

Building Energy Reporting and Disclosure Ordinance

Summary of Comments Received on Draft Regulations

On October 23, 2013, the City of Boston Environment Department released draft regulations for implementing the Building Energy Reporting and Disclosure Ordinance. Oral comments were heard by the Air Pollution Control Commission on November 12th, and written comments were received through November 15th. Finally, comments were also provided by stakeholders during meetings and phone conversations.

This document summarizes the issues raised. Responses to some comments, including when changes were made in the draft, are indicated in italics. The substance of some comments will be addressed in various guidance documents that the Commission intends to develop after adoption of regulations.

General

Need for additional comment period. Several commenters requested an extension of the comment period until the end of November. or suggested that the Commission delay implementation by 60 days to avoid confusion.

General support. FirstFuel expresses its support for the City’s progress on these regulations. MASCO/Health Care Without Harm/Boston Teaching Hospitals is pleased with the inclusion of several provisions, especially the Advisory Council. MASCO and ABC note that many of their members have been trained on and/or are using Portfolio Manager.

Comments should be reviewed at second Advisory Committee meeting. MASCO suggests that the meeting be used as a working session to review written comments and shape final regulations.

Provision of utility data is crucial. Having direct utility transfer of whole-building data available prior to the 2014 reporting deadline is important, noted by multiple commenters. Owners should also have direct uploads from the assessor’s database, with building owners just reviewing the accuracy of all uploaded information. GBREB states that other cities have held utilities responsible for whole-building data, and NAIOP suggests that this should be the case here, as tenants own the data. Building owners need assurance that utilities will provide this information, with penalties for owners held off until then. GBREB feels it is difficult for utilities to compile this information across accounts and may charge for it.

An operational rating can be inaccurate. GBREB and NAIOP feel that Portfolio Manager reports are based on building occupant activities, rather than how energy-efficient the building is. This can result in low ratings, triggering the need for assessments or actions, and potentially lower building valuation.

Portfolio Manager is not useful to the health care sector. The intensity of research activity in Boston’s hospitals, and the inclusion of labs in mixed use buildings, makes the use of Portfolio Manager difficult.

Clarifying public disclosure. Building owners need to know how energy information will be made public, and that the program should be rolled out over time, perhaps averaging data over multiple years. It is concerning that energy professionals will call up the building owners with publicly-listed scores.

Ownership intricacies of condo associations. Condominium associations are a unique form of ownership, distinct from an apartment building. CAI notes that there are buildings with master condo associations and sub-associations, where the master association has no control of the data and hence may not be able to report. It is thus unclear who would be responsible.

- *This will be addressed in the guidance.*

Condo associations that are forced to use default data may receive poor results. CAI states that condo associations would find it difficult to get adequate tenant data, and would have to use default data. This can lead to a lower rating, and thus a lower sale price for units, in turn exposing the association to lawsuits from sellers of units. CAI suggests not disclosing any reports based on default data.

Definitions [1.03]

Confusion in coverage definitions. [1.03] GBREB notes the difficulty in identifying buildings covered by the size thresholds, based on different definitions in tax records and the owner’s definitions. It notes the difficulties other cities had in identifying covered buildings. They also feel that it is unclear whether uses such as mixed-use residential, apartments, condominiums, time-shares, and nursing homes are covered.

- *The size thresholds are defined in part (d) of the ordinance.*

Clarify use of “meter.” [1.03] MASCO seeks to understand if “meter” includes data from an energy or building management system.

- *This will be addressed in the guidance.*

Narrowing water use definition. [1.03] NAIOP suggests excluding separately metered water uses, such as restaurants or cooling units.

Use of Portfolio Manager [1.04]

Use of other tools should be allowed. [1.04(a)] MASCO strongly recommends that the owners be able to request use of a reporting tool other than Portfolio Manager. The Commission can list criteria to define allowable tools. This would enable the inclusion of situations such as mixed-use buildings with labs and acute care, efficiency improvements made prior to the ordinance, and wholesale clean power purchases. Currently, Portfolio Manager does not allow for certain space type definitions. A report generated through such alternative tool would take precedent and be the only City-disclosed results.

- *See the new draft regulations.*

Need to account for wholesale clean power purchases. [1.04(a)] Portfolio Manager does not account for wholesale clean energy purchases, undertaken by quite a few institutions.

- *Not correct. Details on renewable supply can be entered for all power purchases in Portfolio Manager.*

Categories of buildings in Portfolio Manager are too broad. [1.04(b)(1)] BU’s buildings, for example, could all be lumped in as “higher ed.”

Condo associations cannot calculate gross floor area. [1.04(c)] CAI states that the square footage of common areas in condo buildings is unlisted/unknown, making it impossible for condo association to submit their total gross floor area. The regulations should include language for this situation.

- *This will be addressed in the guidance.*

Clarification on billing cycles. [1.04(e)] A Better City notes that billing cycles do not necessarily begin on the first of the month, and suggests that 12-month billing cycles ending in December are selected.

- *Section 1.04(e) of the regulations notes that data encompassing the full calendar year is needed.*

Requesting Data from Tenants and Extrapolating [1.04(e)]

Timing for mid-year vacancies needs to be changed. [1.04(e)(i) and 1.05(a)(ii)] Multiple commenters feel that giving the tenant only 30 days to comply with the request when vacating will not provide enough time for receiving and reporting their final bill. Instead, 90 days would be more feasible, and “if such advance notice is provided” should be included after “at least 21 days” for the request. This section should also account for condo unit owners that leave without notice.

- *See the new draft regulations.*

Need to verify utility data fairly. [1.04(e)(i)] The Commission should create a fair process to reconcile differences between utility and owner data. Also, in order to verify utility data, building owners will need to request utility data from tenants, which is prohibited if whole-building data is available.

- *See the new draft regulations, section 1.04(a)(1).*

Difficulties of tenant data request. [1.04(e)(2)] GBREB and NAIOP feel that building owners face privacy concerns and resistance in getting energy use data from tenants (or condo associations getting it from unit owners), and that it has been an impediment in DC. Collecting this information will be a burden, requiring perhaps 25 hours for a 10 unit building. MASCO suggests that the language be clarified such that the point is to show the owner has met their obligation, rather than to take enforcement actions.

- *See the new draft regulations. Whole-building data access from utilities is expected.*

Excel tool for energy use extrapolation. [1.04(e)(3)(ii)(A)] A Better City finds the extrapolation formula simple enough, and suggests that the City provide an Excel or web tool for extrapolation, as it would be useful and help in accurate estimates.

- *The Environment Department will provide a spreadsheet or similar tool.*

Threshold for extrapolation is too high. [1.04(e)(3)(ii)(A)] The cutoff should be lower than 75%.

- *See the new draft regulations.*

Default Values for Energy Use [1.04(e)(3)]

Default data is not useful. [1.04(e)(3)] Default or estimated values will make actual tracking of reductions impossible. In general, regulations must account for complexities to produce useful results.

Updating the default values, based on Boston’s results. [1.04(e)(3)(ii)(B)] MASCO notes that the values will change over time, so language should be included to ensure that the most recent CBECS and RECS values be used. A Better City notes that, for some building types, the default value for district heating is higher than the default for all energy. They suggest the Commission retain flexibility and adjust values based on Boston’s results from the first year of reports.

- *See the new draft regulations. The Commission will investigate using local data in future default values.*

Need for defaults for other types of energy use. [1.04(e)(3)(ii)(B)] A Better City asks what the estimation process will be for other energy use types, such as chilled water.

- *This will be addressed in the guidance.*

Default values for other types of buildings and tenants. [1.04(e)(3)] Multiple commenters find that Table 1 does not include all building types and are unclear on what the sectors listed include (e.g., the Education sector). They suggest a link to the CBECS building type definitions and further guidance. The values do not address tenant density; square footage does not represent energy usage.

- *See the new draft regulations: the Commission will update default values from time to time, and may include more specific use types. Definitions will be addressed in the guidance.*

Penalty factor for default data. [1.04(e)(3)] NAIOP finds the 20% factor arbitrary.

Per square-foot defaults for residences. [1.04(e)(3)] Default residential values should be by square foot.

- *Reliable data is only available on a per-unit basis from the U.S. EIA. The Commission will investigate per-square-foot residential values in the future.*

Other Reporting Details [1.04(g), 1.05, 1.06, and 1.07]

Discuss provision on contextual information. [1.04(g)] Several commenters ask for definition of and discussion on the format and disclosure of contextual information. It is unclear if owners can submit this information on an ongoing basis, and if the context will be taken into account in assigning the building a rating. A Better City notes that some members have put forth ideas on how to display this information.

- *This will be addressed in the guidance.*

Clarifying how to report multiple buildings that share systems. [1.07(c)(2)] The section should be clarified to say whether existing Portfolio Manager accounts would have to be reclassified. BU asks if there is a requirement for submetering, and that this should be clarified. Reporting as a campus is also not functional within Portfolio Manager, and BU is working with EPA on it. CAI asks that the Commission clarify who should report as separate buildings.

- *See the new draft regulations.*

Tenant penalties needed. [1.05(a)(1)] The GRC Higher Ed Working Group feels that there isn't a penalty for tenant non-compliance.

- *Section (j) of the ordinance establishes penalties for non-residential tenants who fail to comply.*

Sub-Lease Applicability to Condos. [1.05(a)(3)] CAI writes that it is unclear how the requirement for sublessors would apply to condos, and that the language include condo owners who lease their units.

- *The definitions in section (b) of the ordinance establish that "owner" includes condo associations, and "tenant" includes condo unit owners, including those who lease out their units.*

Clarifying when to update a previous report. [1.06(c)] A Better City asks if there is a cut-off date for providing updated information, such as for previous years. They ask if data be revised after it has been publicly released. MASCO recommends including some threshold of substantiality here, with less significant changes to be provided by May 15th of the following year.

- *See the new draft regulations.*

Clarification of extension requests. [1.06(d)] Simply stating the date of the extension request deadline may be clearer than "45 days before."

- *See the new draft regulations.*

Exemptions [1.08(c)]

An exemption for reduced water use. [1.08(c)] A Better City asks if substantially reducing energy and water use together can be an exemption, or if the City has an alternative plan for water reductions.

- *Reduced water use will not be an exemption for energy assessments or actions.*

A lower Energy Star rating-based exemption. [1.08(c)(1)] The GRC HEWG suggests that Energy Star ratings of 30 or below be the only one required to do assessments, rather than those under 75. Additionally, exemptions should not penalize buildings where Energy Star certification cannot be achieved, such as many university buildings.

Exemption for LEED questionable. [1.08(c)(2)] The GRC HEWG finds that LEED buildings should not receive an exemption just because they have achieved LEED status.

- *The exemption is for LEED Existing Buildings, Silver certification, with 15 points in the energy category.*

Tighten exemption for net-zero buildings. [1.08(c)(3)] A Better City notes that the exemption for net-zero buildings does not mention renewable energy, and could be met by burning on-site fossil fuels.

- *Not correct. For example, burning natural gas on-site counts as energy consumption, and would thus be reflected in Portfolio Manager.*

Clarifying the exemption for increased Energy Star rating. [1.08(c)(4)] A Better City says that this exemption can be interpreted in three ways¹, and is very ambiguous.

- *See the new draft regulations.*

Exemption for highly efficient buildings is unclear. [1.08(c)(5)] A Better City, BU, and the GRC HEWG all ask what constitutes a highly efficient building. Making these determinations on a case-by-case basis is inefficient for potentially hundreds of buildings. Instead, the City (in collaboration with stakeholders) could develop standards for specific building categories after a full year of data is collected. This would yield a useful database for buildings to meaningfully compare to other buildings of the same type. Another option would be to use the Labs21 benchmarking tool, not Portfolio Manager, for labs.

- *See the new draft regulations, which reserve a section for standards developed in line with the GRC HEWG suggestion.*

Clarify and expand exemptions for institutional master plan with comprehensive energy plan.

[1.08(c)(6)] MASCO and BU both suggest changes to this section. Clarify that the 15% reduction is for the campus as a whole and that the comprehensive energy plan is for the campus. The language should be amended with “or can demonstrate that continuously progressive measures to reduce energy and water consumption and greenhouse gas emissions have been implemented either during the reporting period or in the 10 years prior to the reporting period.”

BU also notes the issue of the campus growing. The overall GHGs of the campus could grow, even if the campus is in an energy management plan. The Commission also needs to clarify what happens if the campus achieves 9% or 13%. Does this count as “demonstrated progress,” i.e. as an exemption?

- *See the new draft regulations.*

Exemption documentation. [1.08(d)] The exemption application should be not too onerous.

Typos. References to 1.08(g) need to say 1.08(c).

Assessments [1.09]

Internal energy professionals should be allowed. [1.09(a)] The GRC HEWG, BU, and NAIOP comment on this issue. In many higher education institutions, there is an internal professional group that performs building assessments. At BU, the sustainability staff aren’t involved in day-to-day building operations, and would in fact provide outsider perspective on the building. BU suggests that people who aren’t involved in day-to-day staff should be allowed, i.e. don’t count as “building staff.” Alternatively, allow internal energy professionals with the required credentials to conduct assessments. NAIOP suggests the use of self-certification. EPA, in fact, doesn’t require external professionals for Energy Star certification.

- *See the new draft regulations.*

Assessor qualifications are restrictive. [1.09(a)] BU feels that the requirements exclude too many potential assessors, and that utilities themselves don’t send out PEs. They ask if working in a campus’s energy engineering department could be a qualification, and suggest an experience-based requirement.

- *The qualifications are aligned with those required by other cities and EPA’s Energy Star program.*

Assessment requirements are too stringent. [1.09(b)] The ASHRAE Level II language was dropped from the draft ordinance, and, now, draft regulations should not require ASHRAE Level II or equivalent. These

assessments cost a lot, and some buildings cannot be easily improved, like labs. Owners should be provided an acceptable alternative.

- *See the new draft regulations, which reserve a section for appropriate requirements for smaller buildings.*

Support for ASHRAE Level II requirements. [1.09(b)] The GRC HEWG supports the requiring of ASHRAE Level II audits.

Clarify ‘reasonable’ conservation measures in a similar audit. [1.09(b)(2)(A)] NAIOP feels that “reasonable” is subjective. More clarification is needed.

- *See the new draft regulations.*

Clarify process for new assessment procedures. [1.09(b)(2)] New assessment procedures approved by the Commission should be listed publicly, and the process for proposing one should be clarified.

- *This will be addressed in the guidance. Clarifications have also been added to the new draft regulations.*

Opening up requirements for new energy assessments. [1.09(b)(2)] A Better City feels that the criteria for the alternative audit may be too restrictive to new technologies. FirstFuel believes that data analytics provide a compelling alternative option, with reduced cost and time, and that more explicitly supportive language be included. FirstFuel provides suggested language².

- *The Commission will consider all proposals for assessment protocols on a case-by-case basis, and will evaluate their ability to provide insights into cost-effective energy efficiency measures.*

Energy assessment reports. [1.09(c)] The reporting process for assessments should not be onerous.

Assessments reported should have shorter payback period. [1.09(d)(5)] Two commenters wrote that the 10-year payback period is too high, as owners are unable to sustain that horizon and may not be able to qualify for utility rebates for longer-term measures. Five years would be more appropriate.

- *The implementation of measures from the assessment is not required. Insights into measures that have longer payback periods can help identify where better incentives are needed.*

Energy Actions [1.10]

Suggestions for other energy actions. MASCO suggests other emissions reductions when direct energy or GHG reductions are not possible or economically feasible. Examples they suggest are wholesale clean power purchases, Tier 3 efforts of supply chain and transportation improvements, investments/underwriting of efficiency measures at other properties in the community, and white tags.

- *See the new draft regulations.*

Condos and energy actions. CAI writes that 75% of unit owners need to approve improvements to the building, which is near impossible, and even more difficult if this is triggered by reports that use default data. There should be another option or exception for condo buildings.

Actions falling short of the 15% reduction. [1.10(b)(1)] It is ambiguous what an owner should do if the actions cut energy use by only 10% - not report the action? The reduction threshold of 15% could prevent buildings from committing to energy actions.

- *See the new draft regulations. A combination of actions would be permitted, meaning that actions that add up to only 10% can be followed by smaller actions to total 15% by the end of the five-year period.*

Energy actions become more difficult in future five-year periods. [1.10(b)(1)-(2)] Reductions of 15 points or 15% may be easy in the first 5-year period, but increasingly difficult in subsequent periods.

- *The baseline for any given five-year period is the building's energy consumption at the start of the period. Thus, in future five-year periods, the starting baseline is lower, and 15% represents a smaller absolute reduction.*

Exemption overlaps with action and precludes report. [1.10(b)(2)] A Better City notes that receiving the exemption for increased Energy Star rating would preclude the owner from reporting that action.

- *Such an increase in Energy Star rating can be undertaken as an action, or submitted as an exemption application. Either approach is acceptable.*

No guaranteed data for district energy action. [1.10(b)(3)] MASCO notes that there is no requirement for district energy providers to share GHG emissions rates.

- *This will be addressed in the guidance. The Commission will work with owners of buildings undertaking such actions to find appropriate data.*

Action reports limit window to four years. [1.10(c)] A Better City notes that action results must appear in the fifth year report, thus giving building owners only four years, contradicting the ordinance. A report based on projected savings for actions taken in the fifth year should be an option.

- *See the new draft regulations.*

Enforcement [1.12]

Sending Notices of Violation to the right person. [1.12(b)] The language should make sure the notices are sent to those in charge of energy reporting compliance. MASCO provides suggested language.³

- *See the new draft regulations.*

Clarify approach to verification. [1.12(c)] A Better City suggests the regulations specify how validity checks will be completed.

- *The process to be used is still under development.*

Reiterated support for fines. [1.12(a)] The GRC HEWG supports meaningful fines.

¹ Specifically, they write that the exemption for 15 point Energy Star rating increase can mean: a 15 point increase from year one to year five; a 15 point increase from the lowest score during the five-year period to the highest

score of the five-year period, given that the highest year is after the lowest year; or a 15 point increase from the lowest year in the five-year period to the last year of the five-year period.

² FirstFuel's suggested language: "An assessment that follows similar procedures approved by the Commission. Options can include analytics of energy usage data where possible in the energy auditing evaluation inventorying measuring and verification of projects. Data analytics refers to what is typically called a "no-touch" or Web-based "virtual" energy audit assessment. A data analytics provider evaluates a facility's energy usage from metered data and other public information sources, such as digital photographs, satellite, and aerial images, and provides an audit-based report with energy efficiency project recommendations without entering the facility. Building owners may want to consider a no-touch audit as a tool to help them prioritize energy retrofit projects and better focus ASHRAE level work." FirstFuel notes that this language comes from California Draft Proposition 39 guidelines.

³ MASCO suggests including: "Upon receipt of a written notice of violation of these regulations sent from the Commission to the primary account representative for the owner's Portfolio Manager's data (or designated alternative reporting), a building owner..."