

DRAFT (11-08-2023)

City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)

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

WHEREAS: Buildings over 20,000 Gross Floor Area contribute 26 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 production and 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 green jobs; and to protect public health. To do so, the provisions of this Ordinance require the reporting and disclosure of annual

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

energy 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.

Building means a City Building, Non-Residential Building, or Residential Building as defined in this Ordinance or by the Regulations.

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

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

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.

City means the City of Newton.

City Building means a Building that is owned by the City of Newton.

Climate/Sustainability Office means the City's team within the Mayor's office devoted to addressing climate and sustainability issues.

Days means consecutive calendar days.

Electrical Vehicle Supply Equipment (EVSE) means equipment for the purpose of transferring electric Energy to a battery or other Energy storage device in an electric vehicle, including but not limited to electric vehicle charging stations.

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

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

are beyond the control of the Owner, occupant, or operator of a Building.

Emissions means the emission of greenhouse gases, measured in units of CO₂e associated with the generation and transmission of Energy used by a Building.

Emissions Factor means CO₂e calculated according to regional Energy and greenhouse gas factors as set forth in the Regulations.

Energy means electricity, heating and cooling from any fuel source including, but not limited to, natural gas, fuel oil, propane, and power used to generate steam and hot and chilled water, and any other sources of Energy that the Climate/Sustainability Office may designate.

EPA ENERGY STAR Portfolio Manager or 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 per cent 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

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

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 total Building area, measured between the outside surface of the exterior walls of the Building. The Climate/Sustainability Office 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.

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

Law Department means the City department that handles the City's legal affairs, including enforcement and litigation matters.

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

Non-Residential Building means a Building that equals or exceeds 20,000 square feet in Gross Floor Area, and 50 percent or more of which is used for commercial, retail, office, professional, educational, or other non-residential purposes.

Owner means a Building's Owner of record, provided that the "Owner" may be deemed to include (i) multiple Owners in common ownership; (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. 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 Climate/Sustainability Office 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 Climate/Sustainability Office, and (ii) does not relieve the Owner of any compliance obligation under this Ordinance.

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

Power Purchase Agreement means a contract by which an Owner agrees to purchase electricity from a generating facility over a fixed term of years.

Regulations means the Climate/Sustainability Office Building Emissions Reduction and Disclosure Regulations

Residential Building means a Building that equals or exceeds 20,000 square feet in Gross Floor Area, 50 percent or more of which, with hallways and other common spaces, serves residents.

Renewable Energy Certificate (REC) means a certificate representing the environmental attributes associated with the production of 1 megawatt hour (MWh) of electricity by a renewable Energy facility.

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

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)****(c) Building Portfolios**

Building Portfolios must be approved by the Climate/Sustainability Office, 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 Climate/Sustainability Office, via the Portfolio Manager or as required by the Regulations, the following information for the previous calendar year:

- (a) Energy use of each Building and other Building characteristics necessary to evaluate CO₂e Emissions on a kgCO₂e/SF/yr. basis.

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

- (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 or accounts for at least 10 percent of the Building's annual Energy use or CO₂e Emissions.
- (c) If applicable, any Renewable Energy Certificates (RECs) used to comply with the Emissions standards set forth in this Ordinance, including proof that RECs have been removed from availability for resale.
- (d) If applicable, any Energy purchased via a Power Purchase Agreement(s) that was used at the Building and/or used to comply with the Emissions standards set forth in this Ordinance, including, if relevant, proof of removal of availability for resale of associated RECs and the Emissions Factor of the electric grid where the generating facility is located if on a grid other than ISO New England. Owners must provide the terms of an executed Power Purchase Agreement that demonstrates (i) the quantity of Energy purchased in the relevant calendar year, (ii) the type and generation location of the Energy purchased, (iii) the ownership of any RECs associated with the Energy, and (iv) other information required by the Regulations.

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

(e) Contact information for Owners and any designated agents.

(ii) Reporting Schedules.

The initial reports shall occur according to the following schedule:

1. For every Non-Residential Building equal to or greater than 100,000 Gross Floor Area, the first report shall be submitted no later than September 15, 2025.
2. For every Non-Residential Building equal to or greater than 50,000 Gross Floor Area but less than 100,000 Gross Floor Area, the first report shall be submitted no later than September 15, 2025.
3. For every Non-Residential Building equal to or greater than 35,000 Gross Floor Area but less than 50,000 Gross Floor Area, and Residential Buildings over 50,000 Gross Floor Area, the first report shall be submitted no later than September 15, 2025.
4. For every Non-Residential Building, greater than 20,000 Gross Floor Area but less than 35,000 Gross Floor Area, the first report shall be submitted no later than September 15, 2026.

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

5. For every Residential Building equal to or greater than 50,000 Gross Floor Area, the first report shall be submitted no later than September 15, 2025.

6. For every Residential Building equal to or greater than 20,000 Gross Floor Area but less than 50,000 Gross Floor Area, the first report shall be submitted no later than September 15, 2026.

Building Owners may apply to the Climate/Sustainability Office for a one-time six-month extension on their reporting deadline.

Notwithstanding the foregoing, the Climate/Sustainability Office shall develop a procedure for establishing alternative reporting dates for Building Owners who supply timely notification of extenuating circumstances as defined by the Regulations.

(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 Climate/Sustainability Office. Such authorization shall not create an obligation on the part of Energy utilities or remove the obligation of Building Owners to comply with reporting requirements.

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

(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 direct other funds to the Fund at its discretion.

During each fiscal year, the City may incur liabilities against and spend monies from the Fund.

The Climate/Sustainability Office is responsible for directing expenditures from the Fund.

At the discretion of the Climate/Sustainability Office, and approval by the Mayor, expenditures from the Fund may be made for the following purposes:

- Projects that benefit Environmental Justice Populations and populations disproportionately affected by air pollution;
- Costs incurred by the City in administering the program created pursuant to this Ordinance;
- Costs incurred by the City in complying with the program created pursuant to this Ordinance;
- Costs incurred by non-profit entities that operate within the City, including but not limited to entities

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

that operate affordable housing, in complying with the program created pursuant to this Ordinance;

- Other projects intended to reduce greenhouse gas emissions within the City;
- Education related to implementation of the requirements of this ordinance.

(g) Data Verification

- a. Building Owners shall self-certify their reporting data every year.
- b. In the 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, but not including the current year. Verifications must be performed by qualified Energy professionals, as defined by the Regulations, and submitted no later than the reporting deadline of the relevant year.

By regulation, the Climate/Sustainability Office may revise requirements for data verification and qualified Energy professionals.

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

(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; provided, however, that Building Owners may develop and request approval for an Individual Compliance Schedule pursuant to the requirements in SECTION 1(k) or request a Hardship Compliance Plan pursuant to SECTION 1(i). 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 6. Any Building the construction of which has been completed after the date of implementation of this Ordinance shall comply with Emissions Standards consistent with zoning approvals, provided that they are more stringent than the Emissions standards in this Ordinance.

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
 Disclosure Ordinance (BERDO)**

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	Period 6
Assembly	8.4	6.0	4.7	2.8	1.4	0.0
College/University	12.6	8.5	5.8	3.4	1.6	0.0
Education	4.2	3.3	2.6	1.7	0.8	0.0
Food Sales & Service	19.0	13.4	10.2	6.4	3.2	0.0
Healthcare	15.2	12.6	10.1	6.6	3.2	0.0
Lodging	6.3	4.7	3.7	2.4	1.1	0.0
Manufacturing/ Industrial	27.1	22.9	18.6	11.7	5.0	0.0
Office	5.9	4.4	3.3	2.0	0.9	0.0
Residential	4.8	3.5	2.6	1.6	0.8	0.0
Retail	9.3	6.3	4.4	2.2	0.9	0.0
Services	9.3	6.5	4.7	3.0	1.5	0.0
Storage	7.3	5.1	3.4	1.8	0.6	0.0
Technology/Science	20.3	15.9	12.3	7.0	3.3	0.0

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
 Disclosure Ordinance (BERDO)**

*Table 2. Compliance Periods by Building Use—Tier 1
 Buildings: Non-residential Buildings Equal to or Greater
 than 100,000 square feet **Gross Floor Area.***

Building use	Emission standards (kgCO ₂ e/SF/yr)					
	2027- 2031	2032- 2036	2037- 2041	2042- 2045	2046- 2049	2050-
Assembly	8.4	6.0	4.7	2.8	1.4	0.0
College/University	12.6	8.5	5.8	3.4	1.6	0.0
Education	4.2	3.3	2.6	1.7	0.8	0.0
Food Sales & Service	19.0	13.4	10.2	6.4	3.2	0.0
Healthcare	15.2	12.6	10.1	6.6	3.2	0.0
Lodging	6.3	4.7	3.7	2.4	1.1	0.0
Manufacturing/ Industrial	27.1	22.9	18.6	11.7	5.0	0.0
Office	5.9	4.4	3.3	2.0	0.9	0.0
Retail	9.3	6.3	4.4	2.2	0.9	0.0
Services	9.3	6.5	4.7	3.0	1.5	0.0
Storage	7.3	5.1	3.4	1.8	0.6	0.0
Technology/Science	20.3	15.9	12.3	7.0	3.3	0.0

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

Table 3. Compliance Periods by Building Use—Tier 2
Buildings: Non-residential 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- 2032	2033- 2037	2038- 2041	2042- 2045	2046- 2049	2050-
Assembly	8.4	6.0	4.7	2.8	1.4	0.0
College/University	12.6	8.5	5.8	3.4	1.6	0.0
Education	4.2	3.3	2.6	1.7	0.8	0.0
Food Sales & Service	19.0	13.4	10.2	6.4	3.2	0.0
Healthcare	15.2	12.6	10.1	6.6	3.2	0.0
Lodging	6.3	4.7	3.7	2.4	1.1	0.0
Manufacturing/ Industrial	27.1	22.9	18.6	11.7	5.0	0.0
Office	5.9	4.4	3.3	2.0	0.9	0.0
Retail	9.3	6.3	4.4	2.2	0.9	0.0
Services	9.3	6.5	4.7	3.0	1.5	0.0
Storage	7.3	5.1	3.4	1.8	0.6	0.0
Technology/Science	20.3	15.9	12.3	7.0	3.3	0.0

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

*Table 4. Compliance Periods by Building Use—Tier 3
Buildings: Residential Buildings Equal to or Greater than
50,000 Square Feet and Non-residential 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- 2033	2034- 2037	2038- 2041	2042- 2045	2046- 2049	2050-
Assembly	8.4	6.0	4.7	2.8	1.4	0.0
College/University	12.6	8.5	5.8	3.4	1.6	0.0
Education	4.2	3.3	2.6	1.7	0.8	0.0
Food Sales & Service	19.0	13.4	10.2	6.4	3.2	0.0
Healthcare	15.2	12.6	10.1	6.6	3.2	0.0
Lodging	6.3	4.7	3.7	2.4	1.1	0.0
Manufacturing/ Industrial	27.1	22.9	18.6	11.7	5.0	0.0
Office	5.9	4.4	3.3	2.0	0.9	0.0
Residential	4.8	3.5	2.6	1.6	0.8	0.0
Retail	9.3	6.3	4.4	2.2	0.9	0.0
Services	9.3	6.5	4.7	3.0	1.5	0.0
Storage	7.3	5.1	3.4	1.8	0.6	0.0
Technology/Science	20.3	15.9	12.3	7.0	3.3	0.0

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

*Table 5. Compliance Periods by Building Use—Tier 4
Buildings: Non-residential 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- 2033	2034- 2037	2038- 2041	2042- 2045	2046- 2049	2050-
Assembly	8.4	6.0	4.7	2.8	1.4	0.0
College/University	12.6	8.5	5.8	3.4	1.6	0.0
Education	4.2	3.3	2.6	1.7	0.8	0.0
Food Sales & Service	19.0	13.4	10.2	6.4	3.2	0.0
Healthcare	15.2	12.6	10.1	6.6	3.2	0.0
Lodging	6.3	4.7	3.7	2.4	1.1	0.0
Manufacturing/ Industrial	27.1	22.9	18.6	11.7	5.0	0.0
Office	5.9	4.4	3.3	2.0	0.9	0.0
Retail	9.3	6.3	4.4	2.2	0.9	0.0
Services	9.3	6.5	4.7	3.0	1.5	0.0
Storage	7.3	5.1	3.4	1.8	0.6	0.0
Technology/Science	20.3	15.9	12.3	7.0	3.3	0.0

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
 Disclosure Ordinance (BERDO)**

*Table 6. Compliance Periods by Building Use—Tier 5
 Buildings: Residential Buildings Equal to or Greater than
 20,000 Square Feet and Less than 50,000 square feet Gross
 Floor Area.*

Building use	Emission standards (kgCO ₂ e/SF/yr)					
	2031- 2034	2035- 2038	2039- 2042	2043- 2046	2047- 2049	2050-
Residential	4.8	3.5	2.6	1.6	0.8	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 (i) occupies at least 10 percent of a Building's or Building Portfolio's Gross Floor Area, or (ii) accounts for more than 10 percent of a Building's or Building Portfolio's total annual Energy use or CO₂e Emissions. Building Owners using a blended CO₂e Emissions standard must (i) designate the blended standard in annual reports to the Climate/Sustainability Office, and (ii) provide documentation verifying the qualification of each primary use in annual reports to the Commission for the first year a blended CO₂e Emissions

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

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

Building Owners may deduct Energy used by Emergency Backup Generation/Backup Power and Electrical Vehicle Supply Equipment (EVSE) from a Building's total Energy use subject to the CO₂e Emissions standard of this Ordinance, provided that:

- i. Emergency Backup Generation/Backup Power provides Energy only to the Building or Building Portfolio;
- ii. EVSE is separately metered or is capable of tracking and reporting accurate energy usage, and EVSE meets specifications defined by the Regulations; and
- iii. Building Owners annually report (i) Energy used by Emergency Backup Generation / Backup Power and EVSE; (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 shall be subject to the self-certification and third-party verification procedures in

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

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 Climate/Sustainability Office 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 Table 1. Individual Compliance Schedules must establish declining CO₂e Emissions standards in 4- to 5-year increments, and such standards must (i) decline on a linear or better basis, (ii) reduce Emissions 40 percent by period 3, and (iii) reduce Emissions 100 percent by period 6; and

- a. Use the year that a Building was first required to report Energy use pursuant to this Ordinance as the baseline for emissions, provided, however, that the Building's or Building Portfolio's Energy use, Gross Floor Area, and any relevant Emissions Factors have

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

been reported to the Climate/Sustainability Office in accordance with this Ordinance and the Regulations or are retroactively reported in accordance with the data verification requirements of this Ordinance and the Regulations; or

- b. Use a baseline from any year starting in 2013 to 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 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 is submitted to the Climate/Sustainability Office and any applicable penalties for past non-compliance are paid in full.

Individual Compliance Schedules must be approved by the Climate/Sustainability Office. 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

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

Schedule. The Climate/Sustainability Office 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 Climate/Sustainability Office 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, to be detailed in the Regulations, may include historic Building designations, affordable housing refinancing timelines, pre-existing long-term Energy contracts without reopeners, recently installed high-efficiency fossil fuel-fired equipment, or extraordinary financial hardship. The application, review process, and conditions for Hardship Compliance Plans shall be set forth in the Regulations. The Climate/Sustainability Office shall have sole discretion in approving Hardship Compliance Plans; such plans may include alternative Emissions standards and timelines for compliance. The Climate/Sustainability Office may include additional conditions on the approval of Hardship Compliance Plans consistent with the Regulations.

(m) Additional Compliance Mechanisms

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

- a. Municipal Aggregation: Buildings may participate in Newton Power Choice and may utilize the applicable Emissions Factor applied to such electricity.
- b. Renewable Energy Certificates (RECs): Buildings may mitigate CO₂e Emissions from electricity use by purchasing and removing from the possibility of resale unbundled RECs that:
- (i) Are generated by non-CO₂e emitting renewable sources and meet the Massachusetts Renewable Portfolio Standards (RPS) Class I eligibility criteria in 225 CMR 14.05;
 - (ii) Are tracked by the New England Power Pool Generation Information System;
 - (iii) Are generated in the compliance period in which they are used;
 - (iv) Comply with any additional or different requirements set forth in the Regulations. In the event of a conflict between the requirements for RECs in this provision and the Regulations, the requirements in the Regulations shall prevail.
- b. Power Purchase Agreements: Buildings may mitigate CO₂e Emissions from electricity use by entering Power Purchase Agreements for Energy generated by renewable non-emitting fuel sources, provided that:

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

- (i) The Energy purchased pursuant to a Power Purchase Agreement is generated during the compliance period for which a Building is mitigating CO₂e Emissions.
 - (ii) The RECs associated with the Energy purchased under a Power Purchase Agreement are retired by the Building Owner within six months after the compliance period in which they are used.
 - (iii) The Power Purchase Agreement complies with any additional or different requirements set forth in the Regulations. In the event of a conflict between the requirements for Power Purchase Agreements in this provision and the Regulations, the requirements in the Regulations shall prevail.
- c. Alternative Compliance Payments: Buildings 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 Climate/Sustainability Office, and may be adjusted by the Regulations.

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

The Climate/Sustainability Office may revise the availability and use of these compliance mechanisms or add additional compliance mechanisms pursuant to the Regulations.

(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, 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 Climate/Sustainability Office 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 Owner of the Building may request aggregate use data from the utility. If aggregate use data is not available from the utility then the Owner may request it from the Tenant. The Owner may also request information from the Tenant relating to the Tenant's purchase of renewable energy or RECs, use of space, operating hours, and other information required for Portfolio Manager reporting, for the previous

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

calendar year, and the Tenant shall report such information to the Owner. The Climate/Sustainability Office may designate and make available a form to be used to request and report such information. Notwithstanding the foregoing, individual residential Tenants shall have no obligation to report Energy use to Building Owners.

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.

1. Upon receiving such a request, a Tenant shall report information relating to the Tenant's separately metered Energy use for the previous calendar year no later than February 28 of any year in which the Owner is required to report such information.
2. If a Tenant vacates a unit or other space before the end of the calendar year without reporting metered Energy use, the Owner may immediately request such information for any period of occupancy relevant to the Owner's obligation to report, and the Tenant shall respond within 30 Days.
3. Failure of any Tenant to report the information required in this Ordinance does not relieve the Owner of the obligation to report.
4. Where an Owner of a Building is unable to obtain complete Energy use data due to the failure of any

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

Tenant to report the information required, the Owner shall use values or formulas established by the Climate/Sustainability Office to estimate whole Building Energy use.

(p) Disclosure

The Climate/Sustainability Office 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 Climate/Sustainability Office shall subject all data to a quality-assurance/quality-control process.

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

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

(g) Enforcement for Failure to Comply with this Ordinance

1. Failure to comply with the provisions of this Ordinance or the Regulations shall result in the imposition of penalties by the City. For any failure to comply, the City 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 non-residential Tenant to comply with the requirements of this Ordinance or the Regulations. These enforcement provisions shall not apply to residential Tenants.

2. Notice of violation. The Law Department shall issue a written notice of violation to any Building Owner or non-residential Tenant who fails to comply with any of the provisions of this Ordinance or the Regulations. The notice of violation shall indicate which obligations the Building Owner or non-residential Tenant has not fulfilled and provide the Building Owner or non-residential Tenant 30 days to either: (i) correct the violation by complying with this Ordinance and Regulations; or (ii) send a written request to the Law Department for a hearing by the Law Department for a determination of whether the Building Owner or non-residential Tenant violated this Ordinance or the Regulations.

3. Request for a Hearing. If a Building Owner or non-residential Tenant requests a hearing, the Law Department

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

shall hold such hearing within 60 days of the receipt by the Law Department of a written request for a hearing. The hearing shall be conducted according to the requirements of M.G.L. c. 30A. If the Law Department determines that the Building Owner or non-residential Tenant violated this Ordinance or the Regulations, 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 within 30 Days after the Law Department issues a written notice of violation, that person shall be deemed to have failed to comply with the notice of violation. If a person who requested a hearing fails to correct a noticed violation within 30 Days after the issuance of an adverse hearing decision, that person shall be deemed to have 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 penalty as set forth in SECTION 1(r).

5. Injunctive relief. The City may seek an injunction from a court of competent jurisdiction instructing a Building Owner or non-residential Tenant who has failed to comply with a notice of violation to comply with this Ordinance and the Regulations.

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

6. Penalties. All penalties issued under this Ordinance may be enforced pursuant to M.G.L. c. 40, s. 21D or M.G.L. c. 111, s. 31C. For any penalties that remain unpaid 30 Days following the receipt of a notice of violation, the City may take steps to place an assessment on the Building Owner's tax bill or a lien on the Building pursuant to M.G.L. c. 40U, s. 12.

(r) Penalties for Failure to Comply with this Ordinance

The penalties outlined in this Ordinance may be revised by the Regulations. The Regulations shall provide a Building Owner with an opportunity to administratively appeal any such penalties pursuant to an appeal mechanism that is consistent with that required by M.G. L. c. 40U.

(i) Failure to Comply with Reporting Requirements

Penalties under this section will not be levied prior to the third year of the effective date of the emissions requirement. Each Day, in whole or in part, that a Building Owner is out of compliance with the reporting requirements of this Ordinance, or the Regulations shall be deemed a separate violation and subject to a penalty of:

1. \$300 a Day for:
 - a. Non-Residential Buildings equal to or greater than 35,000 Square Feet of Gross Floor Area; and

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

b. Residential Buildings equal to or greater than 35,000 Square Feet of Gross Floor Area.

2. \$150 a Day for:

a. Non-Residential Buildings equal to or greater than 20,000 Gross Floor Area but less than 35,000 Square Feet of Gross Floor Area; and

b. Residential Buildings equal to or greater than 20,000 Square Feet of Gross Floor Area, but less than 35,000 Square Feet of Gross Floor Area.

No penalty shall be assessed prior to 30 Days after receipt of a notice of violation by a Building Owner or if a Building Owner corrects the violation within 30 Days of receipt of a notice of violation.

(ii) Failure to Comply with Emission Standards

Penalties under this section will not be levied prior to the third year of the effective date of the emissions requirement. If a Building Owner does not comply with the applicable Emissions standard in a calendar year, each Day of that calendar year that the violation is not corrected shall be deemed a separate violation of this Ordinance and subject to a penalty of:

1. \$1,000 a Day for:

DRAFT (11-08-2023)

City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)

- a. Non-Residential Buildings equal to or greater than 35,000 Square Feet of Gross Floor Area; and
- b. Residential Buildings equal to or greater than 35,000 Square Feet of Gross Floor Area.

2. \$300 a Day for:

- a. Non-Residential Buildings equal to or greater than 20,000 Square Feet of Gross Floor Area but less than 35,000 Square Feet of Gross Floor Area; and
- b. Residential Buildings equal to or greater than 20,000 Square Feet of Gross Floor Area, but less than 35,000 Square Feet of Gross Floor Area.

For any Building Owner that has failed to report any or all information required by this Ordinance in order to calculate compliance with the Emissions standard, the Building shall be deemed to be in noncompliance with the Emissions standard and subject to the penalties in this Ordinance. A Building Owner may correct such noncompliance by providing the information required by this Ordinance in order to calculate compliance with the Emissions standard and, if necessary, make use of relevant Compliance Mechanisms to account for any failure to meet the Emissions standard.

No penalty shall be assessed prior to 30 Days after receipt of a notice of violation by a Building Owner or if a

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

Building Owner corrects the violation within 30 Days of receipt of a notice of violation.

(iii) Failure to Report Information Accurately

In the event that third-party verification of information reported by a Building Owner identifies a discrepancy with a Building Owner's self-certified reporting, and such discrepancy is not reconciled pursuant to a process to be outlined by Regulation, such discrepancy shall be deemed a violation of this Subsection and subject to a fine between \$1,000 and \$5,000. The Law Department, in consultation with the Climate/Sustainability Office, shall determine the penalty, taking into account whether the failure to accurately report information impacted a determination of compliance with an Emissions standard. An Owner may petition the Law Department for a reduction in such a penalty in accordance with the conditions outlined in the Regulations, which shall include circumstances in which a third-party verification was filed by a prior Owner.

In the event that a failure to accurately report information resulted in inaccurately determining that a Building Owner complied with an Emissions standard, the penalties from subclause (r)(ii) above shall apply.

(iv) Penalty reductions and waivers

DRAFT (11-08-2023)**City of Newton Buildings Emissions Reduction and Disclosure Ordinance (BERDO)**

In its discretion the Law Department, in consultation with the Climate/Sustainability Office, may grant penalty reductions and waivers. Details regarding petitions for penalty reductions and waivers, review process, and conditions may be set forth in the Regulations. In determining whether to grant any reduction in penalty for failure to comply with Emission standards, the Law Department and the Climate/Sustainability Office shall consider an Owner's plans for bringing a Building into full compliance and whether there are Building characteristics or circumstances that present a hardship in complying with the Emissions standards.

SECTION 1(r) shall not apply to any City Building.

(s) Fees

(i) Submittal fees. The City may levy fees at the time of submittal of annual reports. These fees will be based on the total Gross Floor Area of the Buildings or Building Portfolio included in the annual report and will be defined by the Regulations.

(ii) Administrative fees may be set for plan reviews. Fees will be set by the Regulations for the review of individual plans and other documents subject to review by the City under this Ordinance.

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

(t) Review and Power to Suspend

The Climate/Sustainability Office shall review the implementation of this Ordinance every five years. As part of such review, the Climate/Sustainability Office shall hold at least one public hearing and solicit comments from the public. Such request for comments shall include a request for information regarding how, if at all, implementation of this Ordinance has impacted air quality, Energy cost burdens, and other qualitative and quantitative metrics related to Environmental Justice Populations and equitable implementation of this Ordinance; to the extent such information is available from other City departments, the Climate/Sustainability Office shall take all reasonable steps to collect and analyze such information.

(u) Regulatory Authority

The Climate/Sustainability Office shall promulgate rules and regulations necessary to implement and enforce this Subsection, pursuant to M.G.L. c. 30A.

(v) Applicability

If any provision of this Ordinance imposes greater restrictions or obligations than those imposed by any other regulation, rule, ordinance, order, or policy of the City, then the provisions of this Ordinance shall control.

DRAFT (11-08-2023)
**City of Newton Buildings Emissions Reduction and
Disclosure Ordinance (BERDO)**

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

SECTION 4. The provisions of this Ordinance shall be effective upon passage.