CITY OF BOSTON ENVIRONMENT DEPARTMENT
AIR POLLUTION CONTROL COMMISSION (APCC)

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Public Hearing Notice and Agenda
Air Pollution Control Commission
Special Hearing
December 18, 2013
2:00 PM
City Hall, Room 900
City Hall Plaza
Boston, MA 02201

Agenda

I. Discussion of draft revised regulations of the Building Energy Reporting and Disclosure Ordinance

For further information, contact Nikhil Nadkarni, Environment Department, at (617) 635-3850.

CITY OF BOSTON

AIR POLLUTION CONTROL COMMISSION

BOSTON CITY HALL

BOSTON, MASSACHUSETTS 02201

BUILDING ENERGY REPORTING AND DISCLOSURE REGULATIONS

1.01 ***Introduction.*** The following regulations are promulgated by the City of Boston Air Pollution Control Commission ("the Commission") pursuant to the authority granted to it under Chapter VII, Section 7-2.2(n) of the City of Boston Code. These regulations implement Section 7-2.2 of the City of Boston Code, An Ordinance Amending the Air Pollution Control Commission Ordinance in Relation to Reporting and Disclosing the Energy and Water Efficiency of Buildings.

1.02 ***References***. References to Section 7-2.2 are to Chapter VII, Section 7-2.2 of the City of Boston Code.

1.03 ***Definitions.*** Terms defined in Section 7-2.2 have the same meanings for purposes of these regulations and those definitions are hereby incorporated by reference. Terms related to energy and water reporting that are not otherwise defined shall have the same meanings as in Portfolio Manager, an online tool for building energy tracking developed by the U.S. Environmental Protection Agency. For the purposes of these regulations, the following additional terms are defined as follows:

Covered building means a residential or non-residential building, as those terms are defined in Section 7-2.2, that is subject to the energy and water performance reporting requirements of Section 7-2.2 for the previous calendar year.

Default data means energy use data that are calculated using the default values in Appendix I, Tables 1 and 2, or space use attributes obtained from Portfolio Manager default values. Default data may not reflect actual energy consumption for a particular building.

Energy use intensity means energy consumption divided by the gross floor area for which that consumption is applicable.

Partial data means any consumption data for a given energy type or any water that are not complete for an entire building.

Qualified energy professional means an individual qualified to perform energy assessments required by Section 7-2.2(f), as further detailed in 1.09(a).

Simple payback. Simple payback refers to the number of years for the projected energy cost savings of a conservation measure to equal the amount invested in such measure.

Space type refers to the primary activity for which a given space is utilized, as entered into Portfolio Manager, also referred to as property use.

Space use attributes refers to any information relating to a building's physical, operational, and facility-related characteristics required for assessing the energy or water performance of a given space type in Portfolio Manager, also referred to as property use details.

Utility means a company distributing, supplying, or transmitting energy or water to a building.

Water use refers to water consumption excluding any emergency fire pipe usage.

Whole building data means complete energy consumption data for a given energy type or complete water data for an entire building.

1.04 ***Energy and Water Reporting in Portfolio Manager.***

(a) **Duty to Report.** Owners of covered buildings must annually report such building's energy and water use for the previous calendar year through Portfolio Manager in accordance with Portfolio Manager instructions unless otherwise specified, or through any other reporting tool that the Commission may designate, as required by Section 7-2.2(d), in accordance with this subsection.

(1) The Commission will evaluate proposals for the use of generally available, alternative reporting tools on a case-by-case basis.

(b) **Reporting through Portfolio Manager.** No later than May fifteenth of each reporting year, owners of covered buildings must open a Portfolio Manager account and must complete the following steps in Portfolio Manager for each such building:

(1) Create a building profile and enter building details, including any building identification number that may be supplied by the Commission;

(2) Enter all space types, with applicable gross floor area, calculated in accordance with 1.04(c), within the building and complete the requisite space use attributes for each such space type;

(3) Enter energy and water use data for the previous calendar year as described in 1.04(e); and

(4) Submit the completed energy and water report to the Commission, as described in 1.06.

(c) **Calculation of Gross Floor Area.** Owners of covered buildings must calculate gross floor area, and assign the appropriate gross floor area to each space type, if the building contains multiple space types, in accordance with this subsection and any further guidance that the Commission may provide. Gross floor area comprises the space between the principal exterior surfaces of the enclosing fixed walls of the building, including tenant areas, lobbies,

common areas, restrooms, stairways, elevator shafts, mechanical equipment rooms, basement space, and storage rooms. It excludes all parking areas, unroofed courtyards, outdoor balconies, exterior loading docks, plenums between floors, and unroofed light wells. For atria, gross floor area includes only the area of atrium floors. For tenant spaces, interior demising walls should be measured to the centerline of the wall. Gross floor area may differ from the area listed in the Boston Assessing Department records that determine whether a building or buildings qualify as covered buildings under Section 7-2.2(d).

(d) **Space Use Attribute Information.** Owners of covered buildings shall enter accurate information on the space use attributes of all spaces within such building. If necessary, owners shall request from tenants any space use attribute information for tenant space. Such request may be made using a form to be provided by the Commission. The owner shall make a request 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. Requests for space use attribute information from tenants may be independent of any requests for energy or water consumption information from tenants that may be needed.

(1) **Absence of Space Use Attribute Information.** If a tenant fails to respond to such request or omits any requested space use attribute information, and the information is unknown to the owner, then the owner shall select "Use a Default" in Portfolio Manager for said attribute. When Portfolio Manager does not provide a default, the owner may estimate an appropriate value. This use of an estimated value must be noted in the "Property Notes" section of Portfolio Manager.

(e) **Reporting Energy and Water Consumption.** Owners of covered buildings must enter such building's energy and water use data for the previous calendar year in Portfolio Manager. Energy and water consumption data must be entered such that it encompasses January first to December thirty-first of the previous calendar year.

(1) **When Whole-Building Data are Available from a Utility**. When whole-building energy or water data are available from a utility, the owner shall report actual whole-building energy or water use, either with such utility-supplied data or data otherwise collected. The provision of whole-building data by a utility does not relieve an owner of the responsibility for the submission of accurate data. Any discrepancies between whole-building data provided by a utility and reported data must be indicated in the "Property Notes" section of Portfolio Manager.

(i) **Direct Upload by Utilities**. If such service is available, owners may authorize a utility to upload such whole building energy or water use data directly to Portfolio Manager. The direct upload of such data by a utility does not relieve an owner of the duty to enter other required information into Portfolio Manager.

(2) **Requesting Energy Use Data from Tenants**. If whole-building data are unavailable from a utility for a given energy type or if an owner wishes to verify utility-supplied data, then for any tenant-occupied space that is separately metered for such energy type, owners of covered buildings shall request such data from such tenants 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 request may include a request for permission for a utility to release tenant data directly or indirectly to the owner, and may be made using a form to be provided by the Commission.

(i) **Mid-Year Vacancy**. If the owner who is required to request tenant data under this subsection receives notice that a tenant intends to vacate a building before the end of a calendar year, then the owner must request from said tenant any necessary energy use or space use data from January first of that year to the date the tenant vacates the space. Such request shall be made at least 14 days before the tenant vacates the unit, or as soon as possible, if notice has been received after that time.

(3) **When an Owner Does Not Obtain Whole-Building Data**. When an owner has not been able to obtain whole-building data for any energy type under 1.04(e) (1) or (2), then the owner must report such energy type as provided in this subsection.

(i) **Common Area Energy Use**. The owner shall submit data for such energy type for all common areas and all centrally metered areas.

(ii) **Calculating Energy Use in Tenant Spaces**. For each energy type used in separately metered tenant space, the owner must report the known data and then use one of the following methods to determine that type of energy use for the areas in which it is unknown, for each month.

(A) With Significant Partial Data for a Space Type. If an owner has actual energy use data for at least 50 percent of a given space type, the owner shall extrapolate the energy data for the remainder of gross floor area with the same space type. This extrapolation, applied only to those areas for which energy use is unknown, will be the average energy use intensity of the floor areas for which it is known, multiplied by all floor area of said remainder, multiplied by 110 percent.

(B) Without Significant Partial Data for a Space Type. If an owner does not have actual energy use data for at least 50 percent of any particular space type, the owner shall utilize the default values in Appendix I, Tables 1 and 2 applied only to those areas for which energy use is unknown. For non-residential spaces, the appropriate energy use per square foot per month from Table 1 shall be multiplied by the floor area of that space type for which energy use is unknown. For residential spaces, the appropriate energy use per unit per month from Table 2 shall be multiplied by the number of units for which energy use is unknown. The Commission will provide updated or additional default values as it may, from time to time, deem necessary.

(iii) **Noting When Whole-Building Energy Use Data are Not Available**. Owners shall indicate in Portfolio Manager:

(A) Any energy values that include extrapolated data, by marking them as "Estimation"; and

(B) Any energy values that include default data, by listing in the "Property Notes" section all of the entries for which default values were used.

(iv) **Documentation.** Owners of all buildings submitting default or extrapolated data shall maintain records documenting their having requested data from all tenants, in accordance with the provisions of Section 7-2.2(g).

(f) **Vacant Space.** Owners of covered buildings must account for any vacant or unoccupied space in Portfolio Manager in accordance with Portfolio Manager instructions.

(g) **Contextual Information.** Owners may supply contextual information regarding their energy and water use, including hyperlinks, that the Commission can include in its disclosure, in the "Property Notes" section of Portfolio Manager. Contextual information shall conform to guidance that the Commission may issue regarding the acceptable length and format.

1.05 ***Tenant Reporting Obligations.***

(a) Tenants in covered buildings are subject to the following obligations:

(1) **Duty of Tenants to Report Energy and Water Use and Space Use Attributes.** If an owner has requested data for the previous calendar year from a tenant pursuant to section 1.04(e)(2), or if an owner has requested space use attributes for the previous calendar year from tenants pursuant to 1.04(d), tenants shall report such data to the owner no later than February twenty-eighth of the year in which the owner has requested such data. Tenants shall use the units and format of data reporting requested by the owner, including the units and format of any Commission-supplied form.

(2) **Mid-Year Vacancy.** When a tenant vacates a unit or other space before the end of the calendar year and the owner has accordingly requested data for a given energy type or space use pursuant to 1.04(e)(2)(i), the tenant must report such data to the owner within 60 days of vacating.

(3) **Sub-Lease.** Tenants who sub-lease their space are responsible for collecting any data on use attributes, energy use, and water use requested by an owner pursuant to 1.04(e)(2) from the sub-tenant and submitting it to the owner.

(b) Owners may report in writing to the Commission any non-residential tenant who fails to respond to the data request of the owner within the time period specified in 1.05(a)(1), using a form to be supplied by the Commission, accompanied by documentation of the owner's request.

1.06 ***Submission of Energy and Water Report.***

(a) **Contents of Energy and Water Report and Report Submission.** Owners of covered buildings shall submit a report to the Commission by May fifteenth of each reporting year. The submission shall be through Portfolio Manager using a template and submission link to be distributed and publicized by the Commission, or any analogous mechanism designated by the Commission. Such report shall contain information for the previous calendar year, related to building identification, occupancy, space use attributes, energy use intensity, energy use by fuel, greenhouse gas emissions, Energy Star rating (where available), use of estimated or default data, and water consumption.

(b) **New Information.** If, after having submitted a report to the Commission, a building owner receives new or updated information that would result in a change to energy or water use intensity of 2 percent or more, then the owner shall, within 30 days of receiving the new information, enter the additional or corrected data into Portfolio Manager, submit an updated report to the Commission, and notify the Commission accordingly. Owners may submit other updates at any time. The Commission will include such updates in its annual disclosure of data.

(c) **Requesting an Extension of Time.** Owners of covered buildings may request, on such form as the Commission shall designate, an extension of the due date for an energy and water report, and the Commission may grant such extension for good cause. Such request must state good cause for why the owner is unable to complete the report by the May 15 deadline and must be made by April 15 of that year. In no case will an extension of greater than 60 days be granted.

1.07 ***Special Conditions.***

(a) **Delegating Reporting Duties to Single Tenant.** If the owner of a covered building has leased the building to a single tenant and that tenant has assumed management of the entire building, the owner may, at the request of and with the consent of the tenant, delegate reporting duties to that tenant. The owner or tenant shall note such delegation in the "Property Notes" section of Portfolio Manager.

(b) **Multiple Buildings on Single Tax Lot, and Buildings on Multiple Tax Lots that Share Meters.** Multiple buildings on a single tax lot and buildings on multiple tax lots that share meters shall have energy and water use reported as follows:

(1) Any buildings that are separately metered or sub-metered for all energy types and water must be reported individually.

(2) Any buildings for which one or more types of energy or water are not separately metered or sub-metered shall be reported as separate buildings, with any energy and water use that is not separately metered or sub-metered apportioned by gross floor area, whenever such energy use can be reasonably apportioned by this method, according to guidance that the Commission may issue. The apportioned data shall be marked as an "Estimation."

(3) Any buildings not meeting the criteria of (1) and (2) may be reported as a multi-building property in Portfolio Manager, except in the case of multiple buildings of similar use on one lot, in which case they may be reported as a single building.

(4) No additional submetering is required by these regulations.

(d) **Newly-Constructed Buildings.** Owners of newly-constructed buildings are first required to comply with the reporting requirements for the first full calendar year following the year the building receives its Certificate of Occupancy. This provision shall not apply if it would require the owner to report energy and water use at an earlier date than would otherwise be required under the schedule in Section 7-2.2(d).

(e) **Change of Ownership.** When a building changes ownership, the previous owner shall provide to the new owner any energy, water, and space use data that has been collected and is necessary for completing the next required energy and water report.

1.08 ***Energy Assessment or Action Requirement.***

(a) **Energy Assessment or Action.** Owners of covered buildings shall complete energy assessments or actions, as required by Section 7-2.2(f), in accordance with the provisions of this subsection.

(b) **Energy Assessment or Action Schedule.** Owners of covered buildings not covered by an exemption as specified in 1.08(c) shall complete an energy assessment or action for each such building within five years of the first reporting deadline for such building and within every five-year period thereafter. The five-year periods in which each assessment or action must be completed shall begin at the end of the previous five-year period and not at the date that the previous assessment or action was completed. Owners may choose between an assessment or an action, and are not required to complete both.

(c) **Exemptions.** Owners of covered buildings are not required to complete an energy assessment or action for a given filing period, if any of the following exceptions apply:

(1) The building has earned EPA Energy Star certification from the United States Environmental Protection Agency for at least three of the five years preceding the date by which an assessment or action would otherwise be due.

(2) The building has received certification or re-certification at the Silver level under the Leadership in Energy and Environmental Design (LEED) rating system for Existing Buildings Operation and Maintenance published by the United States Green Building Council during the five-year period, with at least 15 points achieved in the rating category of Energy and Atmosphere.

(3) The building generates an amount of energy equal to or greater than the amount of energy it consumes, as measured on an annual basis.

(4) The building uses renewable electricity or fuels such that it generates no net greenhouse gas emissions, as measured on an annual basis.

(5) The building is eligible to receive an Energy Star rating and such building's rating has improved by at least 15 points during the five-year period, as measured from its rating in the first year of the period to its fourth or fifth rating during the period, whichever is higher.

(6) The building is not eligible to receive an Energy Star rating, and such building is highly energy efficient compared to other buildings of the same use, as determined by the following criteria:

(i) [RESERVED].

(7) The building is included in an institutional master plan, as described in Article 80.D of the Boston Zoning Code, and a corresponding comprehensive energy management plan for the institution that has reduced energy use or greenhouse gas emissions by at least 15 percent over 5 years across the institution.

(8) The building is to be fully demolished within six months of when the assessment or action would otherwise be due.

(9) The building is fully vacant for the five-year period.

(d) **Procedures to Apply for Exemption.** To claim an exemption from the assessment or action requirement under section 1.08(c), an owner must notify the Commission of the specific exemption it is claiming no later than May 15 of the year in which the energy assessment or action is due. The exemption application shall be on a form to be provided by the Commission and be accompanied by supporting documentation as applicable:

(1) To claim an exemption on account of an Energy Star certification, no additional documentation is required.

(2) To claim an exemption on account of LEED certification, the owner must submit a copy of the relevant certification or confirmation of listing in the LEED project directory, including the completed scorecard.

(3) To claim an exemption based on energy generated being equal to or greater than consumption, documentation of the amount of energy generated and used on site is required.

(4) To claim an exemption based on renewable energy purchasing, the owner must submit documentation of purchases or a purchase agreement for at least five years for the relevant energy types, including any renewable energy certificates retired, and documentation calculating the annual greenhouse gas emissions.

(5) To claim an exemption based on an improvement in Energy Star rating, no additional documentation is required.

(6) To claim an exemption as a highly energy efficient building, the owner must submit the following documentation:

(i) [RESERVED].

(7) To claim an exemption based on inclusion in an institutional master plan and corresponding energy management plan, the owner must submit documentation substantiating such inclusion and the energy use or greenhouse gas reductions achieved during the five-year period. Energy baseline and reduction calculations shall be in accordance with guidelines to be issued by the Commission.

(8) To claim an exemption for imminent demolition, the owner must submit an affidavit stating the planned date of demolition.

(9) To claim an exemption for a fully vacant building, the owner must submit an affidavit stating the length of time that the building has been vacant.

(e) **Temporary Exemption due to Financial Distress.** Owners of financially distressed buildings may apply for an extension of not more than one year beyond the date when an assessment or action would otherwise be due. A building shall be considered to be financially distressed if it currently is or has been subject to one of the following:

(1) The building qualified for sale at a public auction due to arrears of public taxes within two years of the date an assessment or action is due;

(2) The building is controlled by a court-appointed receiver due to financial distress;

(3) The building is owned by a financial institution through default by the borrower;

(4) The building has been acquired by deed in lieu of foreclosure; or

(5) The building has a senior mortgage which is subject to a notice of default.

1.09 **Energy Assessment Requirements.** Owners of covered buildings that are not eligible for an exemption and who choose to complete an energy assessment instead of a qualifying energy action shall comply with the requirements of this section.

(a) **Energy Assessment Professional Requirements.** The energy efficiency assessment shall be performed or supervised by a qualified energy professional. Qualified energy professionals include individuals who hold at least one of the following qualifications:

(1) At least two years' experience performing building energy efficiency audits and at least one of the following:

(i) American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Building Energy Assessment Professional;

(ii) ASHRAE High Performance Building Design Professional;

(iii) Association of Energy Engineers Certified Energy Manager;

(iv) Association of Energy Engineers Certified Energy Auditor.

(2) Licensed Professional Engineer and at least one of the following:

(i) Two years' experience performing building energy efficiency audits;

(ii) Any of the qualifications listed in 1.09(a)(1)(i) through (iv).

(iii) For the purposes of assessing residential buildings only, Building Performance Institute Multifamily Building Analyst.

(3) Other qualifications as the Commission may from time to time deem as appropriate.

(b) **Energy Assessment Requirements.** The energy assessment must meet the following requirements based on the size of the building:

(1) *Buildings greater than or equal to 50,000 square feet.* Buildings that are 50,000 square feet or larger in size must complete either:

(i) An ASHRAE Level 2 Audit, as specified by the *Procedures for Commercial Building Energy Audits*, published by ASHRAE; or

(ii) Any alternative assessment procedure, as approved by the Commission. Building owners or energy assessment providers who wish to propose additional assessment procedures shall apply to the Commission on a form to be provided by the Commission and shall demonstrate that the procedure has high quality and standards. Approved assessment procedures will be publicly listed by the Commission. Alternative assessments shall at minimum describe the following:

(A) All cost-effective energy conservation measures that would reduce building energy consumption, including building upgrades and changes in operations, maintenance, or behavior;

(B) The building components that would be affected by each measure;

(C) The estimated energy savings expected to result from each measure;

(D) The estimated cost savings expected to result from each measure;

(E) The estimated costs of implementing each measure;

(F) The simple payback period or net present value of each measure;

(G) Rebates and incentives available to the owner for each measure; and

(H) Actions the building owner can take to implement each measure.

(2) *Buildings between 35,000 and 50,000 square feet.*

(i) [RESERVED]

(c) **Delivery of Assessment Summary to Commission.** The owner shall deliver a summary of the assessment to the Commission prior to the end of the five-year period.. Such summary shall be on such form as the Commission may provide and shall contain:

(1) The date the assessment was performed;

(2) Building identification;

(3) Signed certification by the qualified energy professional that the assessment meets the applicable standards;

(4) The name and qualifications of the qualified energy professional, as described in 1.09 (a); and

(5) A list of all measures available to the owner with a simple payback of not more than ten years, including the expected energy savings of each measure.

1.10 **Energy Action Requirements.** Owners of covered buildings that are not eligible for an exemption and who choose to complete energy actions shall comply with the requirements of this section.

(a) **Energy Action Professional Requirements.** The energy action must be documented in a report, as described in 1.10 (c), and this report must be signed by a qualified energy professional meeting the requirements of 1.09 (a).

(b) **Energy Action Requirements.** The energy action must meet at least one of the following criteria:

(1) The building owner must implement an energy efficiency project, including building upgrades or changes in operations, maintenance, and behavior, that reduces annual energy use intensity by at least 15 percent, cumulative over the five years;

(2) If the building is eligible to receive an Energy Star rating, the building owner must implement an energy efficiency project that improves the building's rating by at least 15 points, cumulative over the five years;

(3) The building owner must connect the building to a district steam or district cogeneration network that results in at least a 15 percent reduction in the building's annual greenhouse gas emissions;

(4) The building owner must install renewable energy on the building site such that it increases the supply of renewable energy by at least 15 percent of annual energy consumption, over any existing renewable energy supply;

(5) The building owner must obtain energy, such as renewable electricity or lower carbon fuels, such that it reduces the annual greenhouse gas emissions of the building by 15 percent, not including any effects of changes in the emission factor of the regional electric grid;

(6) The building owner must undertake any combination of the actions above that together reduce the building's greenhouse gas emissions by 15 percent, not including any effects of changes in the emission factor of the regional electric grid;

(7) Other criteria that the Commission may, from time to time, specify.

(c) **Energy Action Report.** The owner shall submit a report documenting the energy actions taken and the dates these actions were taken, using a form to be provided by the Commission. The report shall be submitted to the Commission prior to the end of the five-year period, with supporting documentation as applicable:

(1) To document a reduction in energy use intensity, the energy and water reports submitted to the Commission during the five-year period must demonstrate at least a 15 percent reduction in energy use intensity over the period, and no additional documentation is required.

(2) To document an increase in Energy Star rating, the energy and water reports submitted to the Commission during the five-year period must demonstrate an increase of at least 15 points in Energy Star rating over the period, and no additional documentation is required.

(3) To document connection with district steam or cogeneration, the owner must submit documentation of initial connection, the building's district energy consumption for the 12 months after connection, and the greenhouse gas emissions rate of the consumed energy.

(4) To document the installation and use of on-site renewable energy, the owner must submit documentation of the installation, and the energy and water reports submitted to the Commission must demonstrate an additional 15 percent of the building's energy use, or greater, being supplied by said renewable source.

(5) To document the obtaining of energy and reduced greenhouse gas emissions, the owner must submit documentation of purchases or a purchase agreement for at least five years for the relevant energy types, including any renewable energy

certificates retired, and documentation calculating the reduction in greenhouse gas emissions, exclusive of any changes in the emission factor of the regional electric grid.

(6) To document a combination of actions and reduced greenhouse gas emissions, the required reports for each of the component actions must be submitted, and documentation calculating the reduction in greenhouse gas emissions, exclusive of any changes in the emission factor of the regional electric grid.

(7) Any action, or part of an action, taken in the fifth year of the period, with results that do not appear in the fifth energy and water report of the period, may be reported in terms of their projected results. Such projections shall be developed and signed by a qualified energy professional, as described in 1.09(a), and submitted in addition to any other required energy action report. The Commission will review the energy data from the following year to confirm that such projections have been met.

1.11 ***Preservation of Records.***

(a) **Required Records**. Owners of covered buildings shall maintain, in printed or electronic form, the following records for a period of at least five years:

(1) The U.S. EPA Portfolio Manager confirmation email for proof of submission date;

(2) Proof of the date of request of energy or space use attribute data from any separately-metered tenant;

(3) Any back-up information substantiating the energy and water data and space use attribute information entered into Portfolio Manager; and

(4) A copy of any energy efficiency assessment report prepared by a qualified energy professional.

(b) **Inspection of Records by the Commission**. Building owners shall make the records listed in subsection 1.11(a) available for inspection by the Commission during normal business hours, following reasonable notice by the Commission.

1.12 ***Enforcement and Penalties.***

(a) **Penalties.** The violation of any provision of Section 7-2.2 or these regulations by any owner or non-residential tenant is subject to the imposition of penalties by the Commission.

(b) **Notice of Violation.** Upon receipt of a written notice of violation sent from the Commission to the owner and the primary account representative of the building's Portfolio Manager account, a building owner or non-residential tenant shall, within 30 days, either:

(1) correct the violations identified in the notice; or

(2) request, in writing, a hearing for the determination of whether the building owner or tenant violated Section 7-2.2 or these regulations.

(c) **Corrections to Report**. The Commission may notify the owner of errors in energy use data, use attributes, building information, calculations, or results. The owner shall be provided 30 days to correct the errors identified by the Commission, submit the updated report to the Commission as described in 1.06, and notify the Commission of the updated submission.

(1) Intentional or repeated submission of misrepresentative data or falsified reports shall not be considered errors.

(d) **Hearing Procedures.** Upon receipt of a request for a hearing under subsection 1.12(b)(2), the Commission or its designee shall within 60 days hold a hearing to be conducted according to the requirements of M.G.L. c. 30A. If the Commission or its designee determines at such hearing that the owner or non-residential tenant has violated Section 7-2.2 or these regulations, that person shall have 30 days from the issuance of the final decision to correct that violation.

(e) **Failure to Comply with Notice of Violation.**

(1) If an owner or non-residential tenant who does not request a hearing fails to correct a violation of any provision of Section 7-2.2 or these regulations within 30 days of receiving written notice of such violation, then that person has failed to comply with the notice of violation.

(2) If an owner or non-residential tenant who requested a hearing and received an adverse decision in such hearing fails to correct the noticed violation within 30 days of the issuance of such final decision, then that person has failed to comply with the notice of violation.

(f) **Imposition of Penalties.** Any owner or non-residential tenant who fails to comply with a notice of violation shall be subject to a fine, in accordance with the schedule in Section 7-2.2(j)(4).

(g) **Residential Tenants Not Subject to Penalties.** Residential tenants are not subject to the imposition of penalties for the failure to comply with any provision of these regulations.

Appendix I

Tables 1 and 2 below provide the default values for estimating building energy use, pursuant to 1.04(e)(3)(ii)(B). If no value is listed, the owner should use the default for when all energy uses are unknown. The Commission may, from time to time, update and add values, space types, and energy sources, based on national and regional databases as well as local data collected under this ordinance.

Table 1: Non-Residential Default Values (as of January 1, 2014)

	Electricity	**Natural gas**	**Fuel oil**	**District heat**	**If all energy uses are unknown**
	kWh per square foot per month	Cubic feet per square foot per month	Gallons per square foot per month	kBTU per square foot per month	Total kBTU per square foot per month
Space type					
Education	0.78	3.82	0.03	11.663	10.2
Food Sales	4.94	5.02			20.0
Food Service	3.84	14.12			25.8
Health Care	1.94	10.09	0.004		21.2
Inpatient Health Care	2.32	11.74	0.004		24.9
Outpatient Health Care	1.61	5.02			9.5
Lodging	1.35	4.89	0.012		10.0
Mercantile	1.52	3.60			9.7
Retail (Other Than Mall)	0.88	4.23			6.5
Enclosed or Strip Mall	2.26	3.36			10.2
Office	1.63	3.88	0.008	8.153	11.5
Public Assembly	1.25	3.64	0.022		9.4
Public Order and Safety	1.53	4.37			11.6
Religious Worship	0.28	3.84	0.029		5.2
Service	0.69	6.22			8.0
Warehouse and Storage	0.59	2.58	0.005		4.2
Other	2.33	8.55			16.4
Vacant	0.24	2.30			2.1

Table 2: Residential Default Values (as of January 1, 2014)

	Electricity	**Natural gas**	**Fuel oil**	**District heat**	**If all energy uses are unknown**
	kWh per unit per month	Cubic feet per unit per month	Gallons per unit per month		Total kBTU per unit per month
Residential Units	450.4	4,100	37.2		6,470

Values are taken from U.S. Energy Information Administration's 2003 Commercial Buildings Energy Consumption Survey and 2009 Residential Energy Consumption Survey, and are multiplied by 120%. Original non-residential values are for New England or Northeast where available, national values otherwise. Original residential values are based on Northeast multifamily buildings of five units or greater.