

City of Boston BERDO Review Board  
Public Meeting Minutes  
Zoom Virtual Meeting  
August 21, 2023 at 4:30 pm  
[View recording here](#)

**Board Members in Attendance:** Stephen Ellis, Lovette Jacobs, Gail Latimore, Matt O'Malley, Kai Palmer-Dunning

**Board Members not in Attendance:** Rashida Boyd, Councilor Kendra Lara, Lee Matsueda, Jack Nelson,

**Staff Present:** Diana Vasquez, Claudia Diezmartinez, Aladdine Joroff, Aidan Callan

**Others:** Approximately 9 members of the public attended this meeting.

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#### **Motion to Nominate Acting Chair**

**4:33 pm:** Environment staff, D. Vasquez, led a vote for Acting Chair. Board Member Ellis made a motion to nominate Board Member Palmer-Dunning to serve as Acting Chair. Board Member O'Malley seconded the motion. All board members in attendance (5) were in favor. The motion carried at 4:34 pm.

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#### **Call Meeting to Order**

**4:34 pm:** A meeting of the Building Emissions Reduction and Disclosure Ordinance, hereafter referred to as (BERDO), within the Air Pollution Control Commission, was called to order on August 21, 2023 at 4:34 pm. This meeting was held virtually.

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#### **Roll Call**

**4:37 pm:** The following BERDO Review Board members were in attendance: Acting Chair Kai Palmer-Dunning, Stephen Ellis, Lovette Jacobs, Gail Latimore, Matt O'Malley

The following Environment Department staff were in attendance: Diana Vasquez, Claudia Diezmartinez, Aladdine Joroff, Aidan Callan

**Others:** Approximately 9 members of the public attended this meeting.

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#### **First Agenda Item: Approval of Meeting Minutes**

**4:38 pm:** The Board requested Board Member Ellis and more detailed transcriptions be added to the August 7, 2023 meeting minutes. An updated version of the minutes will be presented at the following board meeting.

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## **Second Agenda Item: Updates and Discussion on Phase 3 of BERDO Regulations Development**

**4:44 pm:** D. Vasquez reviewed Phase 3 regulations development activities thus far. C. Diezmartinez presented a summary of feedback received during the formal comment period regarding Building Portfolios (BP) and Individual Compliance Schedules (ICS) draft regulations and resulting regulation revisions based on comments received.

**4:58 pm:** Board Q&A Session and staff responses if applicable:

- S. Ellis: First off, let me express appreciation for Pathway Zero (0) as well as the additional details surrounding the Emissions Standard Compliance Plan. I do have two (2) questions. Am I interpreting that the APCC has opened up a second commenting period so that folks are able to compare the different pathways? Meaning the Building Portfolio with the ICS as well as Hardship Compliance Plan, is that interpretation correct?
  - C. Diezmartinez: Yes, I forgot to mention a few of the comments requested more time to evaluate Building Portfolios and ICS regulations, and to be able to compare them to Hardship Compliance Plans. Since we introduced preliminary proposals to the APCC, we extended the public comment and opened a second public comment so that people have an opportunity to comment on Building Portfolio and ICS regulations at the same time that there are proposals for Hardship Compliance Plans. That's also the reason for extending [the comment period] to twenty-eight (28) days.
- S. Ellis: Got it, thank you. Regarding the twenty-eight (28) days, does the Environment Department foresee that you'll be able to have the draft forms ready before the close of the second commenting period that has been open?
  - A. Joroff: I think the plan would be to have a separate comment period for the draft forms rather than try and put it into that 4 week period. We're aiming to move as soon as we can. But I don't think we have a set schedule for that yet.
- G. Latimore: I want to make sure I understand. The revisions that you went over are in response to all of those comments that came from those groups that you mentioned at the beginning, correct? If you could remind and clarify standard conditions.
  - C. Diezmartinez: Sure. Yes, all of these revisions were in response to the comment letters that we got in addition to feedback that we have gotten through the APCC hearings, Review Board hearings, our Community

Advisory Group. There's a complete response to comments from the staff that is available both in your folder and on the regulations website. The comment regarding standard conditions, people were confused whether those standard conditions as we refer to in the regulations were required for all building portfolios and ICS, or if the Review Board could decide 'oh, maybe this person doesn't need the standard conditions.' For the sake of clarity, we decided to revise that the Review Board shall include standard conditions on the approval of any building portfolio. And in addition, the Review Board has the ability to add special conditions for those that have environmental justice requirements.

- G. Latimore: So standard conditions apply across the board, but we can add special conditions. There's no such thing as modifying standard conditions, meaning they're baseline.
  - C. Diezmartinez: Yes.
- M. O'Malley: I will read through all of the correspondence we've received. I want to thank everyone. It's a lot of the same folks that will submit comments, and as you can see, it's having a positive effect on what these regulations end up being. I wanted to thank the Environment Department for hearing everyone out, I think we're seeing a better product as a result of it.
- K. Palmer-Dunning: One of the comments on Building Portfolios was a request to not require updates to the Emissions Standard Compliance Plan when modifying approved Building Portfolios. I wanted to ask if you could provide a little more clarity on that comment. And if there were any updates or changes to revisions made to the regulations in response to that comment.
  - C. Diezmartinez: Yes, we mentioned it briefly in the summary, but you will be able to find in the policy language that we made some slight revisions to clarify the scope of the updates. We still believe that if there's a modification to a Building Portfolio, it would be important for the Review Board to see that reflected in the owner's Emissions Standard Compliance Plan. We specify the scope and timeline for those revisions to make sure they're not burdensome. So it's not a full new Compliance Plan, just what are the modifications due to those additions.

**5:07 pm:** Acting Chair K. Palmer-Dunning opens Public Comment Period.

**5:08 pm:** Acting Chair K. Palmer-Dunning closes Public Comment Period.

**5:08 pm:** A. Joroff and C. Diezmartinez presented straw proposals regarding Hardship Compliance Plans and the Equitable Emissions Investment Fund.

**5:26 pm:** Board Q&A Session and staff responses if applicable:

- S. Ellis: I heard Aladdine ask about 'other' [when presenting on Hardship Compliance Plans], and I can't help but think about the pandemic that we just had. Pandemic or even an epidemic, I think that language should be included given the reality that we're facing. The first question I have is about the rationale for the fee for the Hardship Compliance Plan. Can you provide us some context about how you are intending for us to use that, or why there is a fee?
  - A. Joroff, City of Boston: Yes, so one possible consideration is we are exploring opportunities for the Review Board to hire, when needed, its own expert consultant to help with the review and decision of an application. This is a potential funding source for that, but we are open to feedback on whether application fees make sense. In this context we do recognize that probably Hardship Compliance Plans would be used less frequently than Building Portfolios and Individual Compliance Schedules but again, welcome feedback on whether it makes sense, how to set it, and what to do with the funds or alternative ways of funding use of experts.
- S. Ellis: Okay, thank you for that context. I'm wondering if the healthcare industry would be the first to submit for a Hardship Compliance Plan given the nature of what they have going on there. I appreciate the flexibility that the city has considered for those that have financial constraints, because it feels a little weird to me to have a fee for financial constraints. I'm wondering now that if we don't see a need to use those funds, where would those funds go? Would they just sit in the city's office? Would it go into the Equitable Emissions Fund? So that's the other thought that I'm wondering if we don't use it for the purpose, for example, that you just provided, where could it go?
  - A. Joroff: I appreciate that question, and that is something we will work on responding to and we invite feedback from others as well on where it should go.
- Stephen Ellis: If it's not used, put it in the Equitable Emissions Investment Fund is what I think but I'll defer to the other members of the board. Now there was one more part under the Hardship Compliance Plan where I wanted clarity. We were talking about Building Portfolios, and pathway 0 had mentioned collectively taking together all buildings that are part of one parcel. I believe the line was, for Hardship Compliance Plans for a Building Portfolios, the Hardship Compliance Plan will be

evaluated if a building is removed from the Building Portfolio. I'm wondering how that works together?

- A. Joroff: To be clear on pathway 0, it wouldn't be a large parcel that has multiple buildings that are subject to BERDO on their own, like a traditional campus. This would be a parcel where none of the buildings on their own would be subject to BERDO, it's because of their collective size and being on a single parcel [that they are subject to BERDO]. If that one parcel were to have a Hardship Compliance Plan and then remove a building, like sell one of those buildings from the parcel, I feel that is its own special category that we'll have to think about. Because then there's a question of are they still subject to BERDO at all? They may have collectively fallen below the threshold. If you're talking about changes to a Building Portfolio that are subject to a Hardship Compliance Plan, we do want feedback on this because we appreciate the feedback we've heard that Building Portfolios can change over time. People can add buildings in and out, and we want to see if there's a way of allowing that fluidity to stay while having a Hardship Compliance Plan. But that doesn't necessarily automatically mean that the revised Building Portfolio has all the benefits of the Hardship Compliance Plan because if you take a building in or take one out, that significantly changes the circumstances that led to the hardship and we might want to reevaluate. I think the question is what types of additions and removals to a Building Portfolio would require review of the Hardship Compliance Plan? What are some standards we should look at for how modifying one affects the other?
- S. Ellis: I'll provide feedback on an offhand call if necessary if I come up with a particular thought. I'm going to shift gears to the Equitable Emissions Investment Fund. I am wondering if there are any potential concerns of double dipping? What I mean by that is, the Mayor's Office or the City Council might have particular plans going on to also address the issue of climate change, one that just popped in my mind is the Urban Forest Plan. In that particular case, I am wondering how is the Environment Department keeping up with the different types of initiatives and plans, and can provide recommendations to the Board about thoughts that we may have? For example, if we're thinking let's add more trees and there's already a plan that is financing that particular initiative. I haven't really fleshed out my question yet. If there's any comments, I would love to hear them.
- A. Joroff: I think one piece that we didn't really present in detail is what an application for use of the Fund would look like. I think that is a piece that we could try to address in part through applications. Ask what other funding sources do you have for a project, including other city or state programs. We

could have a guidance document that has examples. It might not necessarily always be up to date, but it'd be a starting point for that discussion to think about. An issue that we'd welcome feedback on for the Review Board to consider is whether an application for funding should be the only funding that a project needs. Is layering funding okay to do if a project can't go ahead without some additional financing? I think that could be addressed in part through an application question, but we welcome feedback.

- G. Latimore: I wonder if the city has any sense of how many people might, in terms of undue burden, would qualify under that definition?
  - A. Joroff: I do not. I suspect perhaps as we get more reporting data, that's something that we could try to evaluate. But we see where people are, we don't necessarily see the behind the scenes stories from the data that we have.
- G. Latimore: Is it the case that the Review Board will have the ability to waive noncompliance issues in order for someone to be eligible to apply?
  - A. Joroff: What we were suggesting is that eligibility to apply means that up until that point, a Building or Portfolio should have been in compliance with reporting obligations and any emission standard obligations that had existed up to that point. We had suggested the ability to waive fees or coming up to date with obligations about emission standard requirements. We hadn't suggested waiving for reporting obligations, but we're open to feedback on what that should entail. We were focused on if they hadn't complied with an emissions standard, was there a reason that the fee and any catching up payment should be waived.
- G. Latimore: I'm wondering about how the city is going to notify owners of their compliance or noncompliance status? And what is the timing?
  - A. Joroff: The timing piece is a good point and one that we should probably address when we get to the section on enforcement of the regulations in particular. I know in many programs if you submit a complete application or complete set of reporting data by the due date, and then there's back and forth because of technical questions, not because of significant error or fault on the applicant or reporter side, that would not count towards being late. I think we would look to do something similar. But again, we'll be open to feedback there. The city does send out letters to building owners, letting them know their status, where they are in reporting, and if they're behind on reporting. We are trying to keep people informed of that.

- G. Latimore: In terms of the Hardship Compliance Plan application, do you have a sense of timing or availability for the Hardship Compliance applications?
  - A. Joroff: That will be a little further off because we'll want to finish the regulations, but that will be some of the discussion we have at the technical session tomorrow. It's an issue we're talking about with the technical consultant, what type of information should a building owner supply if there are certain technical circumstances that lead to hardship. That is something we're creating the information on, and that would go into the application form. We'd strive for as soon as possible as we do with everything.
  
- M. O'Malley: I'll try to tick through mine. First thing on the HCP, thank you for noting the delays in the electric system interconnection. That's something we have to watch and be mindful of. It's a legitimate concern. I also don't want every building to use it as a crutch. I'm glad it was raised, it's something we should focus on. I fully support having eligibility for the HCP provided that someone is in compliance with the ordinance as it exists. I think that's a baseline, that's something everyone can do. I know we've got a good compliance percentage in terms of buildings. Those that are not, I would urge the Environment Department to maybe notify those who aren't in compliance to say, the only way that you could qualify for an HCP is to be in compliance. That means simply making sure they share the data. Secondly, I'm glad that board Member Ellis brought up the application fees, I'm not sold on it. When we were passing this bill, critics were saying this was seen as a money grab, so I don't want to give credibility to that notion. I hope we collect zero (0) ACPs because everyone's fully compliant with the ordinance. Having said that, it does make sense to have some sort of a bar to fill out an application fee. I would say two (2) things, it shouldn't be too onerous. It probably should be associated with the square footage or with the size of the portfolio that the developer may have. I'm not sure that we could earmark any application fees for the Equitable Investment Fund. It might, by statute, have to go to the general fund. I don't know the answer. If anyone does, please feel free to educate me, otherwise we might need clarity from the Corporation Counsel's office on that. So I guess that's a question. My second question is can you give me an example of a scenario where the Board would be able to initiate termination of an HCP? I've been loudly saying the board should have a lot of leeway here, but I'm curious what prompted the last bullet?
  - A. Joroff: We were thinking of the model that we have for Building Portfolios, where if an owner of a portfolio is not complying with any conditions for the portfolio such as if they have an EJ plan or distributing benefits, that there could be something similar in a Hardship Compliance Plan. We envision

most decisions would have some form of compliance still required for a building or Building Portfolio. If an owner is not meeting the conditions of their Hardship Compliance Plan over several years, we could think about what the time period and standards would be, but there might be a point at which the Review Board would want to initiate a review for termination.

- M. O'Malley: I'm not saying I'm against the idea, I was just curious. That's helpful, thank you. Related to the Equitable Investment Fund, funds may not sit for more than five (5) years. I don't anticipate many funds will, but I'm curious if that's legal boilerplate language? I don't believe that was in the ordinance, is that something that's been fleshed out in the regulations?
  - A. Joroff: It is at this point, a proposal. It's not based on the Ordinance exactly.
- M. O'Malley: I'm curious what the rationale is behind that. Is that something that other other funds would have to make sure money gets moved?
  - A. Joroff: It's in case there's some strange circumstance where projects were not approved over a multi-year period.
- M. O'Malley: I like the idea of having, as we develop the application, data collection on whether or not this would be a standalone funding, whether it is private, whether there's also state or city [funding]? We should do that and we should also allow for maximum flexibility of the Board. I think it's under F or under G, when we lay out what the Equitable Investment Fund can be used for, we specifically added a bullet point that says any environmental initiative. That was done to give the Board maximum flexibility. We have an opportunity to make a really profound impact through this, but we also want to make sure that we don't needlessly limit ourselves.

**5:44 pm:** Acting Chair K. Palmer-Dunning opens Public Comment Period.

**5:45 pm:** Acting Chair K. Palmer-Dunning closes Public Comment Period.

**5:46 pm:** Additional Questions from Board Members and staff responses if applicable:

- S. Ellis: I wanted to jump back to the conversation about sending out compliance notes. This is just a recommendation because I get the sense that there are some folks that may not even understand where they are at in terms of meeting the Ordinance. I'm wondering if it's even possible for the city to include in their notice to building owners what their emissions standard is based on the calculations that you're seeing when they submit they're building size and energy data. It can give



them a sense of knowing, I'm at 6.5 kilograms per square feet, and so on. I'm wondering if that's something that the city could consider adding to the compliance note in the future.

- A. Joroff: I'm not the technical person, but we are working on a tool to do something like that. So yeah, thank you. We do appreciate that feedback and hopefully we'll have something.
- S. Ellis: The other comment that I wanted to provide, I support board Member O'Malley's comment about if we are to employ a fee for the Hardship Compliance Plan, I would recommend going based on square footage. If it's not square footage, then one flat rate. I do really think that it's worth considering, if the money is not allowed to go into the Equitable Emissions Fund, do we give them the money back? I'm trying to consider what the options are. It's not a money making scheme that we're trying out here.
  - A. Joroff: I appreciate that feedback, and we will look into that question of what the options are. We're looking at other bodies that are able to take application fees and use them for consultants, and to see if we have similar ability. We can come back to you after we've done more research on that.
- G. Latimore: I want to make sure I understand the issue that was originally raised by Board Member Ellis and Board Member O'Malley about assessing other funding. I definitely want to make sure that we are allowing for layering of city and other sources [when applying to the Equitable Emissions Investment Fund], especially for certain populations that are doing a public good. I think that's important.
- S. Ellis: I can provide a quick comment. I mainly bring up the aspect of layering because if we don't have a large pot of funding to work with, that may become a concern. I am not against layering. But I will see how this develops over time, and to a high-level I'm aligned with you. I'm also concerned that if we don't have a large enough pool to pull from making sure that we have building owners recognize that there are other options available for them beyond the Equitable Emissions Investment Fund.
- G. Latimore: Thank you, I appreciate that. I think that that is part of the reason why, in my opinion, we need to prioritize those that need the money, but have other [social co-benefits] going for them.

5:53 pm: D. Vasquez reviewed next steps regarding Phase 3 regulations development.

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**Third Agenda Item: Updates on BERDO Reporting**

**5:54 pm:** A. Callan provided a review on current compliance rates among BERDO buildings.

**5:56 pm:** Board Q&A Session and staff responses if applicable:

- G. Latimore: I was curious about past rates of compliance versus non-compliance since the Ordinance was initially adopted. Can you give a general take on that?
  - A. Callan: I wasn't with the team prior to last year. I don't really have a great understanding of the overall compliance rate prior to BERDO 2.0. For reporting, we're probably around 80% compliance. But I'm only speaking on experience and what I've seen with past numbers. And those were building owners that had been reporting to BERDO for a number of years. To provide a bit of context, with BERDO 2.0 we brought in quite a lot more smaller buildings and we're still working to get their compliance rate up to that same level.
- S. Ellis: I am particularly interested in compliance based on primary building type, so percentages across that. Cause that might help begin to get at that story about who might be experiencing hardship in the future. So if you could include that in your presentation I would appreciate that.
  - A. Caidan: That should be doable. We'll work to pull those numbers together.

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#### **Fourth Agenda Item: Administrative Updates**

**5:58 pm:** Next meeting is on September 11 instead of September 4 because of the Labor Day holiday.

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#### **Meeting Adjournment**

**5:59 pm:** Board Member G. Latimore made a motion to adjourn the meeting. Board Member M. O'Malley seconded. All (5) were in favor and the motion carried at 5:59 pm.