

Town of Lexington
Motion
2022 Annual Town Meeting

ARTICLE 31 AMEND GENERAL BYLAW - REPORTING, DISCLOSING, AND ASSESSING THE ENERGY AND WATER USE OF LARGE BUILDINGS

MOTION:

That the Code of the Town of Lexington be amended by

1. Adding a new Chapter 20, "Buildings, Energy Use" as follows;

Section 1. Definitions

For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Commercial building", a building or multiple buildings on a parcel of which not less than 50 per cent of the gross floor area, including hallways or other common space, but excluding parking, is used for commercial, retail, office, professional, educational or other nonresidential purposes, or some combination thereof, or any grouping of commercial buildings designated by the Town as an appropriate Reporting Unit for the purposes of this section; provided, however, that "Commercial building" shall not include a building owned or leased by a municipal, state, or federal agency.

"Energy", electricity, natural gas, steam, hot or chilled water, heating or fuel oil, propane, on-site renewable energy, or other products used for heating, cooling, lighting, or water heating, or for powering or fueling other end uses.

"Energy use benchmarking tool", the ENERGY STAR Portfolio Manager, an online energy use benchmarking tool used by the United States Environmental Protection Agency for reporting and managing the energy performance, water efficiency and Greenhouse Gas Emissions of buildings, or some other tool capable of; (i) performing all the functions relevant to compliance with this section; (ii) allowing for reporting by third parties, including but not limited to, gas distribution and electric distribution companies; and (iii) exchanging information and data with the ENERGY STAR Portfolio Manager.

"Greenhouse Ggas Emissions," as defined in M.G.L. c. 21N.

"Gross floor area", as defined in Town of Lexington Zoning Bylaw Chapter 135-10.1

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“Reporting Unit,” a building or buildings that meet(s) any of the following criteria: (1) buildings owned or leased by the Town, or (2) as of May 15, 2022 a parcel with one or more buildings of ~~not less than~~ 25,000 sq. ft. or more with ~~residential or commercial uses or a combination of residential and commercial uses.~~ In the case of criteria (2) above, where there is more than one building on a parcel, the Town may permit the entire complex of buildings to report as a single “Reporting Unit,” or may designate one or more buildings as separate “Reporting Units.”

“Owner,” the owner of record of a Reporting Unit, or a designated agent thereof, including, but not limited to, the association or organization of unit owners responsible for management in the case of a condominium, the board of directors in the case of a cooperative apartment corporation, the trustees or governing body in the case of a not-for-profit entity and the net lessee in the case of a building subject to a net lease with a term of not less than 49 years, inclusive of all renewal options.

“Residential building”, a Reporting Unit on a parcel of which not less than 50% of the gross floor area, including hallways and other common space serving residents, but excluding parking, is used for dwelling purposes, or any grouping of residential buildings designated by the Town or a municipality as an appropriate Reporting Unit for the purposes of this chapter.

“Tenant”, any tenant, tenant-stockholder of a cooperative apartment corporation, or condominium unit owner.

Section 2: Reporting and Disclosure Requirements

(a) The Town shall undertake energy use benchmarking to determine whether each Reporting Unit utilizes more or less energy, and emits more or less ~~Greenhouse Gas Emissions~~, than Reporting Units of comparable size, occupancies and uses, and to inform a town-wide analysis of energy use trends and opportunities to increase energy efficiency and reduce Greenhouse Gas Emissions. ~~To conduct the benchmarking, the Town shall designate an energy use benchmarking tool.~~

(b) (1) To administer this section, the Town shall ~~define building types, use building types and occupancies defined by 780 CMR.~~ The Town may designate subcategories within each building type ~~and occupancy~~, and may establish different reporting requirements for each subcategory. ~~In establishing reporting requirements, the Town may consider whether tenant-occupied units or spaces are separately metered.~~

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(2) Not later than May 15 of each year, beginning in 2023, the Owner of each Reporting Unit shall use the energy use benchmarking tool to accurately report to the Town, or cause to be accurately reported to the Town, the Reporting Unit's energy use, any electricity suppliers' energy labels (i.e., electricity source), any retired Class I or equivalent Renewable Energy Certificates (RECs) for the previous calendar year, and any building characteristics determined by the Town to be necessary to establish the absolute and relative energy use of the Reporting Unit. The Owner of a Reporting Unit subject to this section may authorize a gas or electric distribution company or other third party to report building-specific data to the Town, provided, however, that such authorization shall not relieve an Owner from compliance with this section.

(3) An Owner of a ~~large~~ Reporting Unit with separately-metered and tenant-occupied units shall request the electric and gas distribution companies to provide the aggregate energy consumption of all meters in the Reporting Unit, including tenant-occupied units and separately-metered units. If the electric and gas distribution companies do not provide the requested information, the Owner shall annually request from each tenant of the Reporting Unit all information necessary to comply with the requirements of paragraph (2).

(4) An Owner may request that the Town extend the Owner's deadline to provide a required report for good cause shown.

(5) If an occupied Reporting Unit subject to the requirements of this section is transferred, the buyer shall make reasonable efforts to report energy use information for the Reporting Unit for the entire calendar year, if practicable.

(c) Not later than October 1 of each year, the Town shall make available on its website energy use information and data for the preceding calendar year for each Reporting Unit. For each Reporting Unit, the information made available shall include, but not be limited to:

- (i) the address of the Reporting Unit and building ID(s) (as established by the Town) for all buildings within the Reporting Unit;
- (ii) the Owner of the Reporting Unit;
- (iii) total square footage;
- (iv) building type ~~and principal use(s)~~;
- (v) the Reporting Unit's total energy use in kBTU and energy use intensity in kBTU per square foot;

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- (vi) the breakdown of the Reporting Unit's energy use and energy use intensity by electricity, gas, renewable energy, and other sources;
- (vii) water usage; and
- (viii) the Reporting Unit's total Greenhouse Gas Emissions intensity in kg CO₂e per square foot.

(d) The Town shall utilize such practices as are necessary to prevent the public disclosure of personal information regarding owners and tenants, and maintain a quality assurance process to improve the accuracy and completeness of the available information. The Town shall provide owners with the opportunity to submit contextual information related to energy use in their Reporting Units and shall disclose such information on its website upon request by the owner.

(e) The Town shall prepare an annual comprehensive report on the energy performance of Reporting Units utilizing the information and data collected pursuant to this section. The report shall include, but not be limited to, an analysis of energy performance, Greenhouse Gas Emissions, and energy sources by building size, occupancy, and use. The report shall also include, when available, energy performance and Greenhouse Gas Emissions over time. The report shall be posted on the Town's website.

(f) On the basis of the comprehensive reports prepared by the Town, the Town shall conduct an annual review of trends in the energy performance of Reporting Units and recommend changes to laws, regulations, policies, and programs to achieve Greenhouse Gas Emission reductions.

Section 3: Enforcement

Owners of Reporting Units failing to comply (after December 31, 2024) with the energy use reporting and benchmarking requirements of this section or knowingly providing false or incomplete information to the Town shall be subject to a noncriminal disposition fine ~~in an amount not to exceed \$300~~ pursuant to M.G.L. c. 40, § 21D and § 1-6 of the Town's Code of Bylaws, provided that no Owner shall be fined for a failure to report data it has not been able to obtain from a Tenant or electric and gas distribution company, where the Owner has demonstrated it has made a good faith effort to obtain that data. Each day of noncompliance shall constitute a separate violation per day of noncompliance for Reporting Units.

2. Amending Section B of the Non-Criminal Disposition Bylaw, Chapter 1-6 of the Code of the Town of Lexington, by adding the following, and further that non-substantive changes to the numbering of this bylaw be permitted to comply with the numbering format of the Code of the Town of Lexington:

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<u>Bylaw</u>	<u>Fine Schedule</u>	<u>Fine Allowed</u>	<u>Enforcement Agency</u>
<u>Building Energy Use Disclosure</u>	<u>Per violation</u>	<u>\$300</u>	<u>Town Manager or Town Manager's designee</u>

(Revised ~~04/04/2022~~04/11/2022)