2021-02-18_20-013_0.pdf (Page 3)



net zero reductions, but that those cases will be evaluated individually over time. Having the flexibility to choose a baseline year, as in the Individual Compliance Schedules, is recommended in this hardship compliance section as well.

- **Understanding “Uniquely Difficult to Decarbonize”:** Members are very interested in additional information about what constitutes a building as “uniquely difficult to decarbonize”, what conditions may be required by the Review Board, and what process may be put in place to determine eligibility. We urge the City to continue engaging with building owners, particularly hard-to-decarbonize large commercial, institutional, industrial and historical building owners and tenants to develop criteria for determining which buildings would be eligible for hardship compliance, and to include a definition of “hard-to-decarbonize building” in the Ordinance language. Members request that throughout the development of the Ordinance Amendment and the regulatory process that the hardship compliance pathway is crafted in a way that appropriately reflects the challenges building owners face across building use types, particularly those that operate 24/7 and have high energy reliability needs, such as hospitals, data centers, and labs.

Compliance Mechanisms

The Coalition stressed that building emissions policies should be designed to allow for a flexible mix of energy efficiency, renewable energy, and electrification, with the goal of enabling every building owner to pursue the solution that most effectively reduces emissions in their building or portfolio. A Better City appreciates that this standard largely reflects a flexible scope and framing for decarbonization that will help to achieve compliance while also promoting creativity and innovation. Members have made the following requests to help improve the Ordinance language and implementation:

- **Renewable Energy Certification Clarification:** We urge the Committee to correct what we understand to be an error in drafting that seems to prohibit the use of bundled Renewable Energy Certificates (RECs) in Power Purchase Agreements (PPAs) located outside New England. Members have made it clear in no uncertain terms that this would prohibit utilizing their existing PPAs for compliance and would make this regulation untenable to them. Specifically, we recommend that language be inserted into the Compliance Mechanism section that makes it clear that bundled RECs are permissible in PPAs located outside New England. We would be happy to provide sample language in A Better City’s forthcoming Ordinance mark-up, as appropriate. Further, we believe that throughout this section, “Renewable Energy Credit” should be amended to “Renewable Energy Certificate.”
- **Power Purchase Agreements:** We recommend that the Committee amend the language on PPAs to clarify that owners are not obligated to provide their PPA contracts to the City, but are required to share the material terms of the agreements necessary for accurate and timely reporting.
- **The Electric Grid:** As stated in the Emissions Requirements section above, we understand that Boston’s standard allows building owners to include emissions reductions based on the greening of the grid and that the utilities are required to green the grid over time. We urge that an assessment be conducted on a regular basis to ensure the utilities are compliant with their GHG reduction requirements so building owners are not unduly penalized. If utilities are not in compliance, then we urge a reassessment of kgCO₂ e/SF/year thresholds for building sectors.
- **Carbon Offsets/Removals:** We understand that the City is not including offsets as a component of compliance at this time, but appreciate the acknowledgement that there may be a small number of individual cases that will need to utilize offsets in the long-term, as per the analysis in the Carbon Free Boston report. In the interim, we understand that these hard-to-decarbonize buildings will be



able to pursue approaches tailored to their unique needs through the Hardship Compliance Plan pathway. We urge the City to state clearly in the ordinance that offsets, with a focus on carbon removals, as a component of compliance, will be reevaluated in 2025 as the City's Climate Action Plan update of Fall 2019 included the intention to pursue carbon offsetting in the City of Boston over the next five years².

- **Alternative Compliance Payments:** We also understand that the \$234 Alternative Compliance Payment (ACP) value was established by assessing the average cost of a retrofit to remove a ton of carbon in the building stock covered by BERDO, without inclusion of incentives or cost savings over time. We appreciate that the City has designed the ACP in a way that seeks to ensure pursuing emissions reductions is a more cost-effective option for an average building. We recommend the Ordinance include parameters under which the ACP should be amended in the future.

Review Board

The Emissions Review Board, as currently articulated in the Ordinance, will have a wide-ranging and important set of functions that are imperative to the successful implementation of the standard. We have concerns that the current functions are too broad for a single Board, and that certain responsibilities would be better served by City staff including compliance and enforcement.

- **Review Board Working Session / Clarification of Function, Purpose and Responsibilities:** We recommend the Committee host a working session solely dedicated to the Review Board to clarify its function, purpose and responsibilities, along with the responsibilities that will be undertaken by the Air Pollution Control Commission and EEOS. Clarifying the relationship between these three bodies, as well as their respective roles in implementing the Ordinance, will be essential to ensuring the right expertise is included on the Review Board.
- **Review Board Expertise:** We recommend the Review Board include business organizations and trade associations in addition to appropriate building expertise from Boston's major industries, including health care, research, financial institutions, and bio-med. We also recommend that the Board represents the diverse constituencies that will be affected by the regulations, including both building owners and tenants.
- **Outside Expertise:** The Board should receive guidance and input from outside experts with technical, energy, and building operation expertise when designing relevant regulations and approving compliance plans.

Effective Date

Development of a comprehensive program to implement this Ordinance is paramount to its success and to ensuring compliance. We urge the Committee to consult with EEOS and the Air Pollution Control Commission to determine the appropriate effective date for implementation. Specifically, we suggest the building reporting deadline be delayed until November 15th, 2022, to allow for:

- Regulations to be written;
- Review Board to be selected, established, and convened;
- Staff capacity and budget to be put in place:
 - City budget and staffing plan for BERDO implementation should be submitted to City Council by September 2021 to ensure there is City capacity to do this work;

² https://www.boston.gov/sites/default/files/embed/file/2019-10/city_of_boston_2019_climate_action_plan_update_4.pdf



- City staff capacity should be increased to account for the additional 1,300 buildings required to comply under this Amendment.

Conclusion

It is exciting to see Boston take such an important step to reduce emissions from one of its major sectors, which will help our City to achieve our climate targets while protecting and improving the health and well-being of all our communities. Thank you for the continued opportunity to engage on this important topic. The Coalition is eager to support this work and urges the Committee to host Working Sessions on these important topics as soon as possible. Our members and staff remain eager and at the ready to engage on BERDO implementation whenever appropriate, in a solutions-oriented manner.

Should you have any questions regarding these comments or the ongoing engagement of A Better City members, please reach out to Yve Torrie (ytorrie@abettercity.org). We appreciate the opportunity to partner with you to support this critical work.