

# AIR POLLUTION CONTROL COMMISSION PUBLIC HEARING



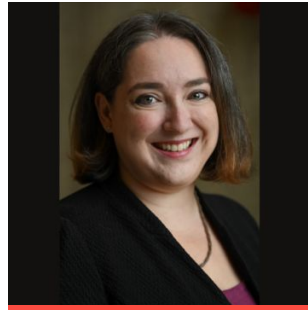
*September 27, 2023*

This public hearing 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.

# AIR POLLUTION CONTROL COMMISSION



**Nick Gove**  
*Transportation  
Department*



**Alison Brizius**  
*Environment  
Department*



**Julien Farland**  
*Boston Public Health  
Commission*



**Russell Preston**  
*Commissioner At-Large*



**Eric Burkman**  
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**Paul Chan**  
*Commissioner At-Large*

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# Public Meeting

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# Building Emissions Reduction and Disclosure Ordinance (BERDO)

*Discussion & Potential Vote:*

*Building Portfolios and Individual Compliance Schedules*

# 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

*On Building Portfolios and Individual Compliance Schedules*

- Launched Phase 3 with **Listening Session** held on Zoom (3/6/23)
- Held 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](https://boston.gov/berdo-regulations).*
- Held monthly **Community Advisory Group** meetings and ‘office hours’.

# Summary of feedback received during formal public comment period





# Letters Received During Public Comment Period

*Formal public comment periods ended on Friday, September 15, 2023 at 12:00 p.m.*

**We received feedback from the following institutions and organizations on Building Portfolios and Individual Compliance Schedules:**

- A Better City
- Conference of Boston Teaching Hospitals
- Green Ribbon Commission Higher Education Working Group
- Longwood Collective
- Longwood Medical Energy Collaborative

# Main themes in formal comment period

*Feedback on revised draft regulations for Building Portfolios and Individual Compliance Schedules*

## For Building Portfolios and Individual Compliance Schedules:

- Seeking more details regarding appeals following a Review Board decision.
- Request for the City to make and share draft standard forms for review and public comment.
- Seeking more clarity on the Review Board's options to terminate versus amend an approved Building Portfolio or Individual Compliance Schedule.

## For Building Portfolios:

- Request to clarify the definition of 'Owner' for purposes of Building Portfolios.
- Request for City of Boston to produce mapping tool for applications for Building Portfolios with an environmental justice review.
- Request to add 'good faith clause' when buildings are removed or added from a Building Portfolio with short notice.

# Clarifications

*On Building Portfolios and Individual Compliance Schedules*

- **Regulations clarifying appeals processes will be adopted as part of Phase 3.**
  - *We anticipate providing drafts of these regulations for public comment in Fall 2023.*
- **The Environment Department is currently developing:**
  - *Draft standard forms to apply for Building Portfolios and ICS - To be released this week*
  - *Environmental justice mapping tool - Coming soon*
- **Applications for Building Portfolios and ICS will be available after their respective regulations are adopted.**
  - *The first deadline to apply will be September 1, 2024.*

# Revisions to draft language: Building Portfolios

Sections with revisions are marked in *red*

## Draft regulations

WW. Definitions

XX. Building Portfolios

- a. Eligibility for Building Portfolios**
- b. Requirements for Building Portfolios**
- c. Application Process for Building Portfolios
- d. Conditions of Approval for Building Portfolios
- e. Modifications of Approved Building Portfolios**
- f. Transfer of Building Portfolios
- g. Termination of Building Portfolios

## Draft policy

7. Building Portfolios

- A. Applications
- B. Emissions Standard Compliance Plans and Progress Reports
- C. Amendments to Special Conditions and Revocation of Approved Building Portfolios

# Revisions to draft language: Building Portfolios

Sections with revisions are marked in *red*

## XX. Building Portfolios

### a. Eligibility for Building Portfolios

- Minor revisions to clarify the definition of “Owner” for purposes of Building Portfolios:
  - “The same majority owner or beneficial owner (provided that the beneficial owner is *the entity legally responsible for BERDO compliance* ~~also the legal owner~~) of two or more special purpose entities or charitable organizations may be considered the Owner of record for purposes of creating a Building Portfolio; provided, however, that a Building may not be in more than one Building Portfolio.”
  - “An entity that, directly or indirectly through its subsidiaries, exercises control over, or acts as managing member or managing partner (provided that the entity, *directly or indirectly through its subsidiaries*, (i) has ownership interest, (ii) is the entity legally responsible for BERDO compliance, and (iii) in the case of a limited partnership, is a general partner) of two or more special purpose entities or charitable corporations may be considered the Owner of record for purposes of creating a Building Portfolio; provided, however, that a Building may not be in more than one Building Portfolio.”

### b. Requirements for Building Portfolios

- Re-classified two “eligibility criteria” as “requirements”:
  - “For any Building Portfolio that combines Buildings with Emissions standard requirements starting in 2025 and 2030, the Owner shall meet the applicable 2025–2029 Emissions standards in Table 1 for the whole Building Portfolio until 2030; and”
  - “Any Building in the proposed Building Portfolio that is required to meet a *more stringent or* net-zero Emissions standard prior to 2050 *set through zoning requirements* must meet its Building-specific Emissions standard every year.”

# Revisions to draft language: Building Portfolios

Sections with revisions are marked in *red*

## XX. Building Portfolios

### e. Modifications of Approved Building Portfolios

- Clarified the scenario where Building(s) are removed from an approved Building Portfolio due to change of ownership or vacancy of an existing Building after the September 1 annual deadline for modifications. Guidance by the Environment Department will be provided.
  - *“If Building(s) are removed from an approved Building Portfolio for these reasons after September 1 of a year, Owners must calculate and comply with an adjusted blended emissions standard for the Building Portfolio.”*

### Other revisions

- General formatting improvements
- Renumbering of references to Sections in the regulations.

# Revisions to draft language: ICS

Sections with revisions are marked in *red*

## Draft regulations

WW. Definitions

YY. Individual Compliance Schedules

- a. Eligibility for ICS**
- b. Applications for ICS for Individual Buildings**
- c. Applications for ICS for Building Portfolios**
- d. Review of Applications for ICS**
- e. Application Timeline for ICS**
- e. Modifications of Approved ICS**
- f. Transfer of ICS**
- g. Termination of ICS**

## Draft policy

8. Individual Compliance Schedules

- A. Data sources for baseline year**
- B. Individual Compliance Schedule for Building Portfolios with Multiple Baseline Years**

# Revisions to draft language: ICS

Sections with revisions are marked in *red*

## YY. Individual Compliance Schedules

### a. Eligibility for ICS

- Revised language on eligibility criteria to allow for Building Portfolios that have multiple baseline years. Rather than demonstrating that the Building Portfolio's total Gross Floor Area (GFA) has not been reduced by more than 10% from a single baseline year, Owners would need to demonstrate that each Building's GFA has not been reduced by more than 10% from their respective baseline years:
  - *“For an individual Building or for each Building in a Building Portfolio, the total Gross Floor Area has not been reduced from the baseline year by more than ten (10) percent and the largest primary Building Use remains the same.”*

### Other revisions

- General formatting improvements
- Renumbering of references to Sections in the regulations.



# Proposed Next Steps

*On Building Portfolios and Individual Compliance Schedules*

- BERDO team asks the Commission to consider **a vote to adopt regulations** for Building Portfolios and ICS.
- Should the Commission vote to approve the proposed regulations, the Environment Department would work to:
  - *Release draft application forms for Building Portfolios and ICS for public comment this week*
  - *Publish environmental justice mapping tool to support applications for Building Portfolios as soon as possible*

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# Commission Q&A

*Commissioners may discuss and ask staff questions.*

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

# Public Q&A

*The public may discuss and ask staff questions.*

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

# Commission Motion and Vote

*Building Portfolios and Individual Compliance Schedules*

# **Building Emissions Reduction and Disclosure Ordinance (BERDO)**

*Discussion & Potential Vote to Open Public Comment Period:  
Hardship Compliance Plans and the Equitable Emissions Investment Fund*

# Phase 3 Progress and Activities Thus Far

*On Hardship Compliance Plans and the Equitable Emissions Investment Fund*

- Held monthly **Community Advisory Group** meetings and ‘office hours’.
- Held five 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)*
- Held public working sessions on **Hardship Compliance Plans** (8/22/23) and the **Equitable Emissions Investment Fund** (8/23/23).
  - *Slides and notes available on [boston.gov/berdo-regulations](https://boston.gov/berdo-regulations).*
- Community Focus Group on the **Equitable Emissions Investment Fund** (9/21/23).
- Working with **technical consultant** to support the development of regulations regarding technical Hardship Compliance Plans.

# Letters Received During Public Comment Periods

*Informal public comment periods ended on Friday, September 15, 2023 at 12:00 p.m.*



**We received feedback from the following institutions and organizations:**

- A Better City
- Green Ribbon Commission Cultural Institutions Working Group
- Green Ribbon Commission Higher Education Working Group
- Institute of Contemporary Art
- Isabella Stewart Gardner Museum
- Vicinity Energy

# Summary of feedback received during informal public comment period





# Main themes in informal comment period

*Feedback on straw proposals for Hardship Compliance Plans and the Equitable Emissions Investment Fund*

## **For Hardship Compliance Plans:**

- Request to expand the list of “Critical Services” related to Hardship Compliance Plans.
- Request to add additional characteristics and circumstances that could create hardship.
- Request to create a new Building Use Category for Cultural Institutions.
- Request to establish a “common pathway” for Cultural Institutions for Hardship Compliance Plans.
- Request to add additional potential application materials to demonstrate hardship(s).
- Seeking clarity on the frequency with which a Hardship Compliance Plan would need to be filed and updated.
- Seeking clarity on the length of time a Hardship Compliance Plan covers.

# Main themes in informal comment period

*Feedback on straw proposals for Hardship Compliance Plans and the Equitable Emissions Investment Fund*

## **For Equitable Emissions Investment Fund:**

- Seeking clarification on how the Review Board will evaluate and prioritize potential projects.
- Suggesting to score potential projects according to evaluation criteria.
- Suggesting additional evaluation criteria of potential projects.
- Seeking clarification on how project deliverables, such as emissions reductions, are ensured.
- Suggesting the creation of a public project tracker, independent project review, and third-party audit component paid for by the Fund.
- Suggesting review of other 'green' bank models.

# Main themes in informal comment period

*Feedback on straw proposals for Hardship Compliance Plans and the Equitable Emissions Investment Fund*

## Other comments

- Seeking technical guidance on best pathway for compliance.
- Requesting the establishment of a Cultural Institutions Working Group

# Hardship Compliance Plans

*Draft language*



# 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**, according to the circumstances and characteristics detailed in the upcoming regulations.
- HCP are approved by the **BERDO Review Board**.
- The Review Board may set **conditions of approval**.

# Structure of Hardship Compliance Plans

*Draft language*

**Owners demonstrate the existence of circumstances and characteristics that could create hardship:**

- Financial
- Regulatory or contractual
- Technical or operational
- Other

*Policies and guidance will provide details on how to demonstrate these circumstances and characteristics.*



**Owners confirm eligibility by demonstrating how, due to these circumstances and characteristics, compliance with Emissions standards would:**

- Require space, equipment, or electric service that is not available;
- Significantly interfere with or significantly increase the cost to provide services that are critical to community health and safety; or
- Create an undue burden on a Building Owner in terms of costs.



**Owners request one of the two types of HCP:**

- Short-term Hardship Compliance Plans
  - Relief for 1 to 3 years
- Long-term Hardship Compliance Plans
  - Relief for 4 or more years

# Circumstances and Characteristics that Could Create Hardship in Complying with Emissions standards (Part 1)

*Draft language*

## Regulatory or contractual circumstances and characteristics

- Long-term energy contracts without reopeners for a significant portion of a Building's or Building Portfolio's energy demand.
- Long-term leases without reopeners signed prior to 2019 that prohibit any significant compliance-related work at a Building.
- Delays in delivery of renewable energy credits pursuant to executed Power Purchase Agreements because of delays in initial commercial operation for reasons beyond a Building Owner's control.
- Delays in electric system interconnections or adequate delivery of electricity for reasons outside a Building Owner's control, provided that requests for interconnections and notification of anticipated electricity demands were made in a timely manner in light of planned work and Emissions standard compliance deadlines.
- Denial or delays in government permits or approvals, including approvals through the Mass Save program, for significant compliance-related work, provided that applications for such permits or approvals were made in a timely manner in light of planned work and Emissions standard compliance deadlines.
- Government regulations affecting minimum energy use, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.
- Accreditation/certification standards affecting minimum energy use, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.

# Circumstances and Characteristics that Could Create Hardship in Complying with Emissions standards (Part 2)

*Draft language*

## Financial circumstances and characteristics

- Owner bankruptcy for all or part of a year in which an Emissions standard must be met.
- Schedule of compliance-related costs do not align with long-term schedules for capital expenditures that cannot be changed or are beyond the control of the Owner.

## Technical or operational circumstances and characteristics

- Building and/or site space constraints that limit significant compliance-related work.
- Equipment needed for significant compliance-related work is not adequately demonstrated or available in the United States, including due to supply chain constraints.
- High process loads, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.

## Other circumstances and characteristics

- Delays in significant compliance-related work due to a natural disaster or declared state of emergency.
- Other characteristics and characteristics that, in its discretion, the Review Board deems relevant on a case-by-case basis.



# Eligibility for Hardship Compliance Plans (Part 1)

*Draft language*

**To confirm eligibility for a Hardship Compliance Plan**, an Owner of a Building or approved Building Portfolio must demonstrate that:

1. Due to the unusual circumstances or characteristics of an Owner, Building or Building Portfolio, meeting the applicable Emissions standard through all combinations of compliance mechanisms and flexibility measures authorized by BERDO would:
  - Require **space, equipment, or electric service** that is not available;
  - Significantly **interfere with or significantly increase the cost to provide services that are critical to community health and safety**, including life saving services, affordable housing, and such other services the Review Board may deem critical on a case by case basis; or
  - Create an **undue burden** on a Building Owner by resulting in **costs** that would:
    - *Be significantly higher due to the unusual circumstances or characteristics of a Building Owner, Building or Building Portfolio;*
    - *Interrupt financial ability to operate a Building or its primary uses;*
    - *Have a more than merely negligible effect on a State agency's or State-created entity's ability to fulfill an essential government function; or*
    - *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.*

# Eligibility for Hardship Compliance Plans (Part 2)

*Draft language*

**To confirm eligibility for a Hardship Compliance Plan**, an Owner of a Building or approved Building Portfolio must demonstrate that:

2. The Building or Building Portfolio **does not** have an Individual Compliance Schedule or is requesting to **replace** an Individual Compliance Schedule with a Hardship Compliance Plan.
3. The Building or 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 or Emissions standards, (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.
  - Applicants may request, for financial reasons, **a waiver or reduction** of (i) fines for failure to comply with an Emissions standard or (ii) submission of compliance mechanisms to correct such failure. Relief shall be granted at the Review Board's discretion.

# Types of relief for Hardship Compliance Plans

*Draft language*

At its discretion, the Review Board may grant an applicant **one or more of the following types of relief** for a defined period of time or permanently, provided, however, that **any relief granted in a long-term Hardship Compliance Plan shall be reassessed every 5 years**. Relief may apply to some or all of an Owner's compliance obligations.

- **Alternative schedules for complying with the Emissions standards in the Ordinance.**
- **Alternative Emissions standards than those in the Ordinance.**
- **Exemption of specified Energy use(s), in whole or in part, from a Building Owner's compliance obligations.**
- **Adjusted compliance obligations in light of third-party barriers or delays to significant energy efficiency or electrification projects, provided that such third-party is unrelated to the Owner.**
- **Additional compliance mechanisms that the Review Board determines are consistent with achieving the Purpose set in Section 7-2.2.(a).**
- **Other relief the Review Board deems appropriate on a case-by-case basis.**

# Applications for Hardship Compliance Plans (Part 1)

*Draft language*



Applications for Hardship Compliance Plans must include the following **information and supporting documentation** in accordance with any guidance adopted by the Commission and application instructions issued by the Environment Department:

- A description of how the Owner has used, plans to use, and/or evaluated the use of all the compliance mechanisms and flexibility measures authorized by the Ordinance other than direct emission reductions, including: on-site renewable energy, Community Choice Electricity, Renewable Energy Credits, Power Purchase Agreements, Building Portfolios and Individual Compliance Schedules.
- A description, accompanied with supporting documentation, of the existence and scope of the circumstance(s) or characteristic(s) in Section ZZ.b that apply to the Owner, Building, or Building Portfolio.
- A description, accompanied with supporting documentation, of the hardship resulting from the combination of:
  - *The compliance actions described in bullet point 1; and*
  - *The unusual circumstances and characteristics described in bullet point 2.*
- An evaluation of opportunities, feasibility, costs and financial support for compliance-related work in the Building or Building Portfolio, including, where applicable, opportunities for conducting compliance-related work in phases to reduce or avoid hardships.

# Applications for Hardship Compliance Plans (Part 2)



*Draft language*

- A description of significant Emissions reduction efforts and work on heating/cooling systems and high-energy systems/process loads in the Building or Building Portfolio prior to the time of application.
- The requested type, scope and length of relief the Owner is requesting for a Building or Building Portfolio.
- For applications for long-term Hardship Compliance Plans, for Building Portfolios with an Emissions standard compliance plan, a description of how a Hardship Compliance Plan will impact the development and implementation of such Emissions standard compliance plan.
- For applications for long-term Hardship Compliance Plans, proposed conditions for the approval of the Hardship Compliance Plan that provide benefits to Environmental Justice Populations and/or advance the purpose of the Ordinance in Section 7-2.2.(a). Such conditions may include, but need not be limited to, measures related to equitable workforce development, housing affordability and stabilization, energy cost- and benefit-sharing, public health, and climate resilience.

# Applications fees

*Draft language*

At the time of an application for a Hardship Compliance Plan, the applicant shall pay a filing fee in accordance with the following:

- The Environment Department may, at its discretion, **waive application fees** for applications from government agencies or for applicants that demonstrate financial difficulty in paying the application fee.

Short-term Hardship Compliance Plan	Individual Building	\$300
	Building Portfolio	\$300 <u>plus</u> \$50 per building
Long-term Hardship Compliance Plan	<ul style="list-style-type: none"> <li>• Non-Residential Buildings equal to or greater than 20,000 SF but less than 35,000 SF; and</li> <li>• Residential Buildings equal to or greater than 15 units but less than 35 units.</li> </ul>	\$500
	<ul style="list-style-type: none"> <li>• Non-Residential Buildings equal to or greater than 35,000 SF or 2 or more Buildings on the same parcel that equal or exceed 100,000 SF; and</li> <li>• Residential Buildings equal to or greater than thirty-five 35 units.</li> </ul>	\$750
	Building Portfolio	\$750 <u>plus</u> \$100 per building

- Application funds shall be used by the **Review Board**, at its discretion, to secure outside consultants, including engineers, in order to aid in the review of applications for Hardship Compliance Plans.
- The Review Board may, at its discretion, require an applicant to pay an **additional reasonable fee** for the purpose of securing outside consultants to advise the Review Board in its review of an application for a Hardship Compliance Plan.

# Conditions of approval for Hardship Compliance Plans

*Preliminary proposals*

## Standard conditions (all cases)

- An Owner must comply with any Building-specific Emissions standard every year for any Building subject to a Hardship Compliance Plan that is required to meet a more stringent or net-zero Emissions standard prior to 2050 set through zoning requirements.
- For long-term Hardship Compliance Plans, the Review Board shall reassess approved plans every five (5) years. As part of this review, Owners shall update the information provided in their initial applications for Hardship Compliance Plans, and the Review Board may, as appropriate, amend the relief and conditions of a Hardship Compliance Plan to reflect changes in (i) circumstances and characteristics contributing to a hardship for an Owner, (ii) technology, (iii) regulatory requirements, and (iv) other relevant factors.
- The Review Board or its designee may inspect any Building that is subject to a Hardship Compliance Plan, at reasonable times and with reasonable notice, in order to assess compliance with the terms and conditions of said Hardship Compliance Plan.

## Special conditions (case-by-case basis)

- Relevant to the distribution of benefits to Environmental Justice Populations and advancing the purpose of the Ordinance.
- Any proposal to add special conditions shall be discussed at a public meeting of the Review Board.

# Applications process

*Draft language*



**Applications for Hardship Compliance Plans may be submitted on a rolling basis in accordance with the following schedule:**

- Applicants for short-term HCP must be submitted **at least 6 months** before the first year in which the HCP would be effective.
- Applications for long-term HCP must be submitted **at least 12 months** before the first year in which the HCP would be effective.
  - *For a long-term or short-term HCP to be effective in 2025, applications must be submitted by July 1, 2024.*
- Applications may be submitted in advance of the start of an anticipated hardship, provided, however, that the Review Board may prioritize the review of applications based on the year that the anticipated hardship would begin.
- Within **45 Days** of receiving an application to create or modify a HCP, the Environment Department shall inform the applicant whether the application is complete.
- Within **45 Days** of the Environment Department's finding of completeness, the Review Board shall hold a public hearing on an application.
- A written copy of the Review Board's decision shall be provided to an applicant within **7 Days** after the vote. Applicants must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within 30 Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
- Within **45 Days** of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.



# Modifications of Hardship Compliance Plans (Part 1)

*Draft language*

- **Review Board approval** is required to make any modification to a Hardship Compliance Plan or to extend the relief granted in such plan to any additional Building.
- For Building Portfolios with Hardship Compliance Plans, a Building added to the Building Portfolio must meet the Emissions standard required by the Ordinance every year unless the Review Board approves a modification of the Hardship Compliance Plan for the Building Portfolio.
- Beginning in 2024, requests to modify an approved Hardship Compliance Plan must be submitted by **September 1** for the modifications to be effective in the next year.

# Modifications of Hardship Compliance Plans (Part 2)

*Draft language*

- The Review Board shall review and vote to approve or deny a requested modification in accordance with the schedule in ZZ.g. Decisions on modifications shall be made in accordance with the following requirements and other conditions the Review 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 HCP for Building Portfolios, the HCP shall be reassessed if a Building is removed from the Building Portfolio, provided, however, that:
    - For Buildings that are removed from a Building Portfolio due to change of Owner of an existing Building or vacancy of an existing Building, Owners may continue to rely on the terms of the Building Portfolio's HCP, and must continue to comply with all conditions, until the Review Board makes a decision on a request for modification.
    - Reassessment is not required if the term of the relief in the HCP will end in less than 18 months.
  - Existing Buildings added to a Building Portfolio may be subject to a long-term HCP only with approval from the Review Board, and the Review Board may adjust the Hardship Compliance Plan as it deems appropriate. Buildings cannot be added to short-term HCP.
  - Newly constructed Buildings, and new Buildings for which an Owner begins Article 80 review or applies for a building permit after approval of a long-term HCP, may not be added to a HCP.

# Termination of Hardship Compliance Plans

## *Draft language*

- Upon termination of a HCP, the Building or Building Portfolios will be subject to the Emissions standards in Table 1 of the Ordinance or, if applicable, a Building Portfolio blended emissions standard.
- An Owner may terminate an approved HCP. Notice must be provided to the Review Board by September 1 for the termination to be effective for the next year.
- A HCP for a Building Portfolio shall be automatically terminated if the associated Building Portfolio is terminated in accordance with Section XI of the Regulations.
- The Review Board may initiate a proceeding to revoke an approved HCP if the Review Board determines that an Owner does not materially comply with the requirements in Section ZZ, including requirements to report modifications to Building Portfolios subject to HCP, or the conditions of an HCP.
  - *If an Owner demonstrates that material noncompliance was due to unique circumstances beyond the Owner's control, the Review Board may, at its discretion, amend an approved HCP rather than terminate it.*
- Any proposed revocation shall be discussed at a public hearing of the Review Board. Owners shall be provided notice of such meeting at least 30 Days in advance. A written copy of the Review Board's decision shall be provided to an Owner within 7 Days after the vote. Owners must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within 30 Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal. Within 30 Days of issuance of the Review Board's written decision, Owners may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

# Equitable Emissions Investment Fund

*Draft language*



# 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 CO<sub>2</sub>e they emit over their limit.*

# Eligibility for funding and application process (Part 1)

*Draft language*

## Eligibility

- Any Building Owner or resident located in the City of Boston, or entity acting on their behalf, is eligible to receive funding from the Fund to evaluate, design, implement, support and/or administer projects that produce direct Emissions reductions from Energy use in buildings located in the City of Boston.

## Application process

- The Review Board shall hold at least one application cycle per calendar year and shall provide at least a 30 day period for interested parties to submit applications.
- The Review Board may, at its discretion, dedicate any application cycle to specific types of benefits or types of applicants that align with the goals of the Fund and the Ordinance.
- An application shall include the following information and any other material required by standards issued by the Review Board, and shall be utilize any standard form issued by the Environment Department: *[continues next slide]*

# Eligibility for funding and application process (Part 2)

*Draft language*

- A description of the proposed project, including:
  - The building(s) that will be served by a proposed project, including identifying which, if any, building(s) are subject to BERDO.
  - The total cost of the proposed project. For requests for funding for a phase of a project, the cost of the proposed phase as well as any known future costs to achieve Emissions reductions.
  - The realized or anticipated project start date.
  - The anticipated project completion date.
- The total amount of funding requested and a description of how the requested funding will be used for the proposed project.
- The expected timeline and scale of Emissions reductions, including from Energy savings, that would be achieved by the proposed project.
- A narrative of how the project would provide benefits to Environmental Justice Populations and/or advance the Purpose set in Section 7-2.2.(a).
- If applicable, any anticipated efforts to inform and engage tenants in the proposed project and any potential impacts of the proposed project on tenants.
- If applicable, a description of any other funding or financial support that the proposed project has received in the past or that may be leveraged in the future.

The Environment Department shall review each application for completeness and compliance with the eligibility criteria in the Ordinance and Section AA.a. The Environment Department shall send all complete and eligible applications to the Review Board.

# Funding decisions (Part 1)

*Draft language*

- The Review Board shall hold public hearings for all funding decisions.
- For all funding decisions, the Review Board must:
  - **Prioritize** project proposals that provide direct benefits to **Environmental Justice Populations** and **populations disproportionately affected by air pollution**.
  - **Evaluate project proposals based on their expected impacts and benefits**, according to the following criteria:
    - Emissions reductions
    - Benefits to affordable housing and tenant protections
    - Benefits to labor and workforce development
    - Benefits to outdoor air quality
    - Benefits to indoor air quality and quality of life
    - Climate resilience benefits
    - Other benefits.
- If there are insufficient project proposals that meet the requirements of the Fund, 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.



# Funding decisions (Part 2)

Draft language



Criteria	Description
<b>Emissions reductions</b>	The expected timeline and scale of direct Emissions reductions produced by the proposed project. Review Board members may consider metrics such as expected absolute Emissions reductions or expected Emissions reductions achieved per dollar spent.
<b>Benefits to affordable housing and tenant protections</b>	The expected timeline and scale of direct benefits provided to low-income residents and residents of affordable housing, including, but not limited to, anti-displacement measures, rent stabilization, rent assistance, or relocation assistance.
<b>Benefits to labor and workforce development</b>	The expected timeline and scale of benefits to local labor and workforce development, including equitable employment and contracting standards, living wage standards, and the hiring of local contractors, cooperative contractors, Minority, Women, and Disadvantaged Business Enterprises, and/or trainees or recent graduates from local workforce development programs.
<b>Benefits to outdoor air quality</b>	The expected timeline and scale of direct emissions reductions of criteria air pollutants, including carbon monoxide, lead, ground-level ozone, nitrogen dioxide, particulate matter, and sulfur dioxide.
<b>Benefits to indoor air quality and quality of life</b>	The expected timeline and scale of improvements related to indoor air quality, thermal comfort, and/or reduced energy bills for building occupants produced by the proposed project.
<b>Climate resilience benefits</b>	The expected timeline and scale of climate resilience benefits produced by the project, including heat resilience, energy resilience, and coastal and stormwater flood management.
<b>Other benefits</b>	Other benefits presented by the applicant and evaluated at the discretion of the Review Board. This may include the proposed project's replicability, scalability, uniqueness, urgency and timeliness.

# Conditions for expenditure

*Draft language*

## Standard Conditions (all cases)

- If funding is provided for a project in Building(s) covered by the Ordinance, timely compliance with reporting requirements in the Ordinance.
- Reporting of the project progress and use of funding. The frequency of reporting may vary according to the project's lifetime.
- Completion of the funded project within the projected time frame.
- The Review Board or its designee may inspect any funded project and related records, at reasonable times and with reasonable notice, in order to assess compliance with the terms and conditions of the funding provided.

## Special conditions (case-by-case basis)

- Relevant to the distribution of benefits to Environmental Justice Populations and advancement of the Purpose set in Section 7-2.2.(a).
- Any proposal to add special conditions shall be discussed at a public meeting of the Review Board.

# Proposed Next Steps

*On Hardship Compliance Plans and the Equitable Emissions Investment Fund*

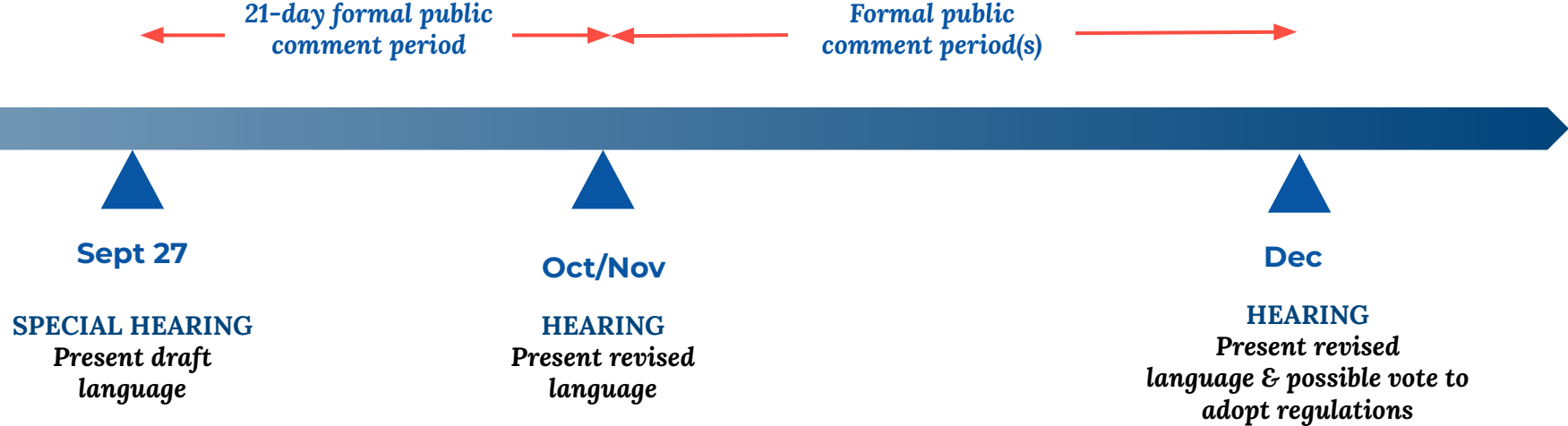
- BERDO team asks the Commission to consider **opening a 21-day public comment period** on draft regulations for Hardship Compliance Plans and the Equitable Emissions Investment Fund.
  - The public comment period would open on **Friday, September 29** and close on **Friday, October 20 at 12:00 p.m.**
- Based on feedback received during the public comment period, the BERDO team would revise the draft regulations and present them to the APCC at an upcoming public hearing.



# Tentative Timeline

On Hardship Compliance Plans and the Equitable Emissions Investment Fund

**Hardship Compliance Plans  
& Equitable Emissions  
Investment Fund**



The background of the slide is a dark blue wireframe illustration of a city skyline, viewed from an elevated perspective. The buildings are represented by white and light blue lines, creating a complex geometric pattern. A semi-transparent dark blue horizontal band runs across the middle of the image, serving as a backdrop for the text.

# Commission Q&A

*Commissioners may discuss and ask staff questions.*

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

# Public Q&A

*The public may discuss and ask staff questions.*

# Commission Motion and Vote

*Hardship Compliance Plans and Equitable Emissions Investment Fund*



An aerial wireframe illustration of a cityscape, showing various building footprints and structures in a light blue color against a darker blue background. The perspective is from a high angle, looking down on the city.

# Updates on BERDO Implementation and Compliance

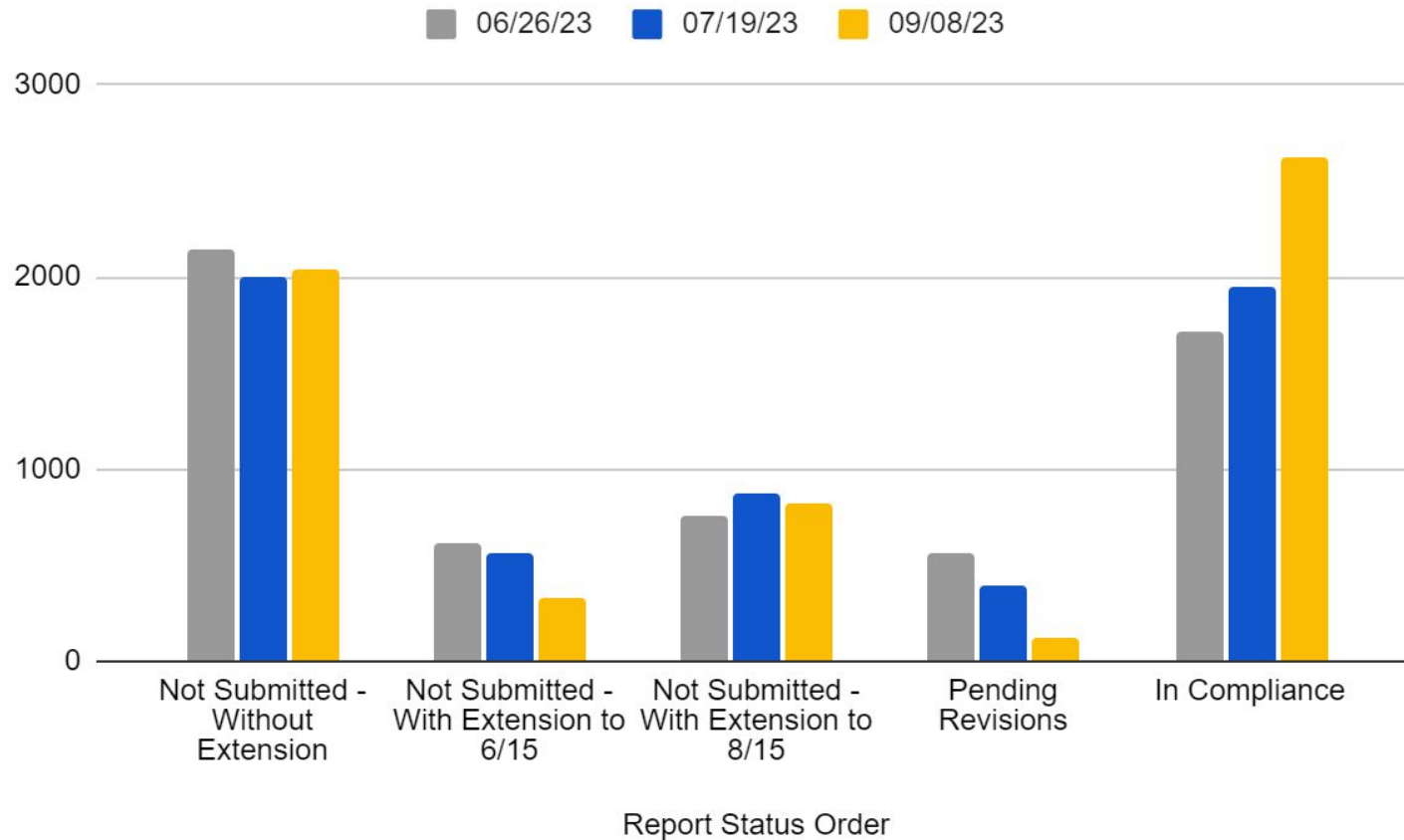


# General Updates

## 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 wireframe illustration of a city skyline, showing various building shapes and structures from an aerial perspective.

# Commission Q&A

*Commissioners may discuss and ask staff questions.*

# Adjourn

*Thank you for your participation!*

