

**City of Newton Proposed Building Emissions
Reduction and Disclosure Ordinance (BERDO)
May 6, 2024**

WHEREAS: Buildings contribute to 64 percent of greenhouse gas emissions in the City of Newton; and

WHEREAS: Non-Residential Buildings over 20,000 Gross Floor Area contribute 23 percent of greenhouse gas emissions in the City of Newton; and

WHEREAS: The City of Newton’s Climate Action Plan details strategies to reduce carbon emissions from buildings; and

WHEREAS: The Newton City Council passed a resolution unanimously in April 2022 declaring that the City should pass a Building Emissions and Reduction Ordinance.

THEREFORE, THE FOLLOWING ORDINANCE IS ADOPTED:

SECTION 1. Building Emissions Reduction and Disclosure

(a) Purpose

It is the intent of this Ordinance to reduce the emissions of air pollutants, including greenhouse gases, from building energy consumption, and thereby to encourage efficient use of energy; to develop further investment in building a green economy, including by encouraging the hiring and training of workers for green jobs; and to protect public health. To do so, the provisions of this Ordinance require the reporting and disclosure of annual energy

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use in all covered Buildings and compliance with emissions reduction requirements in accordance with this Ordinance.

(b) Definitions

When used in this Ordinance, unless a contrary intention clearly appears, the following terms shall have the following meaning:

Alternative Compliance Payment means a per-metric ton payment based on the average cost per metric ton of CO₂e to decarbonize Buildings subject to this Ordinance.

BERDO Administrator means the City employee designated as the individual employed to implement the BERDO program.

Building means a building that equals or exceeds 20,000 square feet in Gross Floor Area and in which at least 20,000 square feet of Gross Floor Area is used for non-residential purposes.

Building Portfolio means two or more Buildings, on one or more properties, provided that all Buildings within the Portfolio have the same Owner; for this purpose, a Building management company does not constitute an Owner.

Building Use means (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 EPA Energy Star Portfolio Manager

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reporting tool; or (ii) other activities as defined in Portfolio Manager or by the Regulations.

Carbon Dioxide Equivalent (CO_{2e}) means greenhouse gas Emissions, including carbon dioxide, methane, and nitrous oxide. CO_{2e} shall be calculated using a methodology as set forth in the Regulations.

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 CO_{2e} associated with the Energy used by a Building, excluding electricity.

Emissions Factor means CO_{2e} calculated according to regional Energy and greenhouse gas factors as set forth in the Regulations.

Energy means electricity and any fuel source including, but not limited to, natural gas, fuel oil, propane and any other sources of Energy that the BERDO Administrator may designate.

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

Environmental Justice Population means a neighborhood that meets one or more of the following criteria: (i) the annual median household income is not more than 65 percent 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, by state statute, or defined in the Regulations.

Gross Floor Area (GFA) means the sum of the floor area of the Building measured from the exterior face of the exterior walls of the Building as per the City of Newton Assessors' records. The BERDO Administrator shall publish Regulations governing the calculation of Gross Floor Area, including types of areas that shall be excluded from the calculation.

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

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Individual Compliance Schedule means an alternative timeline for complying with the Emissions Standards outlined in this Ordinance.

Owner means a Building's Owner of record, provided that the "Owner" may be deemed to include (i) multiple Owners in common ownership and (ii) the association or organization of unit Owners responsible for overall management in the case of a condominium. 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 30 years, inclusive of all renewal options, the Owner may designate the lessee as "Owner" for purposes of compliance with this Ordinance; such designation must be provided in writing to the BERDO Administrator as required by the Regulations. An Owner may designate an agent to act on its behalf, including reporting as required by this Ordinance; provided, however, that any designation (i) must be provided in writing to the—BERDO Administrator, and (ii) does not relieve the Owner of any compliance obligation under this Ordinance.

Regulations means the Newton Building Emissions Reduction and Disclosure Regulations.

Tenant means any tenant of a Building covered by this Ordinance.

Verification Year means any year in which an Owner must report third-party verified reporting data. Verification Years will be the

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second reporting year for each building category following the enactment of this Ordinance, and every five years thereafter.

(c) Building Portfolios

Building Portfolios must be approved by the BERDO Administrator and Building Portfolio Owners must submit documentation confirming eligibility as a Building Portfolio. Notwithstanding the approval of a Building Portfolio, Owners must continue to report the Energy use, Emissions data, and any other information required by this Ordinance for each individual Building. If a Building is removed from or added to 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, and the Building Portfolio shall be adjusted to reflect the removal or addition of the Building.

(d) Energy and Emissions Reporting Required

(i) Data Reporting Requirements

Each year, the Owner of each Building subject to reporting requirements shall accurately report to the BERDO Administrator, via the Portfolio Manager or as required by the Regulations, the following information for the previous calendar year:

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- (a) Energy use of each Building and other Building characteristics necessary to evaluate CO₂e Emissions on a kilogram (kg) CO₂e per square foot (SF) per year basis.
- (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 shall be reported, provided that each use occupies at least 10 percent of the Building's Gross Floor Area.
- (c) Contact information for Owners and any designated agents.

(ii) Reporting Schedules

The initial reports shall occur according to the following schedule:

1. For every Building equal to or greater than 100,000 square feet Gross Floor Area, the first report shall be submitted no later than September 15, 2025.
2. For every Building equal to or greater than 20,000 square feet Gross Floor Area but less than 100,000 square feet Gross Floor Area, the first report shall be submitted no later than September 15, 2026.

Building Owners may apply to the BERDO Administrator for a one-time six-month extension of their reporting deadline.

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(e) Direct Upload

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

(f) Equitable Emissions Investment Fund

The City Comptroller shall establish the Equitable Emissions Investment Fund (hereinafter, the “Fund”) as a separate account, and credit to the Fund all Alternative Compliance Payments, penalties and fees paid pursuant to this Ordinance.

The City may incur liabilities against and spend monies from the Fund.

At the discretion of the BERDO Administrator, and with approval by the Mayor, expenditures from the Fund may be made for the following purposes:

- a. Projects that benefit Environmental Justice Populations
- b. Costs incurred by the City in administering the program created pursuant to this Ordinance;

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- c. Costs incurred by the City in complying with the program created pursuant to this Ordinance;
- d. Costs incurred by non-profit entities that operate within the City, including but not limited to entities that operate affordable housing, in complying with the program created pursuant to this Ordinance;
- e. Other projects intended to reduce greenhouse gas emissions within the City;
- f. Technical assistance to property owners subject to BERDO related to implementation of the requirements of this ordinance.

(g) Data Verification

- a. Building Owners shall self-certify their reporting data every year.

In a Building's second year of reporting, Building Owners shall provide a third-party verification of their reporting data for the previous year. For every Verification Year thereafter, Building Owners shall provide a third-party verification for the five calendar years prior to, but not including the current year. Third-party verifications must be performed by qualified Energy professionals,

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as defined by the Regulations, and submitted no later than the reporting deadline of the relevant year.

(h) Emissions Requirements

Each Building subject to the reporting requirements of this Ordinance shall comply with the CO₂e Emissions standards set forth in Table 1 below; unless the Building Owner has received an approved Individual Compliance Schedule pursuant to the requirements in SECTION 1(k) or an approved Hardship Compliance Plan pursuant to SECTION 1(l). Buildings must comply with the Emissions standards on an annual basis and compliance shall be measured as a total of kg of CO₂e Emissions per square foot. Buildings will be subject to the emissions standards in Table 1 based on the schedule for each Tier and Building Category in Tables 2 through 5.

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Table 1: CO₂e Emissions Standards by Building Use

Building Use	Emission standards (kgCO ₂ e/SF/yr)				
	Period 1	Period 2	Period 3	Period 4	Period 5
Assembly	6.1	3.7	2.3	1.1	0.0
College/University	9.5	5.7	3.5	1.5	0.0
Education	4.1	2.8	1.9	0.9	0.0
Food Sales & Service	6.8	4.4	3.2	1.5	0.0
Healthcare	14.3	9.2	6.5	3.2	0.0
Lodging	4.6	3.1	2.1	1.0	0.0
Manufacturing/Industrial	3.9	2.9	2.2	1.0	0.0
Office	3.1	2.0	1.2	0.5	0.0
Retail	3.4	2.3	1.4	0.6	0.0
Services	6.5	4.2	2.9	1.4	0.0
Storage	2.5	1.8	1.3	0.6	0.0
Technology/Science	14.6	10.7	6.7	2.8	0.0

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Table 2. Compliance Periods by Building Use—Tier 1 Buildings:
Buildings equal to or greater than 100,000 square feet Gross Floor
Area.

Building Use	Emission standards (kgCO ₂ e/SF/yr)				
	2027- 2032	2033- 2038	2039- 2044	2045- 2049	2050-
Assembly	6.1	3.7	2.3	1.1	0.0
College/University	9.5	5.7	3.5	1.5	0.0
Education	4.1	2.8	1.9	0.9	0.0
Food Sales & Service	6.8	4.4	3.2	1.5	0.0
Healthcare	14.3	9.2	6.5	3.2	0.0
Lodging	4.6	3.1	2.1	1.0	0.0
Manufacturing/Industrial	3.9	2.9	2.2	1.0	0.0
Office	3.1	2.0	1.2	0.5	0.0
Retail	3.4	2.3	1.4	0.6	0.0
Services	6.5	4.2	2.9	1.4	0.0
Storage	2.5	1.8	1.3	0.6	0.0
Technology/Science	14.6	10.7	6.7	2.8	0.0

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Table 3. Compliance Periods by Building Use—Tier 2 Buildings:
Buildings equal to or greater than 50,000 square feet and less than
100,000 square feet Gross Floor Area.

Building Use	Emission standards (kgCO ₂ e/SF/yr)				
	2028- 2033	2034- 2039	2040- 2044	2045- 2049	2050-
Assembly	6.1	3.7	2.3	1.1	0.0
College/University	9.5	5.7	3.5	1.5	0.0
Education	4.1	2.8	1.9	0.9	0.0
Food Sales & Service	6.8	4.4	3.2	1.5	0.0
Healthcare	14.3	9.2	6.5	3.2	0.0
Lodging	4.6	3.1	2.1	1.0	0.0
Manufacturing/Industrial	3.9	2.9	2.2	1.0	0.0
Office	3.1	2.0	1.2	0.5	0.0
Retail	3.4	2.3	1.4	0.6	0.0
Services	6.5	4.2	2.9	1.4	0.0
Storage	2.5	1.8	1.3	0.6	0.0
Technology/Science	14.6	10.7	6.7	2.8	0.0

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Table 4. Compliance Periods by Building Use—Tier 3 Buildings:
Buildings equal to or greater than 35,000 square feet and less than
50,000 square feet Gross Floor Area.

Building Use	Emission standards (kgCO ₂ e/SF/yr)				
	2029- 2034	2035- 2039	2040- 2044	2045- 2049	2050-
Assembly	6.1	3.7	2.3	1.1	0.0
College/University	9.5	5.7	3.5	1.5	0.0
Education	4.1	2.8	1.9	0.9	0.0
Food Sales & Service	6.8	4.4	3.2	1.5	0.0
Healthcare	14.3	9.2	6.5	3.2	0.0
Lodging	4.6	3.1	2.1	1.0	0.0
Manufacturing/Industrial	3.9	2.9	2.2	1.0	0.0
Office	3.1	2.0	1.2	0.5	0.0
Retail	3.4	2.3	1.4	0.6	0.0
Services	6.5	4.2	2.9	1.4	0.0
Storage	2.5	1.8	1.3	0.6	0.0
Technology/Science	14.6	10.7	6.7	2.8	0.0

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Table 5. Compliance Periods by Building Use—Tier 4 Buildings:
Buildings equal to or greater than 20,000 square feet and less than
35,000 square feet Gross Floor Area.

Building Use	Emission standards (kgCO ₂ e/SF/yr)				
	2030- 2034	2035- 2039	2040- 2044	2045- 2049	2050-
Assembly	6.1	3.7	2.3	1.1	0.0
College/University	9.5	5.7	3.5	1.5	0.0
Education	4.1	2.8	1.9	0.9	0.0
Food Sales & Service	6.8	4.4	3.2	1.5	0.0
Healthcare	14.3	9.2	6.5	3.2	0.0
Lodging	4.6	3.1	2.1	1.0	0.0
Manufacturing/Industrial	3.9	2.9	2.2	1.0	0.0
Office	3.1	2.0	1.2	0.5	0.0
Retail	3.4	2.3	1.4	0.6	0.0
Services	6.5	4.2	2.9	1.4	0.0
Storage	2.5	1.8	1.3	0.6	0.0
Technology/Science	14.6	10.7	6.7	2.8	0.0

(i) Blended Emissions Standard

Buildings or Building Portfolios with more than one primary use may comply with a blended CO₂e Emissions standard as defined by Regulation; provided, however, that a use may constitute a primary use only if it occupies at least 10 percent of a Building’s

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or Building Portfolio's Gross Floor Area. Building Owners using a blended CO₂e Emissions standard must (i) designate the blended standard in annual reports to the BERDO Administrator, and (ii) provide documentation verifying the qualification of each primary use in annual reports to the BERDO Administrator for the first year a blended CO₂e Emissions standard is used and in any subsequent year for which the blended Emissions standard or primary use(s) changes.

(j) Energy Use Exempt from Emissions Requirements

- i. Electricity which is used by a covered Building or Building Portfolio is exempt from the CO₂e Emissions Standard of this ordinance;
- ii. Building Owners may deduct Energy used by Emergency Backup Generation/Backup Power supply equipment from a Building's total Energy use subject to the CO₂e Emissions standard of this Ordinance, provided that emergency Backup Generation/Backup Power provides Energy only to the Building or Building Portfolio; and:
- iii. Building Owners annually report (i) Energy used by Emergency Backup Generation / Backup Power; (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

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shall be subject to the self-certification and third-party verification procedures in SECTION 1(g);

- iv. In the event that Emergency Backup Generation/Backup Power serves, or has the potential to serve, multiple Buildings in a Building Portfolio, the Energy use from such activities shall be allocated to individual Buildings in proportion to the gross square footage of each Building.

The BERDO Administrator may revise the availability and use of these exemptions or add additional exemptions pursuant to the Regulations.

(k) Individual Compliance Schedules

Owners of Buildings or Building Portfolios may apply for an Individual Compliance Schedule as an alternative to the CO₂e Emissions standard reduction schedule in Tables 2 through 5. Individual Compliance Schedules must establish declining CO₂e Emissions standards in 5- to 6-year increments, and such standards must (i) decline on a linear basis, (ii) reduce Emissions 40 percent by period 3, and (iii) reduce Emissions 100 percent by period 6; and

Use a baseline from any year between 2013 and 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

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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 Ordinance and the Regulations.

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 has been submitted to the BERDO Administrator and any applicable penalties for past non-compliance are paid in full.

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

(l) Hardship Compliance Plans

A Building Owner may apply to the BERDO Administrator for a Hardship Compliance Plan if there are extraordinary characteristics or circumstances associated with the Building in complying with the Emissions standards in this Ordinance. Such characteristics or circumstances may include historic Building designations, pre-existing long-term Energy contracts without reopeners, or extraordinary financial hardship. Implementation guidelines will

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be further detailed in the Regulations. The application, review process, and conditions for Hardship Compliance Plans shall be set forth in the Regulations. The BERDO Administrator shall have sole discretion in approving Hardship Compliance Plans; such plans may include alternative Emissions standards and timelines for compliance. The BERDO Administrator may include additional conditions on the approval of Hardship Compliance Plans consistent with the Regulations.

(m) Alternative Compliance Payments

Owners of Buildings or Building Portfolios may mitigate CO₂e 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 CO₂e to decarbonize Buildings subject to this Ordinance. The initial cost of an Alternative Compliance Payment shall be \$234 per metric ton of CO₂e. The cost of an Alternative Compliance Payment shall be reviewed every five years by the BERDO Administrator, which shall make recommended adjustments, if any, to the City Council.

(n) Preservation of Documents

Building Owners shall preserve records and information (i) required to be submitted by this Ordinance and/or (ii) submitted pursuant to this Ordinance in order to demonstrate compliance with the Emissions standards, including but not limited to information regarding Building Uses, Emissions Factors,

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compliance mechanisms outlined in this Ordinance, Individual Compliance Schedules, and Hardship Compliance Plans, for such time as set forth in the Regulations, and shall make such records available for inspection and audit by the BERDO Administrator or the Law Department upon request.

(o) Obligation to Request and Report Information

Where a unit or other space in a Building is occupied by a Tenant and the unit or space is separately metered, the Tenant of such space shall, within 30 days of request by the Owner and in a form to be determined by the BERDO Administrator, provide all information that cannot otherwise be acquired by the Owner and that is needed to comply with the requirements of this Ordinance. Failure by Tenant to comply with the requirements of this Ordinance may result in penalties as provided in this Ordinance.

1. The Owner may request information related to the Tenant's metered Energy 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. Failure of any Tenant to report the information required in this Ordinance does not relieve the Owner of the obligation to report.

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3. Where an Owner of a Building is unable to obtain complete Energy use data due to the failure of any Tenant to report the information required, the Owner shall use values or formulas established by the BERDO Administrator to estimate whole Building Energy use.

(p) Disclosure

The BERDO Administrator shall make Energy and Emissions information for Buildings available to the public on the City's website no later than November 30 of every year, except for 2025, in which it shall make such information available to the public no later than December 15, 2025. Such disclosure shall include, at a minimum, Building identification, Energy use intensity, CO₂e Emissions per square foot, and Emissions compliance status. Before any such disclosure, the BERDO Administrator shall subject all data to a quality-assurance/quality-control process.

1. At least 30 Days prior to disclosure, the BERDO Administrator shall provide Building Owners an opportunity to review the accuracy of information to be disclosed.
2. The Building Administrator shall also, from time to time, publicly report on implementation of, compliance with, and overall results from this Ordinance.

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(q) Enforcement for Failure to Comply with this Ordinance

Any violation of this ordinance shall be punishable by a fine of three hundred (\$300.00) dollars per day for each day the violation continues. Each day a violation continues shall constitute a separate offense. Where noncriminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these ordinances, as amended, pursuant to the authority granted by M.G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute.

(r) Notice

Within two months of the adoption of this Ordinance, notification concerning reporting and disclosure obligations and emissions reductions obligations shall be provided to Owners subject to the requirements of this Ordinance.

This notice, and any other notice required by this Ordinance shall be delivered to the contact information in the Assessor's database unless an Owner provides alternative contact information to the City Assessor's office.

SECTION 2. If any provision of this ordinance is held invalid by a court of competent jurisdiction, then such provision should be considered

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separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 3. The provisions of this Ordinance shall be effective upon passage.

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