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

Whereas, energy use in buildings accounts for approximately three-quarters of Boston's emissions of the gases that cause climate change, including sea-level rise, higher temperatures, and more intense storms; and

Whereas, the Boston Climate Action Plan calls for reducing greenhouse gas emissions in Boston 25 percent by 2020, and 80 percent by 2050; and

Whereas, the Boston Climate Action Leadership Committee recommended, in 2010, that the City of Boston adopt a building energy reporting and disclosure ordinance as one component of a comprehensive set of actions to increase energy efficiency and thus reduce greenhouse gas emissions, which recommendation was accepted in the City of Boston's 2011 Climate Action Plan; and

Whereas, other leading U.S. cities, such as New York City, Seattle, San Francisco, Minneapolis, Philadelphia, Austin, and Washington, D.C., have adopted building energy reporting and disclosure requirements, thus demonstrating the acceptability and feasibility of such requirements; and

Whereas, systematic energy measurement assists building owners in making cost-effective energy efficiency investments, thereby not only reducing greenhouse gas emissions, but also reducing operating costs, improving indoor comfort, and reducing air pollution from the burning of fossil fuels; and

Whereas, climate action and energy efficiency spurs Boston's green economy and job creation, makes Boston more attractive to people and businesses, and underlines Boston's innovative leadership across the country;

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

7-2.2 Energy Reporting and Disclosure.

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

The Air Pollution Control Commission has enforcement authority pursuant to, inter alia, Article 89 of the Massachusetts Constitution, M.G.L. c.111, s.31C, and this subsection.

(b) Definitions. When used in this subsection 7-2.2, unless a contrary intention clearly appears, the following terms shall have the following meaning:

City means the City of Boston.

Commission means the Air Pollution Control Commission.

Days means consecutive calendar days.

Owner means the owner of record, or designated agent, provided that the "owner" shall be deemed to include: (i) the net lessee in the case of a building subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options, (ii) the association or organization of unit owners responsible for overall management in the case of a condominium, and (iii) the board of directors in the case of a cooperative apartment corporation.

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

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

City building means a building, as it appears in the records of the Boston Assessing Department, that is owned by the City or for which the City regularly pays all of the annual energy bills.

Non-residential building means, as it appears in the records of the Boston Assessing Department, a parcel with one or more buildings that equal or exceed 35,000 square feet in gross building area, and of which 50 percent or more of the gross building area, excluding parking, is used for commercial, retail, office, professional, educational or other non-residential purposes, or any grouping of non-residential buildings designated by the Commission as an appropriate reporting unit. *The term "non-residential building" shall not include any building that is a City building.*

Residential building means, as it appears in the records of the Boston Assessing Department, a parcel with one or more buildings with 35 or more total individual dwelling units that, together with hallways and other common space serving residents, comprise more than 50 percent of the gross building area, excluding parking, or any parcel with one or more buildings that equal or exceed 35,000 square feet in gross building area and that is not a City building or a non-residential building, or any grouping of residential buildings designated by the Commission as an appropriate reporting unit.

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

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

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

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

The Commission shall coordinate the performance of this requirement.

(d) Energy and Water Reporting Required for Non-City Buildings. No later than May fifteenth of each year, building owners of each building subject to reporting requirements shall accurately report to the Commission the previous calendar year's energy and water use of each building and other building characteristics necessary to evaluate absolute and relative energy use intensity. Energy and water use data shall not include its associated cost. Building owners shall report this information by using the Energy Star Portfolio Manager or such alternative as the Commission may designate. The initial reports shall occur according to the following schedule:

(i) For every non-residential building equal to or greater than 50,000 gross square feet or two or more buildings on the same parcel that equal or exceed 100,000 gross square feet, the first report shall be submitted no later than May 15, 2014.

(ii) For every non-residential building equal to or greater than 35,000 gross square feet but less than 50,000 gross square feet, the first report shall be submitted no later than May 15, 2016.

(iii) For every residential building equal to or greater than 50 units or 50,000 gross square feet, or two or more buildings held in the same condominium form of ownership that are governed by the same board of managers that together equal or exceed 50 units or 50,000 gross square feet, the first report shall be submitted no later than May 15, 2015.

(iv) For every residential building equal to or greater than 35 units or 35,000 gross square feet, the first report shall be submitted no later than May 15, 2017.

Notwithstanding the foregoing, the Commission shall develop a procedure for establishing alternative reporting dates for building owners who supply timely notification of extenuating circumstances.

(e) Direct upload. Building owners may authorize an energy or water utility or other third party to report building-specific data on their behalf to the Commission. Such authorization shall not remove the obligation of building owners to comply with reporting requirements.

(f) Energy assessments or actions. Each building subject to reporting requirements of this subsection, if not meeting exemption criteria herein described, shall complete an energy assessment or action, such as the Commission shall specify, within five (5) years of its first energy reporting deadline and within every five-(5-)year period thereafter.

(i) *Energy assessment or action requirements.* In specifying energy assessment and action requirements, the Commission shall ensure that every building owner is receiving up-to-date information regarding energy efficiency opportunities or, at the owner's choice, taking significant action to increase energy efficiency.

a. In establishing requirements for energy assessments, the Commission shall look to the most recent edition of Procedures for Commercial Building Energy Audits published by ASHRAE for guidance, and may vary these requirements based on building size, age, energy performance, and other building characteristics as well as incentives in utility-administered or other energy efficiency programs and changes in energy assessment technology.

b. Energy actions may include significant investments in energy efficiency, development of comprehensive energy management plans, retrocommissioning of energy systems, and similar actions.

c. Summary results of energy assessments and actions shall be reported to the Commission in such form as the Commission shall specify.

(ii) *Energy assessment and action exemptions.* The Commission shall establish criteria for exempting buildings with high energy performance or significant energy improvement from the energy-assessment or action requirement. Such criteria shall be based on:

a. U.S. Environmental Protection Agency's Energy Star performance ratings, with a goal of incentivizing buildings to

attain a rating of at least the 75th percentile, for buildings that can obtain such a rating;

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

c. patterns of significant and consistent improvements in energy efficiency or greenhouse gas emissions;

d. a building's comprehensive energy management plan or inclusion in an institutional comprehensive energy management plan; or

e. other factors that recognize the complexity of buildings and building management, other regulatory requirements, the costs and benefits of energy efficiency, and the City of Boston's climate goals.

(g) Obligation to Request and Report Information. Where a unit or other space is occupied by a tenant and such unit or space is separately metered by a utility company, the owner of such building may request from such tenant information relating to such tenant's separately metered energy and water use, use of space, and operating hours, and other information required for Portfolio Manager reporting, for the previous calendar year, and such tenant shall report such information to such owner. The Commission may designate and make available a form to be used to request and report such information. Notwithstanding the foregoing, individual residential tenants shall have no obligation to report energy and water use to building owners.

i. Such owner may request information related to such tenant's metered energy and water use and other related information for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to report such information.

ii. Upon receiving such request, a tenant shall report information relating to the tenant's separately metered energy and water use for the previous calendar year no later than February twenty-eighth of any year in which the owner is required to report such information.

iii. If a tenant vacates a unit or other space before the end of the calendar year without reporting metered energy and water use, such owner may immediately request such information for any period of occupancy relevant to such owner's obligation to report and the tenant shall respond within 30 days.

iv. Failure of any tenant to report the information required in this subsection does not relieve such owner of the obligation to report pursuant to this article.

v. Where an owner of a residential building is unable to obtain complete energy and water use due to the failure of any residential tenant to report the information required by this subsection, the owner shall use values or formulas established by the Commission to estimate whole building energy and water use.

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

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

i. At least 30 days prior to disclosure, the Commission shall provide building owners an opportunity to review the accuracy of information to be disclosed.

ii. The Commission shall invite building owners to submit contextual information related to energy and water use in their buildings, and shall disclose contextual information in such form as it shall determine.

iii. Notwithstanding the foregoing, in the first year of required reporting by non-City buildings, the Commission shall disclose only information related to reporting compliance by individual buildings and shall not disclose individual energy and water use data. It may report summary statistical data on energy and water use of buildings.

iv. The Commission shall also, from time to time, publicly report on implementation of, compliance with, and overall results from this ordinance; however, the first such report shall be issued no later than December 31, 2014.

(j) Enforcement and Penalties.

(1) Failure to comply with the provisions of this subsection shall result in the imposition of penalties by the Air Pollution Control Commission. For any failure to comply, the Commission, acting through its Executive Director, shall have the authority to: (i) issue a notice of violation subject to penalties if not corrected; and (ii) seek an injunction from a court of competent jurisdiction requiring a building owner or tenant to comply with the requirements of this subsection. However, this provision shall not apply to residential tenants.

(2) Notice of Violation. The Executive Director of the Commission shall issue a written notice of violation to any building owner or tenant violating this subsection by failing to comply with any of the provisions of this subsection or any regulation issued by the Air Pollution Control Commission pursuant to this subsection. The notice of violation shall indicate which obligations the building owner or tenant has not fulfilled and provide the building owner or tenant with 30 days to either: (i) correct the notice of violation by complying with this subsection and associated regulations; or (ii) send a written request to the Executive Director for a hearing for a determination of whether the building owner or tenant violated this subsection.

(3) If a building owner or tenant requests a hearing, the Commission or its designee shall hold such hearing within 60 days of the Executive Director's receipt of a written request for hearing. The hearing shall be conducted according to the requirements of M.G.L. c. 30A. If the Commission determines that the building owner or tenant violated this subsection, that person shall have 30 days from the issuance of a final decision to correct the violation.

(4) Failure to Comply with Notice of Violation. If a person who does not request a hearing fails to correct a noticed violation of this subsection within 30 days after the Executive Director issues a written notice of violation, that person has failed to comply with the notice of violation. If a person who requested a hearing fails to correct a noticed violation of this subsection within 30 days after the issuance of an adverse decision after a hearing, that person has failed to comply with the notice of violation. Any person who has failed to comply with a notice of violation shall be subject to a fine as set forth below:

i. For owners of non-residential buildings of 50,000 square feet or greater, up to $200.00 per violation.

ii. For owners of non-residential buildings of 35,000 to 49,999 square feet, up to $75.00 per violation.

iii. For owners of residential buildings equal to or greater than 50 units or 50,000 gross square feet, up to $200.00 per violation.

iv. For owners of residential buildings equal to or greater than 35 units or 35,000 gross square feet but less than 50 units or 50,000 square feet, up to $75.00 per violation.

v. For non-residential tenants, up to $35.00 per violation.

Each day of noncompliance shall count as a separate violation.

Notwithstanding the foregoing, no owner or non-residential tenant shall be liable for a total fine of more than $3,000 per calendar year per building or tenancy.

(5) Injunctive Relief. The Commission may seek an injunction from a court of competent jurisdiction instructing a building owner or tenant who has failed to comply with a notice of violation to comply with this subsection and regulations issued pursuant to this subsection.

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

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

(k) Advisory committee. The Commission shall appoint an advisory committee comprised of property owners subject to the requirements of this sub-section, including, but not limited to, representatives of the following sectors:

i. Commercial/office
ii. Health care and hospitals
iii. Higher education
iv. Hospitality
v. Retail
vi. Residential

The Commission shall consult with the advisory committee prior to the release of proposed regulations and promulgation of final regulations and prior to any subsequent modifications.

(l) ***Power to Suspend.*** The Commission may suspend all or part of the requirements of this subsection upon a written finding that a significant obstacle interferes with their implementation, and may lift such suspension upon a written finding that the obstacle has been removed. The Commission shall suspend the requirements of this subsection as necessary to ensure that at least 90 days passes between the promulgation of regulations and any reporting deadline.

(m) ***Applicability.*** If any provision of this subsection imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy, then the provisions of this subsection control.

(n) ***Regulatory Authority.*** The Commission shall promulgate rules and regulations necessary to implement and enforce this subsection, pursuant to M.G.L., c. 30A.

(o) ***Severability.*** If any provision of this subsection is held invalid by a court of competent jurisdiction, then such provision should be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

(p) ***Implementation.*** The provisions of this subsection are effective immediately upon passage.

(q) ***Notice.*** Notification or attempted notification concerning reporting and disclosure procedures will be provided to all property owners subject to the requirements of this section.

In City Council MAY 08 2013

Passed

Maureen Feeney *City Clerk*

Approved

Thomas M. Menino *Mayor*