

Boston Requires Carbon Neutrality for Existing Buildings

November 10, 2021

Furthering the aims of Boston's 2019 Climate Action Plan, which identified large buildings as major carbon emitters, Boston City Council amended the Building Energy Reporting and Disclosure Ordinance (BERDO) to require all buildings of at least 20,000 square feet or 15 dwelling units to chart a course to carbon neutrality by 2050.

BERDO 1.0, adopted in 2013, required annual reporting of energy and water use for buildings with at least 35,000 square feet or 35 dwelling units. BERDO 2.0, re-named the Boston *Emissions Reduction* and Disclosure Ordinance, passed City Council in September and was signed by Acting Mayor Kim Janey on October 5, 2021. It lowers the building threshold, expands annual reporting to include clean energy purchases and carbon emissions by use type, and requires actual reductions in carbon emissions.

Performance Standards

BERDO 2.0 establishes citywide carbon emissions targets, measured in annual metric tons of carbon dioxide equivalent (i.e., greenhouse gas) per square foot, varying by use type and decreasing every 5 years to net zero in 2050. Mixed-use buildings (more than one use occupying at least 10% of the building's floor area) have blended emissions targets based on the floor area of each use.

A building owner can meet the citywide targets or seek Review Board approval (addressed below) of tailored targets stepping down from a building's current baseline emissions. In either case, the goal is to achieve net zero by 2050. Owners may choose to reduce energy consumption through building retrofits, deploy on-site renewable energy (e.g., heat pumps or solar panels) or purchase renewable energy generated offsite (e.g., Community Choice Electricity, Renewable Energy Certificates, Power Purchase Agreements), among other strategies. Fines may be assessed for failure to comply with the applicable performance standard (\$300 to \$1,000 per day).

Disclosure

The Air Pollution Control Commission, which administers BERDO 2.0, will disclose compliance status on the City of Boston website, in multiple languages, by December 2, 2022, and by October 1 of every subsequent year. Owners can comment on the draft disclosure, available at least 30 days in advance. Buildings newly subject to BERDO 2.0 need only provide annual reporting through 2030 and will not be subject to emissions targets until 2031. Fines may be assessed for failure to comply with reporting requirements (\$150 to \$300 per day) or for inaccurate reporting (\$1,000 to \$5,000 per day)

Review Board

A 9-member Review Board appointed by the Mayor will, among other things:

- review proposed collective instead of individual reporting for building portfolios such as university or hospital campuses;
- approve tailored emissions reduction schedules to achieve net zero by 2050;
- approve alternatives (such as payment into a new Building Emissions Equitable Investment Fund based on the average retrofit cost of \$234 per metric ton of carbon dioxide equivalent) in cases of substantial obstacles such as historic designation, deed-restricted affordability, long-term energy contracts, or financial hardship; and
- award grants from the aforementioned fund for emissions reduction projects that prioritize environmental justice populations and populations disproportionately affected by air pollution.

Working Groups

Review Board membership will include expertise in environmental justice, affordable housing, labor and workers' rights, workforce development, building engineering and energy, real estate development and management, public health and hospitals, architecture and historic preservation. The Review Board can convene sector-specific working groups (e.g., a health care working group) with appropriate governmental authorities, sector-specific professionals, financial institution representatives, energy providers and utility representatives to make recommendations on regulatory changes and hardship criteria.

Further Information

Goulston & Storrs will continue to monitor the impact of BERDO 2.0. For questions about the information in this advisory, please contact your usual Goulston & Storrs attorney or any of the individuals listed below.

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