

BERDO REVIEW BOARD PUBLIC MEETING

September 11, 2023



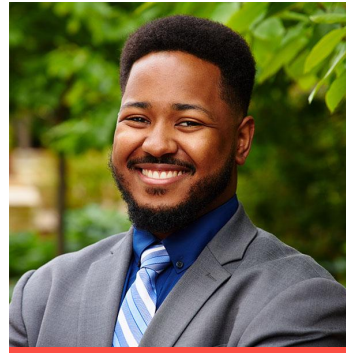
This public meeting will include opportunity for public comment. During public comment periods, members of the public may submit any comments or questions by “raising their hand” or by typing in the chat box.

BERDO REVIEW BOARD



Rashida Boyd

Board Member



Stephen Ellis

Board Member



Lovette Jacobs

Board Member



Gail Latimore

Board Member



Lee Matsueda

Board Member



Jack Nelson

Board Member



Kai Palmer-Dunning

Board Member

CITY OF BOSTON STAFF



**Diana
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*Environment
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Agenda

Today's Meeting



- 1. Approval of Meeting Minutes**
- 2. BERDO Reporting and Implementation Updates**
- 3. Review of Working Sessions**
- 4. Review Next Steps**
- 5. Administrative Updates**

Approval of Meeting Minutes

Board votes on approving previous meeting's minutes.

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BERDO Reporting Updates

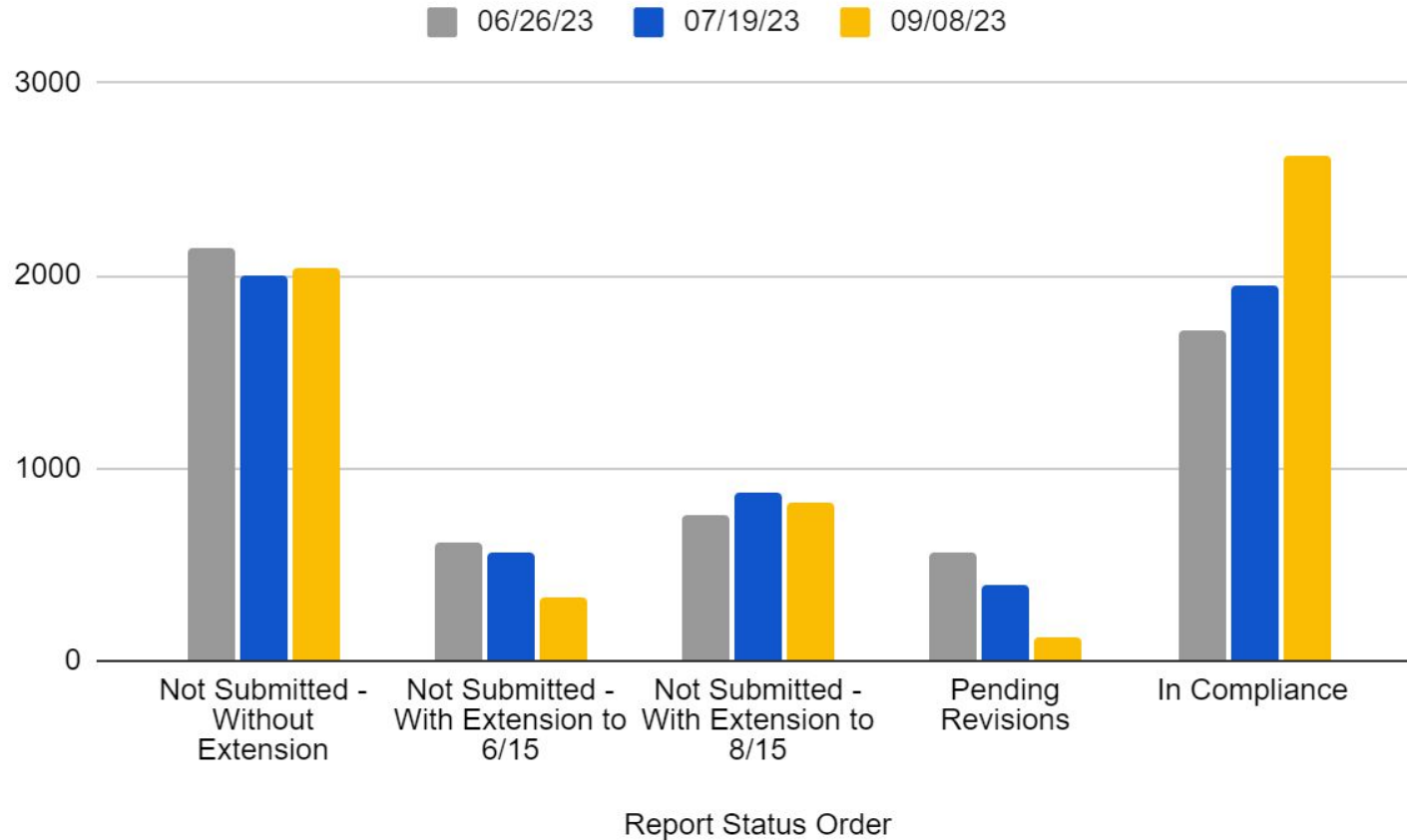
Staff presents reporting and administrative updates.



2023 Reporting was due May 15

- Reporting deadline for buildings with a three-month extension was August 15
- BERDO staff is continuing to work with non-compliant buildings that have reporting in progress
- 2022 Data Disclosure is planned for October 2023

2023 BERDO Reporting Progress as of 09/08/23



- **In Compliance:** 2022 data has been submitted and accepted by the BERDO Team.
- **Pending Revisions:** 2022 data has been submitted to the BERDO team, but acceptance by the BERDO Team is pending further corrections or clarification of submitted data.
- **Not Submitted:** 2022 data has not been submitted to the BERDO team.

Compliance Context and Outreach Plans

- Additional Context
 - *Compliance by square footage - 63%*
 - *Non-Compliant buildings tend to be smaller and new to BERDO Reporting*
 - *Non-Compliant parcels are more likely to contain multiple buildings (BERDO IDs)*
 - *Boston Housing Authority accounts for about 10% of all BERDO buildings*
- Outreach Next Steps
 - *Non-Compliance notices will be mailed and emailed*
 - *Outreach to City Councilors and Neighborhood Liaisons with lists of non-compliant buildings*
 - *Outreach to property management companies and other real estate groups*
 - *Additional staff capacity - Two additional BERDO Assistants*

The background of the slide is a dark blue aerial wireframe illustration of a city, showing various building footprints, streets, and a central park area with a fountain. The lines are light blue and create a sense of depth and urban structure.

Board Q&A

The Board may discuss and ask staff questions.

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Public Q&A

The public may discuss and ask staff questions.

Phase 3 BERDO Regulations Update



Phase 3 Regulations: Topics to Address



BUILDING PORTFOLIOS

- *Two or more Buildings with the same Owner or that are part of an approved Institutional Master Plan may comply with BERDO through a Building Portfolio. Building Portfolios are approved by the Review Board.*



INDIVIDUAL COMPLIANCE SCHEDULES

- *Alternative emissions standard reduction schedules based on a baseline year. Individual Compliance Schedules are approved by the Review Board.*



HARDSHIP COMPLIANCE PLANS

- *Alternative emissions reduction targets and/or timelines. Available for buildings that experience a hardship in complying with BERDO. Hardship Compliance Plans are approved by the Review Board*



EQUITABLE EMISSIONS INVESTMENT FUND

- *New investment fund that will collect all Alternative Compliance Payments (ACPs) and penalties made to BERDO and invest them in local building carbon abatement projects that prioritize environmental justice communities in Boston.*



FINES AND ENFORCEMENT

- *Fines and penalties for non-compliance.*



COMPLIANCE WITH EMISSIONS STANDARDS

- *Compliance rules for buildings in special circumstances (e.g., vacant buildings, demolitions)*

Phase 3 Progress and Activities Thus Far

- **Launched Phase 3 with Listening Session** held on Zoom (3/6/23) and two public technical working sessions focused on **Building Portfolios** (3/29/23) and **Individual Compliance Schedules** (4/5/23).
 - Slides and notes available on boston.gov/berdo-regulations.
- **Holding monthly Community Advisory Group** meetings and ‘office hours’.
 - Next ‘office hours’ scheduled for September 14, 2023.
- **Focus groups on Hardship Compliance Plans** with the following stakeholders:
 - Affordable housing (6/7/23)
 - Longwood hospitals (6/20/23)
 - Healthcare (6/27/23)
 - Historic Preservation (7/6/23)
 - Green Ribbon Commission Cultural Institutions Working Group (7/11/23)

Phase 3 Progress and Activities Thus Far

- Public working sessions on **Hardship Compliance Plans (8/22/23)** and **Equitable Emissions Investment Fund (8/23/23)**.
 - Slides and notes available on boston.gov/berdo-regulations.
- Upcoming Community Focus Group on the **Equitable Emissions Investment Fund**.
- Working with **technical consultant** to support the development of regulations regarding technical Hardship Compliance Plans.

Air Pollution Control Commission

Phase 3 Regulations



Building Portfolios and Individual Compliance Schedules

- Comment period opened on **Friday, August 18** and will close on **Friday, September 15 at 12:00 pm.**

Hardship Compliance Plans and Equitable Emissions Investment Fund

- Informal comment period on **Friday, August 18** and will close on **Friday, September 15 at 12:00 pm.**

Special Hearing Scheduled

- The Commission is scheduled to have a special hearing on **Wednesday, September 27 at 2:30 pm.**

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Review of Working Sessions

Hardship Compliance Plans and Equitable Emissions Investment Fund.

Working Sessions Update

Slides and summarized notes available on boston.gov/berdo-regulations

Hardship Compliance Plans (August 22, 2023)

- **Key takeaways**
 - Participants shared examples of characteristics and circumstances that may lead to hardship.
 - Participants suggested ways to demonstrate certain technical hardships.
 - Participants suggested forms of relief that be may provided through Hardship Compliance Plans.

Working Sessions Update

Slides and summarized notes available on boston.gov/berdo-regulations

Equitable Emissions Investment Fund (August 23, 2023)

- **Key takeaways**
 - More details on evaluation criteria are needed.
 - Defining how to prioritize the different evaluation criteria is needed (e.g., Are all criteria worth the same? What should be prioritized?)
 - The City of Boston should consider how to track the impacts of funded projects (emissions reductions and other benefits).

The background of the slide is a dark blue aerial wireframe map of a city, showing the outlines of buildings, streets, and parks. The map is rendered in a light blue color, creating a technical and architectural feel.

Proposed Next Steps

Regarding Phase 3 regulations.

Air Pollution Control Commission

Phase 3 Regulations

Building Portfolios and Individual Compliance Schedules

- Current formal comment period closes on **Friday, September 15 at 12:00 pm.**
 - *BERDO Team will read and summarize formal comments received and prepare revisions to present at special APCC hearing on September 27.*

Hardship Compliance Plans and Equitable Emissions Investment Fund

- Current informal comment period closes on **Friday, September 15 at 12:00 pm.**
 - *BERDO team will receive informal public comments and prepare draft regulations to present at special APCC hearing on September 27.*

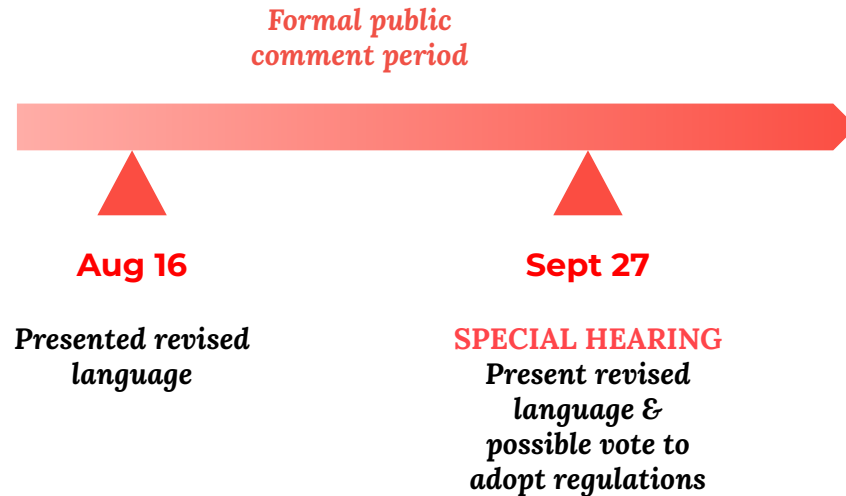
Fines and Enforcement

- Timeline TBD

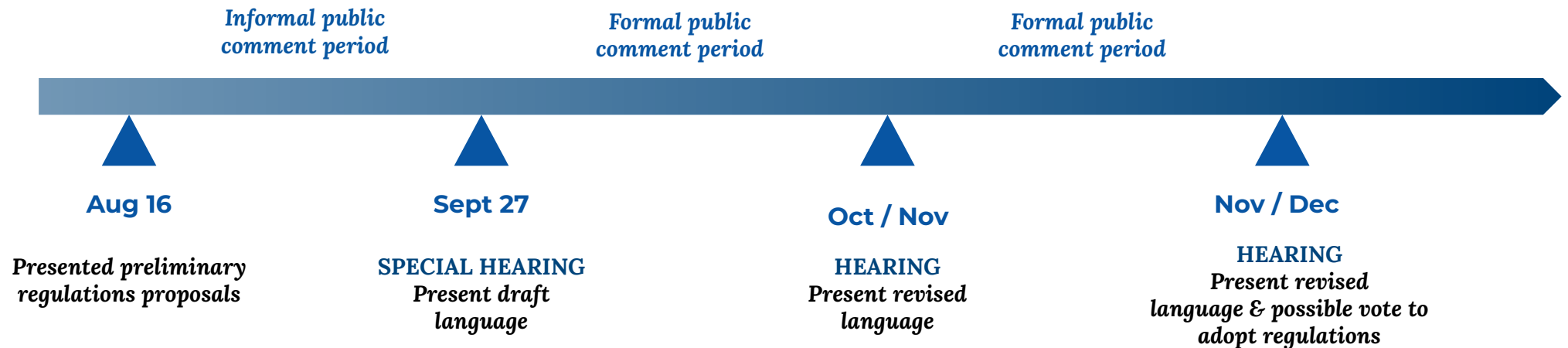
Updated Tentative Timeline for APCC Hearings



Building Portfolios & Individual Compliance Schedules



Hardship Compliance Plans & Equitable Emissions Investment Fund



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Board Q&A

The Board may discuss and ask staff questions.



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Additional Administrative Updates

Staff presents administrative updates.

Adjourn

Thank you for your participation!



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Preliminary Proposals

Hardship Compliance Plans and Equitable Emissions Investment Fund





Hardship Compliance Plans

Preliminary Proposals.

Hardship Compliance Plans (HCP)

Ordinance requirements

- HCP are a flexibility mechanism that allows Building Owners to receive **alternative emissions reduction targets** and/or **timelines for compliance**.
- HCP are available for buildings that experience a **hardship in complying with BERDO**, including historic building designations, affordable housing refinancing timelines, pre-existing long-term energy contracts without reopeners, financial hardship, and any other factors detailed in the upcoming regulations.
- HCP are approved by the **BERDO Review Board**. The Review Board may set **conditions of approval**.

What is a “hardship”?

Preliminary proposals

Hardship means that, **due to the unusual circumstances or characteristics of a Building Owner, Building or Building Portfolio**, meeting the applicable Emissions standard through **all combinations** of (i) direct emissions reductions, (ii) participation in CCE, (iii) purchase of RECs, (iv) participation in PPAs (v) Alternative Compliance Payments, (vi) Building Portfolios, and/or (vii) Individual Compliance Schedules will:

- Create an **undue burden** on a Building Owner; or
- Significantly interfere with or significantly increase the cost to provide **critical services**.

What are “undue burdens” and “critical services”?

Preliminary proposals



Undue burden on a Building Owner exists if a Building Owner’s total compliance costs would (i) be significantly higher because of the unusual circumstances or characteristics of a Building Owner, Building or Building Portfolio, (ii) cause interruption in financial ability to operate, or (iii) cause other significant effects that the Review Board determines should be mitigated in light of benefits provided by and/or greenhouse gas emissions avoided by the Building or Building Portfolio.*

Critical services include provision of life saving services and affordable housing.

** Deferred maintenance costs cannot contribute to an undue burden*

Owner and Building Circumstances and Characteristics that Could Contribute to Hardship

Preliminary proposals

Categories of Building Owner or Building circumstances and characteristics that could, either singularly or collectively, create a hardship for a Building Owner:

- **Financial**
- **Regulatory/Contractual**
- **Technical/Operational**
- **Other**

Examples of circumstances or characteristics in each category are provided in the following slides.

Guidance regarding demonstrating such circumstances or characteristics will be provided by the Environment Department.

Financial Circumstances and Characteristics

Preliminary proposals

- Owner bankruptcy for all or part of a compliance year.
- Schedule of compliance costs do not align with long-term schedules for capital expenditures that cannot be changed or are beyond the control of the Owner (e.g., affordable housing refinancing timelines).

Regulatory/Contractual Circumstances and Characteristics



Preliminary proposals

- Long-term energy contracts without reopeners for a significant portion of a Building's or Building Portfolio's energy demand.
- Delays in electric system interconnections beyond X months for reasons outside a Building Owner's control.
- Government significant delay or denial of a permit or other approval required for compliance-related work.
- Government regulations affecting minimum energy use.
- Accreditation/certification standards affecting minimum energy use.

Technical/Operational Circumstances and Characteristics

Preliminary proposals



- Space constraints for significant compliance related work.
- Equipment needed for significant compliance related work is not adequately demonstrated or available in the United States.
- High process loads with high emissions.
- High critical loads with high emissions (e.g., energy use for life safety).

Other Hardship Circumstances and Characteristics

Preliminary proposals

- Natural disasters
- Other circumstances and characteristics accepted by the Review Board

Eligibility for HCP

Preliminary proposals

- Any Building/Building Portfolio is in compliance with the Ordinance and Regulations, including, as applicable, (i) requirements for Building Portfolios, (ii) payment of fines for any failure to comply with reporting requirements, accurately report information, or comply with an Emissions Standard, (iii) where feasible, the submission of any missing required reporting data, and (iv) the submission of compliance mechanisms in the amount required to correct any failure to meet an Emissions standard.
 - Applications based solely on financial circumstances or characteristics may request a waiver or reduction in (a) fines for failure to comply with an Emissions standard or (b) submission of compliance mechanisms to correct such failure. Relief shall be at the Review Board's discretion.
- Other?

Relief for Demonstrated Hardship(s)

Preliminary proposals

The Review Board may grant an applicant one or more of the following types of relief, either for a defined period of time or permanently. Relief may apply to some or all of a Building Owner's compliance obligations.

- Alternative schedules for complying with the Emissions standards in the Ordinance; such schedules do not need to be linear or better.
- Alternative Emissions standards than those in the Ordinance.
- Exemption of specified Energy use(s) from a Building Owner's compliance obligations.
- Adjusted compliance obligations in light of third-party electrification barriers or delays.
- Additional compliance mechanisms.
- Other relief the Review Board deems appropriate on a case-by-case basis.

Application Fees for HCP

Preliminary proposals

- Application fees could be required for:
 - *Buildings*
 - *Building Portfolios*
 - *Modifications to any HCP*
- Fees could be calculated as follows:
 - *Flat rate per type of application*
 - *Based on building size*
 - *Based on a Building/Building Portfolio's energy use or emissions*
 - *Other*
- Applications based solely on financial circumstances or characteristics may request a waiver or reduction; relief shall be at the Review Board's discretion.

Timeline for Applications for HCP

Preliminary proposals

- May be submitted on a rolling basis and at least 12 months before the first compliance year in which the HCP would be effective (except for compliance year 2025, for which applications should be submitted by July 1, 2024).
- May be submitted in advance of the start of an anticipated hardship.
- Review Board may prioritize review of applications based on the year that the hardship would begin.

Content for Applications for HCP

Preliminary proposals

- Narrative and supporting material regarding existence and scope of circumstances and characteristics that contribute to a hardship.
- Consideration and use of all compliance mechanisms and other flexibility measures authorized by the Ordinance.
- Description of prior significant emissions reduction efforts or work on high-energy systems or loads.
- Evaluation of opportunities and financial support for compliance-related work at a Building.
 - *E.g., energy audits (including Mass Save), government programs, off-site opportunities for siting equipment.*
- Requested relief and conditions on proposed alternative compliance to advance BERDO objectives.
 - *E.g., tenant protections, rent stabilization, workforce development, etc.*

Conditions on Relief for Hardship

Preliminary proposals

- **Standard Conditions**
 - For all cases. Examples include ongoing compliance and reasonable inspection of Buildings and records to assess compliance with terms and conditions of the HCP.
- **Special Conditions**
 - The Review Board may include special conditions on the approval of any HCP on a case-by-case basis.
 - Examples include conditions related to Employment Plans, housing stabilization, energy cost- and benefit-sharing, and disclosure of compliance status and mechanisms to tenants.

Timeline for Review of Applications for HCP

Preliminary proposals

- The Environment Department shall make a determination of completeness within 45 days of receiving an application to create or modify a HCP.
- The Review Board shall hold a public hearing on an application within 45 days of the Environment Department's finding of completion.
- A written copy of Review Board's decision shall be provided to applicant within 7 days of a vote.
- Applicants must record approvals within 30 days of issuance.
- Applicants may file an appeal with the APCC within 45 days of the Review Board's issuance of a decision.

Modifications of HCP

Preliminary proposals

Modifications to HCP, including changes to underlying Building Portfolios, require Review Board approval in accordance with the following requirements and other conditions the Board deems appropriate.

- Any Building removed from a HCP will be subject to the Emissions standards set in Table 1 of the Ordinance or, if applicable, a Building Portfolio blended emissions standard.
- For Hardship Compliance Plans for Building Portfolios, the Hardship Compliance Plan will be re-evaluated if a Building is removed from the Building Portfolio.
- Existing Buildings added to a Building Portfolio may be subject to a HCP only with approval from the Review Board, which may adjust the HCP as it deems appropriate.
- Newly constructed Buildings may not be added to a HCP.

Termination of HCP

Preliminary proposals

- Owners may terminate an approved HCP with notice to the Review Board.
- A HCP for a Building Portfolio shall be automatically terminated if the associated Building Portfolio is terminated.
- The Review Board may initiate a proceeding to terminate a HCP.

A nighttime photograph of a city street, likely in New Orleans, featuring a streetcar and people walking. The scene is illuminated by streetlights and building lights, with a blue color overlay. The text is overlaid on the image.

Equitable Emissions Investment Fund

Preliminary Proposals.



Equitable Emissions Investment Fund (EEIF)

Ordinance requirements



- The EEIF is a new fund that will collect all Alternative Compliance Payments (ACPs)** and penalties made to BERDO and **invest them in local building carbon abatement projects.**
- Fund expenditures shall **prioritize projects that benefit environmental justice communities.**
- The **Review Board** is responsible for evaluating project proposals, making expenditure recommendations, and setting **conditions for expenditure.**



BERDO buildings with emissions over their limits pay ACPs and/or penalties to comply with BERDO



Equitable Emissions Investment Fund collects money



ACPs and penalties are invested in local building carbon reduction projects approved by the Review Board

*** Buildings with high emissions may comply with BERDO by paying an ACP for each ton of CO₂e they emit over their limit.*

Preliminary eligibility criteria and application process



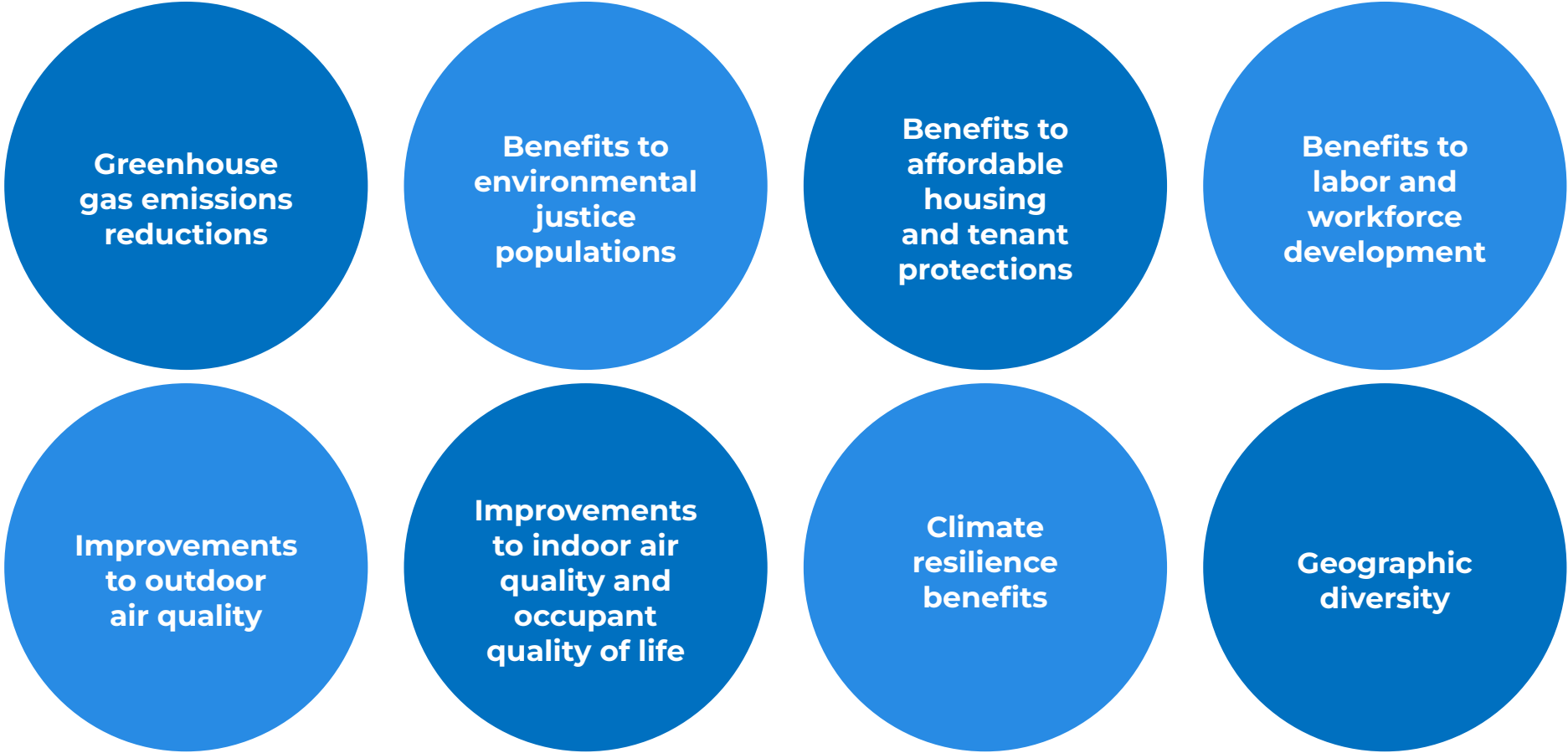
Preliminary proposals

- Any building owner(s) or resident(s) located in the City of Boston, or entity acting on their behalf, are eligible to receive funding.
- The Review Board shall hold at least one application cycle per year.
- Applicants must submit project proposals for **local building carbon abatement projects** and present a narrative of how the project would provide benefits to Environmental Justice Populations and/or advance the purposes of the Ordinance.

Preliminary project evaluation criteria

Preliminary proposals

Review Board decisions shall consider the following criteria to evaluate project proposals:



Preliminary project evaluation criteria

Preliminary proposals



Preliminary criteria	Description
Greenhouse gas emissions reductions	<ul style="list-style-type: none">• All projects must result in direct greenhouse gas emissions reductions from buildings located in Boston. The Review Board may consider the expected timing and scale of emissions reductions when comparing proposed projects.
Benefits to environmental justice populations	<ul style="list-style-type: none">• Whether projects are located in or directly benefit Environmental Justice Populations.
Benefits to affordable housing and tenant protections	<ul style="list-style-type: none">• Whether projects directly benefit low-income residents and residents of affordable housing, including both Deed-Restricted Residential Buildings and Naturally-Occurring Affordable Housing.• Whether projects include anti-displacement measures, such as rent stabilization, rent assistance, and/or relocation assistance.
Benefits to labor and workforce development	<ul style="list-style-type: none">• Whether projects include benefits to local contractors, cooperative contractors, Minority, Women, and Disadvantaged Business Enterprises (MWDBE), and/or promotes equitable workforce development.
Improvements to outdoor air quality	<ul style="list-style-type: none">• Whether projects would result in the reduction of local air pollutants, including but not limited to, carbon monoxide, lead, ground-level ozone, nitrogen dioxide, particulate matter, and sulfur dioxide.
Improvements to indoor air quality and occupant quality of life	<ul style="list-style-type: none">• Whether projects would result in improvements in indoor air quality, thermal comfort, and/or reduced energy bills for occupants.
Climate resilience benefits	<ul style="list-style-type: none">• Whether projects include measures for heat or energy resilience, coastal resilience, stormwater flooding, or other hazards.
Geographic diversity	<ul style="list-style-type: none">• Distribution of funded projects across Boston neighborhoods over time.

Additional preliminary considerations

Preliminary proposals



- The Review Board may decide to dedicate any given application cycle to specific types of benefits or types of applicants that align with the goals of the Fund and the Ordinance.
- The Review Board may prioritize projects that meet multiple evaluation criteria.
- If there are insufficient qualified proposals, funds may be held over to the next application cycle, provided, however, that starting in 2026, new monies may not sit in the Fund for more than 5 years.

Preliminary conditions for expenditure

Preliminary proposals

- The Review Board may set standard and special conditions to grant funding to a project proposal.
- **Standard Conditions**
 - For all cases. Examples include ongoing compliance, timeline of project completion, reporting responsibility, and repayment in case of lack of compliance.
- **Special Conditions**
 - Conditions related to providing benefits to Environmental Justice Populations and/or advancing the purposes of the Ordinance**.
 - Any special conditions shall be determined on a case-by-case basis and discussed at a public hearing.

** “It is the intent of this Subsection to reduce the emissions of air pollutants, including greenhouse gases, from building energy production and consumption, and thereby to encourage efficient use of energy and water, develop further investment in building a green economy, including by encouraging the hiring and training of green jobs, protect public health, and promote equitable access to housing.”