MINUTES OF
BURLINGTON CITY COUNCIL TRANSPORTATION, ENERGY AND UTILITIES COMMITTEE

Thursday, October 22, 2024, 5:30 pm

The meeting of the Burlington City Council, Transportation, Energy and Utilities Committee was convened at 5:34 pm on Tuesday October 22, 2024, at Department of Public Works at 645 Pine Street, Burlington, Vermont and virtually through Microsoft Teams.

Councilors Barlow, Bergman, Litwin, and Broderick present in person. Councilors Litwin present via Microsoft Teams.

Public Attendees: Ashley Adams, Liz Curry, Amy Demetuitz, Ben Fowler, Olivia Gettes, Lindsay Mashler, Tim Perron, Mike Pelletiere, Abby Phillips, Ethan Robbins Casey Smith, Elizabeth Stokes, Quinton Zondervan, Ashley Winter.

Agenda Item

Councilor Barlow made a motion to approve the Agenda. Councilor Bergman seconded the motion. Vote: 3 ayes 0 nays

Public Forum

Dillion and Tim Perron from Vermont Gas – stated that they are interested in the proposal and interested in seeing how it develops.

Ashley Winter:
Requested that the Council meet more frequently to discuss BERO and would like to streamline the process for developing a ballot item to address the enforcement fee for town meeting day in March. She votes in favor of the ordinance.

Olivia Gettes.
Supports the building emissions reduction ordinance because I want strong private policy to help us reach Burlington's climate goals and the threat of climate change.

Abby Phillips.
Feels disappointed that people in certain groups are being given priority and their perspective on the BERO decision and would like to get more perspectives from everyone, not just business owners.

Amy Demetuitz:
Says that it is important that we keep in mind economic energy justice. 60% of the renters in the state are below 80% of median income including multifamily rental housing. As a requirement to increase efficiency, unduly burdens affect low-income tenants. More benchmarking and research need to be done.

Liz Curry:
Recommends that you take a deeper dive into benchmarking and set BERO aside because we need benchmarking. She would also like to see professional opinions and involvement on getting the correct research done.

Elizabeth Stokes:
Supports the BERO and this is the city's next step in mitigating the effects of climate change.

Lindsay Marshall:
Thinks it is crucial that we take full action to reduce emissions, especially from buildings which are a significant source of our cities carbon footprint. She urges the Council to stand firm in supporting this ordinance.

Ben Fowler:
Thinks that in most cases, most of the clients that I work with would struggle to still move projects ahead, even with a reasonable penalty. With this I would heavily advocate for baseline, super important as to guide the process and to measure performance.

Ethan Robbins:
Is in support of the extended timeline and urge the Council to vote in favor of the energy Benchmarking Ordinance proposed tonight. A similar ordinance may need to be drafted to develop Burlington's enforcement and create more opportunities for weatherization.

Quinton Zondervan
As policy director at Run on Climate agrees that you need benchmarking, or more specifically baselining as soon as possible. I do not agree that you should wait for

that to move forward with the legislation. You cannot wait 10 years before you start reducing your emissions at this point, so you are going to have to accelerate that process and start benchmarking as soon as January of next year so that you are ready to start emissions reductions as early as a year later.

BERO Discussion

Counselor Broderick:

The original resolution was written that we would need to have an ordinance or ballot language relating to BERO by the City Council meeting on the 28th.

We need workforce development considerations both in terms of in the city with administration and enforcement by our city departments. I am not completely sure if this will be necessary if we bring the benchmarking ordinance out of committee. Having extra time is necessary, and during that extra time that we are working on the standards themselves, we should be doing some type of benchmarking.

General Manager Springer shared the slides he provided:

Building Emissions Reductions Ordinance (BERO) Overview

Scope:

- Existing buildings 10,000-49,999 sq ft
  - Total universe ~279 buildings
  - Building performance requirements exclude rental housing impacted by the rental energy efficiency ordinance (~60 of the ~279)

Building performance requirements for buildings using more than 50,000 BTUs/sq ft for space heating purposes:

- Less than 90,000 BTUs/sq ft by January 1, 2026
- Less than 70,000 BTUs/sq ft by January 1, 2028
- Less than 50,000 BTUs/sq ft by January 1, 2030

Requirements for buildings using 50,000 BTUs/sq ft or less (includes rental housing):

- Consultation with energy efficiency utility or a certified building contractor regarding ways to reduce climate pollution by January 1, 2026 OR within 1 year of achieving 50,000 BTUs/sq ft
  - Extension given if building owner can demonstrate lack of consultant availability
- Take any cost-effective measures recommended in the consultation within one year of the consultation's completion
  - Extension given if building owner can demonstrate lack of contractor availability

Data Collection/Notification Timeline:
● All affected building owners using over 90,000 BTUs/sq ft notified by February 1, 2025
● All affected building owners using over 70,000 BTUs/sq ft notified by February 1, 2026
● All affected building owners using over 50,000 BTUs/sq ft notified by February 1, 2028
*Owner can contest within 30 days of notice by providing current energy consumption data for their building

Enforcement:
● If passed under current authority, normal ordinance violation fees would apply (up to $500 per violation) until/if greater authority given by voters
● March 2025 ballot item asking for authority to impose a carbon pollution impact fee on buildings out of compliance with the ordinance
○ $234/Metric Ton of CO_2 generated by the heating system over the limit at the time of offense (fee imposed annually)
■ Same level as Cambridge, Boston, and New York City
● Based on average cost of building emission reduction measures

Administration:
● Administrative fee on covered buildings to pay for City staff hours and other resources needed to administer and enforce
● Administered (including technical & support/incentive services) by BED with enforcement by P&I and legal for both by CA *[BED is an Efficiency Utility, P&I is the enforcement department for civil offenses, & CA is the city's attorneys]*
● Voter approved carbon pollution impact fee referenced above would allow more robust admin. and enforcement

ARTICLE V. THERMAL HEATING SYSTEMS

8-76 Purpose and authority.

(a) *Purpose.* It is in the public interest and in the interest of public health and safety to achieve a high degree of conservation of energy and reduce emissions of greenhouse gases by requiring buildings to meet specified energy efficiency performance standards and maximum allowable heat loss standards.
(b) *Authority.* All provisions in this article relating to thermal energy systems are adopted pursuant to the authority and powers granted by a majority of the legal voters of the city who voted at the annual city meeting on March 7, 2023, in accordance with Section 48(66) of the City Charter and its provisions on the regulation of thermal energy systems in residential and commercial buildings, including the assessment of carbon impact or alternative compliance payments, for the purpose of reducing greenhouse gas emissions throughout the city. The provisions in this article are further adopted pursuant to the authority and powers granted by the Vermont Legislature in 24 V.S.A. § 3101 (Chapter 83. Building Inspectors and Regulation of Building; Bylaws and ordinances; penalties), as reasonably necessary to improve the health, safety, and welfare of the public from fuel leaks and explosions, and from air pollution, including that which is causing climate change and thereby threatens the

city and its inhabitants.

8-77 Definitions.

(a) A "thermal energy system" shall mean any space condition, domestic hot water, cooking, appliance, process heat, or other building system that relies on thermal energy.
(b) "Fossil fuel" shall include all fossil-based heating fuel, including coal, natural gas, kerosene, oil, and propane.
(c) "Renewable energy" shall include all of the electrification, geothermal, and solar measures, and renewable fuels included in (d) and (e) of 30 V.S.A. § 8127. Renewable energy measures that do not rely on electrification, geothermal or solar will be subject to the applicable requirements of Section 8-78(a).
(d) Any "renewable energy" fuel or measure set forth in subsection (c) of this section shall be considered excluded from the definition of "renewable energy" if the Vermont Public Utility Commission determines a renewable measure or fuel source is not eligible for renewable heat credits under the requirements of a State of Vermont Renewable Heat Standard or any similar State thermal energy policy.
(e) A "large existing building" shall mean a building with at least fifty thousand (50,000) feet in total floor area of enclosed conditioned space, including hotels, but excepting the following:
(1) All residential buildings; and
(2) Buildings listed, or eligible to be listed, on the National Historic Register, provided the applicant can demonstrate to the satisfaction of the department of permitting and inspections that there is no renewable energy thermal energy system available to the building due to the historic nature of the building and any limitations imposed by the National Historic Register.
(f) A "new building" shall mean the new construction of any building, excepting all additions, alterations, renovations, or repairs to an existing building.
(g) An "existing city building" means all municipal buildings constructed prior to January 1, 2023, and owned by the City of Burlington, regardless of their size or square footage.
(Ord. of 6-28-21(1); Ord. of 11-20-23)

8-78 Renewable energy requirements.

(a) *New buildings.* Applicants seeking permits pursuant to this chapter for new buildings shall demonstrate that the new building will utilize renewable energy thermal energy systems. If an applicant utilizes a primary thermal energy system that relies on renewable energy other than electrification, geothermal, or solar measures, the applicant must certify prior to receiving a permit that the use of electrification, geothermal, or solar measures is not technically feasible, is economically unduly burdensome, is not permitted by applicable regulation, or is not feasible for other similar reasons demonstrated to the satisfaction of the department of permitting and inspections. If an applicant utilizes a nonprimary thermal energy system that relies on renewable energy other than electrification, geothermal, or solar measures, the applicant must provide the department of permitting and inspection a written explanation of the reason for not using a thermal energy system that relies on electrification, geothermal, or solar measures.
(b) *Large existing buildings.* Applicants seeking permits to replace space conditioning

systems or domestic water heating systems that are in large existing buildings shall demonstrate the new space conditioning or domestic water heating systems will utilize renewable energy. This subsection (b) shall also apply to existing city buildings, except that existing city buildings are not subject to the carbon pollution impact fee established in Section 8-79.

(c) *Annual certification.* If an applicant utilizes renewable energy in a thermal energy system capable of also using fossil fuels, the applicant must certify prior to receiving a permit and annually thereafter that the renewable energy fully offsets the annual usage for the thermal energy system.

This certification may include, but shall not be limited to, submitting a contract, invoice, or proof of a subscription to or participation in a tariff program that demonstrates the applicant's purchased renewable energy fully covers the annual need of the thermal energy system. If the applicant fails to provide annual certification for any thermal energy system capable of also using fossil fuels, that thermal energy system shall be considered a fossil fuel thermal energy system that may only be utilized pursuant to subsection (d) of this section, subject to the carbon pollution impact fee established in Section 8-79 prorated to the remaining lifetime of the fossil fuel thermal energy system.

(d) *Utilization of fossil fuel thermal energy systems.* An applicant covered by this section may alternatively utilize a fossil fuel thermal energy system and the applicant's building shall be subject to the carbon pollution impact fee established in Section 8-79, but no permit shall be issued to an applicant utilizing a fossil fuel thermal energy system unless the applicant establishes that the cost of a renewable energy thermal energy system is unduly burdensome. To establish that the cost of a renewable energy thermal energy system is unduly burdensome, the applicant must demonstrate to the satisfaction of the department of permitting and inspections that the twenty-five (25) year capital and operational cost of the least expensive renewable energy thermal energy system, including any available incentives, rebates, or tax credits, is more than the twenty-five (25) year capital and operational costs of the applicant's fossil fuel thermal energy system and the carbon pollution impact fee that will be assessed on the applicant's building.

(e) *Supporting incentives, rebates, or tax credits.* Nothing in this article prevents or prohibits applicants from utilizing any and all available local, State, or federal incentives, rebates, or tax credits that support implementation of renewable energy for their buildings, and applicants are encouraged to access available incentives, rebates, or tax credits.

(Ord. of 6-28-21(1); Ord. of 11-20-23)

8-79 Carbon pollution impact fee.

(a) *Assessment of fee.* Applicants utilizing a fossil fuel thermal energy system pursuant to Section 8-78(c) shall be assessed a carbon pollution impact fee on the greenhouse gas emissions from the applicant's building or buildings that are attributable to the applied-for fossil fuel thermal energy systems. In no event should an applicant pay a carbon pollution impact fee twice for the same ton of carbon, and the department of permitting and inspections should ensure in application of the fee that it is not duplicative for applicants with multiple buildings or campuses.

(b) *Amount of fee.* Effective January 1, 2024, the carbon pollution impact fee shall be equal

to one hundred fifty dollars ($150.00) per ton of greenhouse gas emissions attributable to a building's fossil fuel thermal energy systems over their lifetime, based on a net present value calculation (using a discount rate that is the lower of the rate used by either the environmental protection agency or the State of Vermont in calculating the social cost of carbon) at the time the permit application is submitted. The emissions attributable to a building's fossil fuel thermal energy systems will be based on the expected lifetime of the system and its expected annual emissions. Applicants shall be required to submit this information during the permit process, and the department of permitting and inspections may work with Burlington electric department energy services staff to assess and verify applicant information for expected lifetime and emissions of a system in a building. On each subsequent January 1, the carbon pollution impact fee shall be increased by any percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the twelve
(12) months preceding the previous September 1, but in no event shall the increase be greater than five (5) percent. The carbon pollution impact fee shall be rounded off to the nearest dollar.
(c) *Exceptions.*
(1) For large existing building applicants, the carbon pollution impact fee shall be capped at no more than seventy-five (75) percent of the installed cost of the proposed space conditioning or domestic water heating system.
(2) An applicant building a new, residential multi-unit dwelling with four (4) or more units shall not be subject to the alternative compliance carbon pollution impact fee as it applies to domestic water heating systems until January 1, 2026.
(3) If an applicant with one (1) or more buildings is seeking a permit pursuant to this chapter, and is already using one (1) or more thermal energy systems that rely on renewable energy, the applicant may apply for a credit toward any carbon pollution impact fee equal to the carbon value of the renewable energy used for any thermal energy system permitted by the City of Burlington since January 1, 2024, and not regulated under this article.
(d) *Renewable energy fund.* All carbon pollution impact fee proceeds, except those funds needed to administer this article, shall be placed in a renewable energy fund established and managed by the department of permitting and inspections with technical support from the Burlington electric department. Renewable energy fund proceeds shall be made available as follows:
(1) Half of the proceeds paid into the renewable energy fund by a large existing building applicant shall be available to the payor for projects to reduce greenhouse gas emissions at any site owned by the payor in the City of Burlington. The large existing building applicant must request these proceeds within one (1) year following payment of their carbon pollution impact fee; the applicant shall demonstrate to the satisfaction of the department of permitting and inspections that the proceeds will be used to meaningfully reduce greenhouse gas emissions; the proceeds may not be used to subsidize the cost of thermal energy systems regulated by this article, and any proceeds not requested within that year shall be made available under subsection (d)(2) of this section.

(2) Any remaining proceeds collected from large existing building applicants and all proceeds paid into the renewable energy fund by new construction applicants shall be available to provide financial assistance to help low-income Burlington residents with funding initiatives that reduce greenhouse gas emissions, including, but not limited to, the installation of renewable energy thermal energy systems, weatherization projects, or subsidizing utility costs associated with purchasing renewable energy rather than fossil fuel. This funding may be delivered either through direct payments to homeowners and renters who are income-qualified per the most recent income-qualification levels published by the community and economic development office ("CEDO"), or through payments to property owners of multifamily buildings where at least twenty-five (25) percent of the tenants in the building are income-qualified; provided, that the property owner must commit to not raising the rent of income-qualified tenants as a result of costs associated with the funded initiatives to reduce greenhouse gas emissions.

(Ord. of 6-28-21(1); Ord. of 11-20-23)

8-80 Building Emissions Reduction Requirements.

(a) Owners of existing buildings with more than ten thousand (10,000) and less than fifty thousand (50,000) in total floor area of enclosed conditioned space– excluding all residential rental properties – that on an annual basis use more than fifty thousand (50,000) British thermal units (BTUs) per conditioned square foot for space heating purposes. are required to achieve the following performance standards:

(1) By January 1, 2026, covered buildings must use, on an annual basis, no more than ninety thousand (90,000) BTUs per conditioned square foot for space heating purposes.

(2) By January 1, 2028, covered buildings must use, on an annual basis, no more than seventy thousand (70,000) BTUs per conditioned square foot for space heating purposes.

(3) By January 1, 2030, covered buildings must use, on an annual basis, no more than fifty thousand (50,000) BTUs per conditioned square foot for space heating purposes.

(b) Owners of existing buildings, including residential rental properties, with more than ten thousand (10,000) and less than fifty thousand (50,000) in total floor area of enclosed conditioned space that use fifty thousand (50,000) or less BTUs per conditioned square foot, are required to schedule and complete a consultation with an energy efficiency utility or a certified building contractor regarding ways to reduce the climate pollution of their covered building(s). The consultation shall be scheduled before January 1, 2026, or within one (1) year of achieving 50,000 or less BTUs per conditioned square foot for space heating purposes, whichever date is later.

(c) Within one (1) year of completion of the consultation required in subsection (b) of this section, building owners must take any cost-effective measures recommended in said consultation.

For purposes of this subsection, “cost-effective” shall be defined as measures that reduce the buildings’ twenty-five (25) year capital and operations costs when compared to the building’s current system(s), including any available incentives, rebates, or tax credits.

(d) *Notification of covered building owners.* The City shall notify covered building owners of their need to comply with this section on the following timeline:
(1) By February 1, 2025 for buildings using more than 90,000 BTUs per conditioned square foot.
(2) By February 1, 2026 for buildings using more than 70,000 BTUs per conditioned square foot.
(3) By February 1, 2028 for buildings using more than 50,000 BTUs per conditioned square foot.
(4) By February 1, 2025 OR within 90 days of their compliance with subsection (a)(3) of this ordinance (whichever date is later) for buildings using 50,000 or less BTUs per conditioned square foot.

8-801 Effective date and reporting requirement.
(a) The provisions of sections 8-76 through 8-79 of this article shall take effect on January 1, 2024.
(b) The provisions of section 8-80 of this article shall take effect on January 1, 2025
(b) The department of permitting and inspections shall maintain records on applications submitted pursuant to this article, including, but not limited to, information on applicant type, the size of an applicant's building(s), the thermal energy system(s) applied for, whether the thermal energy system(s) utilize fossil fuel or renewable energy, and information submitted in support of an applicant utilizing fossil fuel or renewable energy. The department of permitting and inspections shall also maintain records on any carbon pollution impact fee proceeds paid into the renewable energy fund and how these proceeds have been distributed. The records required under this section shall be reported to the city council no later than January 1, 2026, and biannually thereafter, or otherwise upon request.

Mark Barlow:
Over the next couple of months we will focus on the benchmarking piece, try to get that moving through ordinance and then enacted in enough time to really get people working on it. I do not see a reason we could not have a policy enacted by the end of the first half of 2025 that would take effect in 2026 using the data that we will receive as late as May of 2026. We can bring the ordinance to our meeting on the 28t?

Councilor Broderick
I think given the need, building owners will be alerted to this as soon as possible and ready to prepare and know how to take part in this benchmarking process by January 1st, when the when those start. The city attorneys can make sure this is good to get on the books and explore passing this on a first reading.

Councilor Bergman
In my sense is if this committee were to unanimously support the passage of this if staff from BED and DPI were to join members of the Committee to work through the details, we could pass this in time to meet a January 1st deadline, which is the 21st day after publication, which is happens as quickly after the mayor signs it, which happens after second reading. For this to be enacted in in on January 1st, really the first meeting in December is when you need to have the ordinance adopted by the by the City Council, which gives us November working through the ordinance process. We can ask for an extension on our original commitment on policy and that we would see if we could use this as our first piece of DRO, seeing if that would fulfill our obligation to the resolution and say we are passing, this is the first step while we are collecting this data and getting more informed on how the energy usage in our commercial buildings looks that we are simultaneously working on the policy.

Councilor Litwin
this is a reasonable path forward; I think the energy benchmarking clearly needs to happen.

Liz Curry:
Developing a relationship with building owners while you are trying to bring them on board with benchmarking is an opportunity to talk with them about tariff financing.

General Manager Springer:
We have successfully had two grants with the Economic Development Administration to do on Bill financing, It is not tariffed, but it is on bill financing for small businesses. BED has gone through several efficiency projects. We'd like to hear from businesses, restaurants, retail shops and the Burlington Business Association on these opportunities

Quinton Zondervan
The idea behind the alternative compliance fee that we are using in Cambridge and Boston, is that it is priced at the cost of removing the emissions so it creates an incentive for the building owner to actually remove the emissions rather than paying this this fee. But if for whatever reason they are not able to remove those emissions in that particular year, they can just pay the fee and then they are legally in

compliance with the ordinance and create a less adversarial relationship. If you have this alternative compliance fee, then you can collect that money and put it into an into a fund that can itself be used to help finance building emissions reductions

Councilor Barlow
Made the motion to approve the benchmarking ordinance drafted by General Manager Springer, to bring back to the Council with a recommendation of it being referred to of it being a first reading and a referral to the Ordinance Committee for further deliberation with a request that it be passed out no later than the first Council meeting of December, so that an implementation date of January 1st is a possibility. Open for discussion.

Councilor Litwin:
Not knowing what is in the hopper for the Ordinance committee right now makes it difficult for me to support that request, can I ask what is in the pipeline?

Councilor Bergman:
Thinks that this is all doable with what is in the pipeline for the November meeting.

Councilor Barlow seconded the motion. Vote 4 ayes and 0 nays

Next Meeting
The next meeting will be held on 10/29/2024 at 5:30.

Adjourn
Councilor Barlow made the motion to adjourn the meeting at 6:59. Councilor Broderick seconded the motion. Vote: 4 ayes 0 nays.

Elena Alexander, Clerk