

# **BUILDING EMISSIONS REDUCTION AND DISCLOSURE ORDINANCE (BERDO)**

## **PHASE 3 REGULATIONS DEVELOPMENT PROCESS**

### **RESPONSE TO PUBLIC COMMENT LETTERS**

This document contains staff responses for comments letters received during the second formal public comment period regarding draft regulations for **Building Portfolios** and **Individual Compliance Schedules** and an informal public comment period regarding regulations proposals for **Hardship Compliance Plans** and **the Equitable Emissions Investment Fund**.

Both comment periods opened on August 18, 2023 and ended at 12:00 pm on Friday, September 15, 2023

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## 1. Second Formal Public Comment Period: Building Portfolios and Individual Compliance Schedules

### Building Portfolios

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<b>General</b>		
<p>We greatly appreciate the City considering our feedback on the Phase 3 draft regulations during the previous public comment period. In general, we feel the draft regulations have markedly improved with these latest revisions and provided much needed clarity on how building portfolios and individual compliance schedules fit into the larger BERDO compliance framework. We are particularly grateful for the City’s commentary on alignment of these regulations with the upcoming regulations on hardship compliance plans, as well as the clearer definition of charitable owners in this draft. Additionally, we appreciate the City’s clarification that “benefits” are directly related to BERDO compliance, and that the list of benefits in the proposed policies is not exhaustive.</p>	<p>Conference of Boston Teaching Hospitals (COBTH)</p>	<p>Thank you for this comment.</p>

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<b>Definition of “Owner”</b>		
<p>We appreciate the edits made to the definition of ownership regarding Building Portfolios and suggest two additional edits to the draft regulations XX.a.(i)(b) and (c):</p> <p>(b) The same majority owner <b>or beneficial owner</b> (<del>provided that the beneficial owner is also the legal owner</del>) of two or more special purpose entities or charitable organizations <b>each owning a single Building</b> 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.</p> <p>(c) An entity that, directly or indirectly through its subsidiaries, exercises control over, or acts as managing member or managing partner (provided that the entity, <b>directly or indirectly through its subsidiaries</b>, (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.</p>	<p>A Better City</p>	<p>Thank you for this comment. We have revised Section XX.a.i.b and c to clarify the definition of Owner for purposes of creating Building Portfolios:</p> <p>(b) The same majority owner or beneficial owner (provided that the beneficial owner is <b>the entity legally responsible for BERDO compliance</b> <del>also the legal owner</del>) 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.</p> <p>(c) An entity that, directly or indirectly through its subsidiaries, exercises control over, or acts as managing member or managing partner (provided that the entity, <b>directly or indirectly through its subsidiaries</b>, (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.</p>

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<b>Application Process</b>		
<p>We are concerned about the decision to defer providing detailed regulations on appeals until later in the regulatory process. As the BERDO Review Board is a new entity, we believe a clear and usable appeals process will be critical to ensuring covered buildings have adequate due process as they work toward BERDO compliance, especially given the different compliance pathways that are available. We encourage the City to share more information about available appeals and the associated process with stakeholders as soon as possible for feedback.</p> <p>--</p> <p>We are concerned about deferring details on the appeals regulations for Building Portfolios and Individual Compliance Schedules until later in the process. Given that the BERDO Review Board will be in its first year, and that there are different compliance pathways, a clear appeals process is important for owners as they work toward BERDO compliance.</p>	<p>Conference of Boston Teaching Hospitals (COBTH)</p> <p>--</p> <p>Longwood Collective</p>	<p>Thank you for this comment. More details on the process to appeal decisions by the Review Board will be included as part of this phase of regulations. We anticipate providing drafts of these regulations for public comment in Fall 2023.</p>
<p>We reiterate our prior comments about the importance of sharing standard forms and other resources with stakeholders well in advance of the first compliance</p>	<p>Conference of Boston Teaching</p>	<p>Thank you for this comment. The Environment Department is currently developing standard forms to apply for Building Portfolios and Individual Compliance</p>

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<p>period. In particular, we again encourage the City to create a mapping tool that combines all of the required data layers included in the draft regulations. We understand the value of making the location of a building portfolio as it relates to the location of Environmental Justice populations easily accessible, but we think decentralizing this process will not create a usable final product for the City, building owners, or City residents. Instead, having building owners use a City-provided map would both streamline the application process and produce information and visuals that are more useful to the Department, the Review Board, and the public.</p>	<p>Hospitals (COBTH)</p>	<p>Schedules. These forms will be available for public comment as soon as possible.</p> <p>The Environment Department is also developing an environmental justice mapping tool for Owners to use to apply for Building Portfolios and develop their Emissions standard compliance plan.</p>
<p><b>Modifications to Approved Portfolios</b></p>		
<p>In the draft regulations XX.c., beginning in 2024, applications for building portfolios must be submitted by September 1 to use the Building Portfolio in the next year. Some institutions and other building portfolios buy and sell properties regularly and a building could be bought or sold without prior/advance knowledge. If a new building is completed or acquired, that means it will not be included in a portfolio until the following year. However, in the case where a building in a portfolio is sold/exits, the Ownership (and therefore the Owner's Building Portfolio) and this sale could not be foreseen by September in the</p>	<p>A Better City -- Green Ribbon Commission Higher Education Working Group (GRC HEWG)</p>	<p>Thank you for these comments. We have added new draft language to address 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.</p>

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<p>preceding year, we are asking that a good faith clause be included, so Owners won't be penalized, or the portfolio terminated due to a property transfer unforeseen by the filing deadline.</p> <p><b>Recommendation: A Better City recommends a good faith clause be included for buildings being added to or removed from portfolios with short notice, so they do not get penalized and/or their Building Portfolio does not get terminated.</b></p> <p>--</p> <p>We recommend a good faith clause be included for buildings being added to or removed from portfolios with short notice. For example, if a building in a portfolio is sold/exits the Ownership (and therefore portfolio) and it wasn't able to be foreseen by September in the preceding year that the Owner shouldn't be penalized, or the portfolio terminated due to a property transfer unforeseen by the filing deadline.</p>		
<p><b>Termination of Approved Portfolios</b></p>		
<p>In Section xx(g)(ii) of the Revised Draft Regulations, can the City please clarify the events and/or circumstances with respect to Building Portfolios that could prompt the</p>	<p>Longwood Medical Energy Collaborative</p>	<p>Thank you for these comments. The draft regulations specify the scenarios where an approved Building Portfolio may be revoked. The Review Board may initiate</p>

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<p>Review Board to initiate a proceeding to terminate a Building Portfolio at its own initiative?</p> <p>In addition, LMEC encourages the City to require that any decision by the Review Board to initiate termination proceedings for a Building Portfolio be made in consultation with the Environment Department.</p> <p>--</p> <p>We would request clarification about under what circumstances the Review Board can “initiate a proceeding to terminate” a building portfolio or individual compliance schedule “at its own initiative.” Under the current draft, there appear to be no guardrails on when or why the Review Board can initiate such a proceeding. We would suggest that, similar to decisions regarding applications for building portfolios and individual compliance schedules, any decisions by the Review Board to initiate termination proceedings be made in consultation with the Environment Department.</p> <p>--</p> <p>It would be helpful to have more clarification around the Review Board’s ability to ‘initiate a proceeding to terminate’ a building portfolio or individual compliance schedule ‘at its own initiative.’ It would be helpful to better understand the circumstances in which the Board would</p>	<p>(LMEC)</p> <p>--</p> <p>Conference of Boston Teaching Hospitals (COBTH)</p> <p>--</p> <p>Longwood Collective</p> <p>--</p> <p>A Better City</p>	<p>a proceeding to terminate a Building Portfolio if it has reason to believe that (a) an Owner does not materially comply with the requirements for Building Portfolios or the conditions of a Building Portfolio, or (b) absent extenuating circumstances beyond an Owner’s control, an Owner has not prioritized distribution of benefits to Environmental Justice Populations as proposed in the Building Portfolio’s Emissions standard compliance plan. As with all matters before the Review Board, the Environment Department would provide support to the Review Board</p>



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<p>initiate such a proceeding. We suggest that similar to the applications for building portfolios and individual compliance schedules, any decision by the Board to initiate termination proceedings be made in consultation with the Environment Department.</p> <p>--</p> <p>In the draft regulations XX.g (ii) and YY.h.(iii) the Review Board can determine that an Owner does not materially comply with the requirements in XX or the conditions of a Building Portfolio, or the requirements in YY or the conditions of an ICS. Beyond an Owner not prioritizing distribution of benefits to Environmental Justice Populations under Building Portfolios, no additional guidelines or criteria are offered for potential termination.</p> <p><b>Recommendation: A Better City recommends guidelines and criteria be developed for the termination of a Building Portfolio or ICS, and further requests any termination decisions be made in consultation with the Environment Department.</b></p>		

## Individual Compliance Schedules

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<b>Termination of Approved Individual Compliance Schedules</b>		
<p>Section YY(h)(iii) of the Revised Draft Regulations, can the City please clarify the events and/or circumstances with respect to Individual Compliance Schedules that could prompt the Review Board to initiate a proceeding to terminate an Individual Compliance Schedule at its own initiative?</p> <p>In addition, LMEC encourages the City to require that any decision by the Review Board to initiate termination proceedings for an Individual Compliance Schedule be made in consultation with the Environment Department.</p>	<p>Longwood Medical Energy Collaborative (LMEC)</p>	<p>Thank you for this comment. The draft regulations specify the scenarios where an approved Individual Compliance Schedule may be revoked.</p> <p>The Review Board may initiate a proceeding to revoke an approved Individual Compliance Schedule if the Review Board determines that an Owner does not materially comply with the requirements for Individual Compliance Schedules or the conditions of a specific Individual Compliance Schedule.</p>

## 2. Informal Public Comment Period: Hardship Compliance Plans and the Equitable Emissions Investment Fund

### Hardship Compliance Plans

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<b>General</b>		
<p>We have questions and seek greater clarity around the following points:</p> <p><b>Whether an institution’s needs would be met by ICS or whether one should seek an ICP from the start.</b> How would one make that determination early in the planning process?</p> <p><b>The interplay of Building Portfolio and ICP/HCP regulations.</b> For an organization with multiple buildings on varying capital schedules, can the City advise on whether each building should submit either an HCP or ICP, or if those will be included within a Building Portfolio request?</p>	<p>Green Ribbon Commission Cultural Institutions Working Group (GRC CIWG)</p>	<p>We encourage Owners to consider other flexibility mechanisms (i.e., Building Portfolios and Individual Compliance Schedules) before applying for a Hardship Compliance Plan.</p> <p>To aid in this decision-making process, the Environment will prepare and release guidance to help Owners understand which flexibility mechanism(s) may be the best fit for them.</p> <p>We also encourage Owners to contact the Environment Department’s <a href="#">Retrofit Resource Hub</a> to understand their Buildings’ current Energy Use and Emissions and discuss potential compliance strategies. You can contact us at <a href="mailto:retrofit@boston.gov">retrofit@boston.gov</a>.</p>

**Circumstances and Characteristics that May Create Hardship**

**Critical Services:** Currently, the list of critical services for Hardship Compliance includes provision for life saving services and affordable housing. We suggest expanding consideration for additional critical services to this list to give guidance to the Review Board without making an exhaustive list. Additional critical services could include critical research, labs, community health centers, climate resilience hubs, data centers, cultural institutions, churches, libraries, properties providing services like access to grocery stores, to name a few.

**Recommendation: A Better City recommends expanding the list of critical services to give more guidance to the Review Board without it being an exhaustive list.**

A Better City

Thank you for this comment. We have added draft language to provide more clarity regarding eligibility for Hardship Compliance Plans.

The draft language proposes that Owners may be eligible for a Hardship Compliance Plan if they demonstrate that compliance with Emissions standards is **“impracticable”** because compliance would 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.**

In addition, Owners may be eligible for a Hardship Compliance Plan if they demonstrate that compliance with Emissions standards is **“technically infeasible”** because compliance would require space, equipment, or electric service that is not available, or **“financially infeasible”** because compliance would create an undue burden on a Building Owner by resulting in costs that would: (i) be significantly higher due to the unusual circumstances or characteristics of a Building Owner, Building or Building Portofolio; (ii) interrupt financial ability to operate a Building or its primary uses; 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.
<b>Critical Services:</b> We suggest the definition of critical services include research purposes.	Green Ribbon Commission Higher Education Working Group (GRC HEWG)	Thank you for this comment. We have added draft language that allows the Review Board to consider other services as critical (in addition services that are critical to community health and safety).
<b>Financial Hardship:</b> A Better City members have expressed concern that financial hardship language may be too restrictive. Schedules of compliance costs should not prohibit or take the place of essential infrastructure repair and replacement, such as electrical, HVAC, plumbing, elevators, doors, roofs, etc., and needs to be balanced with other essential needs for the good of the operation and safety of the buildings. Additional circumstances to consider for financial hardship include: 1) when required capital investments exceed a specified percentage of the property’s assessed value—a reasonable percentage would need to be determined; and 2) when permitting, supply chain, or other delays beyond an Owner’s control result in a substantial increase in project costs.	A Better City	<p>Thank you for this comment. Section ZZ.c.i. of the draft regulations specifies that, among other eligibility criteria, Owners may be eligible for a Hardship Compliance Plan if they demonstrate that compliance with Emissions standards would:</p> <ul style="list-style-type: none"> <li>● Require space, equipment, or electric service that is not available;</li> <li>● 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</li> <li>● Create an undue burden on a Building Owner by resulting in costs that would: <ul style="list-style-type: none"> <li>○ Be significantly higher due to the unusual circumstances or characteristics of a Building Owner, Building or Building Portfolio;</li> <li>○ Interrupt financial ability to operate a Building or its primary uses;</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ 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</li> <li>○ 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.</li> </ul> <p>In addition, Section ZZ.b.i. specifies the financial circumstances and characteristics that could create hardship, including owner bankruptcy for all or part of a year in which an Emissions standard must be met and when the 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. While assessing financial hardship based on how much the costs of compliance compared to a property's assessed value may be useful in some cases, such a metric may create an undue restriction for Owners of large buildings and/or large Building Portfolios.</p> <p>Section ZZ.b.ii. identifies regulatory or contractual circumstances and characteristics, which include denial or delays in government permits or approvals and delays in electric system interconnections or adequate delivery of electricity.</p> <p>Section ZZ.c.iii. also identifies technical or operational circumstances and characteristics, including when</p>
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		equipment needed for significant compliance-related work is not adequately demonstrated or available in the United States, including due to supply chain constraints.
<p><b>Regulatory or Contractual Hardship:</b> Building on the examples provided for Regulatory or Contractual Hardship, A Better City members have the following comments and additional circumstances for consideration:</p> <ul style="list-style-type: none"> <li>• Regarding “delays in electric system interconnections beyond (x) months for reasons beyond a building owner’s control,” members have suggested leaving the time for interconnection open, and have it just read “beyond a building owner’s control,” as interconnections can be very slow.</li> <li>• When there are significant delays by the utilities in approving energy efficiency projects under MassSave.</li> <li>• When there are any other delays on the part of the utilities through no fault of the owner’s control e.g., capacity, transmission, distribution.</li> <li>• When PPAs/VPPAs have been executed, but Commercial Operation Date is delayed beyond an owner’s control.</li> <li>• When regulatory guidance is provided in a public emergency e.g., hospitals and other buildings during COVID needed to increase the number of air exchanges to promote infection control.</li> </ul>	A Better City	Thank you for this comment. We have incorporated this feedback to the draft language presented in Section ZZ.b.ii, including delays in electric system interconnections or adequate delivery of electricity, denial or delays in government permits or approvals, including approvals through the Mass Save program, government regulations affecting minimum energy use, and 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.

<p><b>Regulatory/Contractual Circumstances and Characteristics:</b> We suggest the following additional circumstances and characteristics be added:</p> <ul style="list-style-type: none"> <li>• Challenges/delays with permitting and approvals for PPA/vPPA contracts.</li> <li>• Utility delays in approvals of MassSave applications or distributed energy interconnections tied to compliance-related work.</li> </ul>	<p>Green Ribbon Commission Higher Education Working Group (GRC HEWG)</p>	<p>Thank you for this comment. We have incorporated this feedback to the draft language presented in Section ZZ.b.ii, and included “denial or delays in government permits or approvals, including approvals through the Mass Save program” and “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.”</p>
<p><b>Technical and Operational Hardship:</b> Building on the examples provided for Technical and Operational Hardship, A Better City members have the following comments and additional circumstances for consideration:</p> <ul style="list-style-type: none"> <li>• Under the example given for “Equipment needed for significant compliance related work is not adequately demonstrated or available in the US,” add the following: “Specific manufacturing or industrial equipment replacements (in conjunction with attempts to decarbonize process loads).”</li> <li>• Under “Equipment needed for significant compliance related work is not adequately demonstrated or available in the US,” add lead times on the delivery of equipment.</li> <li>• When labs/museums/data centers have unique temperature/humidity constraints.</li> <li>• When equipment trials fail.</li> <li>• When timing of decarbonization projects need to be considered in the context of lease obligations,</li> </ul>	<p>A Better City</p>	<p>Thank you for this comment. The circumstances and characteristics described in this comment are covered by the draft language presented in Section ZZ.b.</p>



<p>e.g., a building retrofit may be able to be completed within 2 years if the building is closed down but lease obligations may require the building to remain open, so the project could take much longer.</p> <ul style="list-style-type: none"> <li>• When there are infrastructure capacity limitations, e.g., electrification requires more rooftop space that competes with space for solar panels or green roofs/rooftop gardens.</li> </ul>		
<p><b>Formally recognize Culturals as a unique category of Assembly:</b> It is important to recognize the unique mission and purpose of cultural institutions, which is (an often legally binding obligation) to welcome the public as well as to protect and steward unique collections in perpetuity according to specific standards. For this reason, many Cultural Institutions have very different operating demands than other types of “assembly” buildings. Notably, many Culturals have professional accreditation standards that dictate their degree of latitude in temperature and humidity at all times. These are requirements are consistent with responsibility for:</p> <ul style="list-style-type: none"> <li>• The maintenance of valuable and rare art, artifacts, and historic buildings that require temperature and humidity controls 24/7;</li> <li>• The survival of living collections (plants and animals) that require certain environmental conditions 24/7.</li> </ul>	<p>Green Ribbon Commission Cultural Institutions Working Group (GRC CIWG)</p> <p>--</p> <p>Isabella Stewart Gardner Museum</p> <p>--</p> <p>William Rawn, for the Institute of Contemporary Art (ICA)</p> <p>--</p> <p>Jill Medvedow, for</p>	<p>Thank you for this comment. Cultural institutions may apply for a Hardship Compliance Plan to obtain alternative Emissions standards than those in the Ordinance, as well as other forms of relief.</p> <p>We believe that Section ZZ.b. and ZZ.c. reflect all the circumstances and characteristics that these comment letters note could create hardship for cultural institutions.</p> <p>In particular, Section ZZ.c.ii. identifies “accreditation / certification standards affecting minimum energy use” as a circumstance or characteristic that could create hardship. This includes accreditation and certification standards set for cultural institutions with and without live collections.</p> <p>Please note that cultural institutions may apply for a Hardship Compliance Plan by demonstrating any combination of financial, technical, and regulatory/contractual characteristics and circumstances that may be present in their Buildings, in addition to accreditation / certification standards affecting minimum</p>

<p>Moreover, it is important to recognize that as nonprofit organizations, our fiscal circumstances are not necessarily as robust as those in commercial businesses who may qualify under the same category of “assembly.” Major capital improvements can take years to plan and then implement in part because the funds often need to be raised to support the work. Grants and other financial support for infrastructure projects are often the rarest to find and the hardest to secure. The circumstances described above place cultural institutions in a different category of consideration than other assembly buildings, such as for-profit entertainment venues. We believe that creating a recognized category for Culturals will facilitate the sharing of information and development of solutions around common hardships.</p> <p>--</p> <p><b>Separate Building Use Category for Cultural Institutions:</b>  Because many cultural institutions like the Isabella Stewart Gardner Museum have missions that legally bind them to both welcome the public and protect and steward unique collections in perpetuity according to exacting industry standards, these organizations have dramatically different operating demands than the rest of the business types included in the Assembly Building Use designation. These cultural institutions operate under specific, professional accreditation standards that dictate temperature and humidity ranges at all times. These requirements ensure:</p>	<p>the Institute of Contemporary Art</p> <p>--</p> <p>Karen Conway, for the Institute of Contemporary Art (ICA)</p>	<p>energy use.</p>
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- The maintenance of valuable and rare art, artifacts, and historic buildings that require specific, narrow, temperature and humidity ranges 24/7.
- The survival of living collections (plants and animals) that require certain environmental conditions 24/7.

We believe that larger cultural institutions such as ourselves have been mis-categorized as Assembly, despite emissions data aligning our institution more closely to the Science and Technology category. While Synapse’s Energy Economics analysis used to determine these categories is thorough and logical, no member of the cultural community familiar with Museum operations w consulted in the Technical Advisory Group Meetings, which occurred at a moment of existential threat for arts and culture nonprofits – the early months of the pandemic in spring/summer of 2020. As the Synapse report states, the “activities that occur within a building greatly influence that building’s energy use intensity.” The consolidation of inclusion of museums in the same category as worship facilities and fitness centers represents a misunderstanding of the activities that occur within the Museum, and the energy requirements necessary to fulfill our mission.

Publicly accessible gallery spaces and traditional office spaces, all of which require the same strict standards of environmental controls, represent only about half of our

footprint. Food Sales & Service, Science & Technology, and Manufacturing square footage combined make up the balance of our building use. In addition to the significant amount of lab space we maintain, temperature and humidity controls preserve our collections, and do not change by season or time of day, or whether the spaces are accessible to the public or not. There is very little difference between our peak and non-peak usage of energy.

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The vast bulk of the square footage of art museums, whether the ICA or other art museums or other general museums, are in the realm of conservation and stewardship of objects in their collections as well as temporary space for objects loaned from other institutions. In art museums, some objects are hung on the walls. Much is in storage and conservation areas. The protection and preservation of these works engages the daily use of resources and expertise in all museums. These collection activities engage the daily use of most of the square footage of any museum. For this reason, the emissions of art museums more closely align to that of the stewardship and protection of objects and thus seems to me to be far more coincident to the uses found in the Science/Technology Building sector in our city. While Science/Technology buildings may have a few gathering spaces analogous to the gathering spaces of an art museum, again the vast majority of space in both kinds of

buildings is devoted to protection and preservation of collections and materials not to assembly.

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Art museums, such as the ICA, are consistently designated as Assembly, despite the specific and unique requirements to maintain safe environments for the collections of artwork that we hold in public trust for perpetuity. Absent a more appropriate designation, our emissions data aligns our institution more closely to the Science and Technology category, though we would welcome a dialogue about a new categorization or consideration.

As the Synapse report states, the “activities that occur within a building greatly influence that building’s energy use intensity.” The consolidation of Museums with gyms and worship facilities both obscures and diminishes the activities of art exhibition, conservation and preservation that occur within the Museum, and the energy requirements necessary to fulfill our mission and maintain stable environments for our works of art. Temperature and humidity controls to preserve our collections do not change by season, time of day or whether the spaces are accessible to the public. There is very little difference between our peak and non-peak usage of energy. Professional standards set by the American Alliance of Museums state that a museum must have: “Processes that regularly monitor environmental conditions and have proactive measures to mitigate the effects of ultraviolet light, fluctuations in temperature and humidity, air

pollution, damage, pests and natural disasters on collections.”

In addition, our ability to present works on loan from other institutions from around the globe—and sharing these objects with our Boston community—requires stringent adherence to conservation standards. The International Council of Museums’ Committee for Conservation specifically states that to properly store and display objects such as canvas paintings or textiles, “a stable relative humidity (RH) is required in the range of 40–60% and a stable temperature in the range 16–25°C with fluctuations of no more than ±10% RH per 24 hours within this range.” More sensitive objects require even more specific and tighter controls.

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While art museums are places of convening, it is important to recognize that they are also sites of conservation and stewardship for both objects in their own collections as well as temporary sites for objects generously lent from other institutions. The act of preserving these works in perpetuity—to the benefit of our publics and collective histories—takes significant resources, expertise, and energy. The current emissions of the institution more closely align with the Science/Technology building use as there is no current building use classification that more accurately represents the cultural sector.

<p><b>2. Establishment of a “common pathway” for Hardship Compliance for Culturals:</b> Specifically, it would be helpful to name, standardize, and recognize in the rules specific hardship categories and conditions that are faced by many or most cultural institutions, including:</p> <ul style="list-style-type: none"> <li>• Timeline to meet the deadlines outlined in BERDO. We understand that this can be addressed through ICSs or potentially HCPs. However, it is worth noting that certain acute conditions are common to our institutions, for example: the lack of staffing to address the requirements of BERDO; the need to raise funds through charitable donations to undertake projects; and the challenges of maintaining the safety and security of collections throughout any significant intervention to physical infrastructure.</li> <li>• Historic preservation restrictions stemming from local historic districts, the state historic preservation office, or a private easement holder can limit the interventions to a structure, especially those that might be visible to the public.</li> <li>• Restrictions on modifications to the structure may be built into the deed of gift for a property.</li> <li>• Professional accreditation standards must be met, such as those of the Association of Zoos and Aquariums (AZA). AZA accredited institutions are differentiated as exemplary facilities through the vigorous and voluntary commitment to shared high standards, achieving measurable goals, and</li> </ul>	<p>Green Ribbon Commission Cultural Institutions Working Group (GRC CIWG)</p> <p>--</p> <p>Isabella Stewart Gardner Museum</p>	<p>Thank you for this comment.</p> <p>While cultural institutions may share similar missions, we believe that each Owner will face a different combination of circumstances and characteristics that could create hardship in complying with Emissions standards. Hence, Owners will also need different compliance pathways and forms of relief based on their unique combination of circumstances such as capital planning schedules, historic building designations, ages of heating systems, available spaces to accommodate solar panels and other building systems, etc.</p> <p>All these factors are likely to make it impractical for the Review Board to design - and for Owners to apply - for a single “Cultural Institutions hardship package” that will meet the needs of all cultural institutions. For example, even an alternative “cultural institutions” Emissions Standard will not adequately reflect the operations of the highly diverse cultural institutions operating in Boston, which range from libraries and museums to zoos and aquariums.</p> <p>We believe that Section ZZ.b. and ZZ.c. reflect all the circumstances and characteristics that comments note could create hardship for cultural institutions. We believe personalized Hardship Compliance Plans will allow each cultural institute to find the relief(s) that best fit their unique conditions.</p> <p>However, we are happy to consider any future proposals provided by cultural institutions that specify common</p>
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<p>continually pursuing outcomes that benefit animals, guests, and communities.</p> <ul style="list-style-type: none"> <li>• These standards include assuring excellence in animal care and welfare, conservation, education, and research. Section 9.4 states that the institution must indicate sources and amounts of funding for capital improvements and major maintenance, repairs, and replacements.</li> <li>• Special and specific pieces of equipment required to operate our customized buildings that accommodate and maintain unique collections. For example, the use of Ozone Generators and special Chilled Water Systems.</li> <li>• Industry standards that govern the care of collections and object safety, such as those of the American Alliance of Museums (AAM). AAM standards specify narrow ranges of temperature, humidity, and lighting exposure that museums must maintain 24/7 to both retain their accreditation standings and secure loaned art works from other organizations around the world.</li> </ul> <p>We believe that establishing standardized hardships for Culturals could simplify the HCP process, saving effort on the part of many institutions as well as the City and Review Board.</p> <p>--</p> <p><b>Establishment of a Common Pathway for HCP Applications for Cultural Institutions:</b> Since so many</p>		<p>requirements and compliance measures that may be part of a Hardship Compliance Plan.</p>
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<p>cultural institutions share hardship categories and conditions, creating a common pathway for HCP applications would simplify the application process and create efficiencies for both applying institutions and the BERDO Review Board.</p>		
<p><b>Application Process</b></p>		
<p><b>Application Content:</b> Building on the materials to support why hardship is necessary, A Better City members have the following comments and additions for consideration:</p> <ul style="list-style-type: none"> <li>• Adding “other forms of evidence proving hardships” to the list of supporting materials.</li> <li>• Adding ASHRAE audits to the list of supporting materials.</li> <li>• Adding letters of support to the list of supporting materials.</li> <li>• Considering staff capacity support for the submissions and administration of applications when this is not available in-house.</li> </ul>	<p>A Better City</p>	<p>Thank you for this comment. We will consider these suggestions as we work to develop policies and guidance regarding documentation and evidence to demonstrate a hardship.</p>
<p>We have questions and seek greater clarity around the following points:</p> <p><b>The frequency with which an HCP would need to be filed and updated, and the length of time it would cover?</b></p> <p>Many of our institutions will need to expend extensive resources on the creation of any legitimate path to net</p>	<p>Green Ribbon Commission Cultural Institutions Working Group (GRC CIWG)</p>	<p>Thank you for this comment. We have added draft regulations language that clarifies these questions.</p> <p>Section ZZ.a of the draft language proposes two types of Hardship Compliance Plans: (a) short-term plans for 1 - 3 years and (b) long-term plans for 4 years or more.</p> <p>Section ZZ also provides that for long-term Hardship</p>

<p>zero, including expensive and time-consuming studies on how to change over systems without damaging our respective collections. Can Culturals request to receive an HCP while in the process of funding and deciding on those paths?</p>		<p>Compliance Plans, the Review Board shall reassess approved plans 5 years.</p>
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## Equitable Emissions Investment Fund

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
<p><b>Project Eligibility and Evaluation Criteria</b></p>		

<p>Vicinity applauds the City’s leadership when it comes to equity and environmental justice. In a groundbreaking move, the funds collected from the Alternative Compliance Payments (ACPs) and penalties are going into the uniquely created EEIF, rather than the general fund. The EEIF was created in the BERDO 2.0 legislation as an additional tool to specifically assist and invest locally in projects that need carbon reduction. Recognizing that if we truly want to achieve net zero by 2050, it requires an all-hands-on deck approach and that is why Vicinity is supportive of the presented preliminary regulations to ensure the review board is appropriately equipped to disperse these funds.</p> <p>During the working session on August 23rd, the City presented an overview of potential funding eligible projects along with project evaluation criteria. With the expected influx of numerous applications, establishing priorities will undoubtedly be challenging. Vicinity suggests that the Review Board create a scoring system to assess each project proposal using the evaluation criteria the City presented, along with urgency and timeliness. Above all, Vicinity encourages the Review Board to ensure an equitable distribution of funds across Boston while giving priority to projects that will significantly benefit our environmental justice communities.</p>	<p>Vicinity Energy</p>	<p>Thank you for this comment.</p> <p>Per the Ordinance, all Fund expenditures shall prioritize Environmental Justice Populations and populations disproportionately affected by air pollution.</p> <p>The draft language proposes that, in addition to prioritizing these target populations, the Review Board shall use evaluation criteria to score and compare projects according to the benefits these projects may provide in terms of emissions reductions, affordable housing and tenant protections, labor and workforce development, indoor and outdoor air quality, climate resilience, as well as any other benefits at the discretion of the Review Board.</p>
<p><b>Prioritizing Emissions Reduction in Project Selection:</b> Projects must “provide benefits to Environmental Justice Populations and/or advance the purposes of the Ordinance.” As the goal of the Ordinance is emissions</p>	<p>A Better City</p>	<p>Thank you for this comment. Per the Ordinance, all projects funded through the Equitable Emissions Investment Fund must result in direct emissions reductions in local buildings and Fund expenditures shall</p>

reduction, which is the greatest benefit to Environmental Justice and all populations, we suggest prioritizing projects with large emissions reduction, or short time horizons, or both.

**Considering Replicable or Scalable Projects:** To scale up building decarbonization as quickly as possible, A Better City members recommend including replicability as a project evaluation criterion. Building projects that can be replicated will be a win for all.

**Considering Projects that Support District Energy Solutions for Building Decarbonization:** A Better City members suggests considering district energy solutions, e.g., networked geothermal energy that serve buildings located in Boston, as potential projects for EEIF funding.

**Considering Projects with Climate and Community Resilience Co-Benefits:** A Better City supports projects that provide multiple climate and community resilience co-benefits alongside decarbonization. We also recommend engaging the BERDO Community Advisory Board in the evaluation of co-benefits.

**Considering Green Bank Models and Carbon Removals Best Practices for Selection Criteria:** A Better City recommends exploring existing green and climate bank models as selection criteria are considered for project selection and evaluation. Some examples include the DC Green Bank and Connecticut Green Bank, and the PAVER+ framework from carbon removals verification and

prioritize Environmental Justice Populations and populations disproportionately affected by air pollution.

The draft language proposes that, in addition to prioritizing these target populations, the Review Board shall use the following evaluation criteria to evaluate project proposals:

- Emissions reductions. 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.
- Benefits to affordable housing and tenant protections. 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.
- Benefits to labor and workforce development. 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.
- Benefits to outdoor air quality. The expected

<p>accreditation best practices (please see A Better City’s carbon removals report for more information).</p>		<p>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.</p> <ul style="list-style-type: none"> <li>• Benefits to indoor air quality and quality of life. 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.</li> <li>• Climate resilience benefits. The expected timeline and scale of climate resilience benefits produced by the project, including heat resilience, energy resilience, and coastal and stormwater flood management.</li> <li>• Other benefits. 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.</li> </ul>
<p>We recommend considering exploring established green bank models such as the Connecticut Green Bank and the DC Green Bank and using the PAVER+ (Permanence, Additional, Verifiable, Enforceable, Real + Co-benefits, Contemporary) framework for evaluating projects:</p> <ul style="list-style-type: none"> <li>• <b>Permanence:</b> Emission reductions or removals are permanent if they are not reversible; that is, the emissions can’t be re-released into the atmosphere.</li> </ul>	<p>Green Ribbon Commission Higher Education Working Group (GRC HEWG)</p>	<p>Thank you for this comment. The draft language proposes that, in addition to prioritizing Environmental Justice Populations and populations disproportionately affected by air pollution, the Review Board shall use the following evaluation criteria to score and compare project proposals:</p> <ul style="list-style-type: none"> <li>• Emissions reductions. The expected timeline and scale of direct Emissions reductions produced by the proposed project. Review Board members may</li> </ul>

<ul style="list-style-type: none"> <li>● <b>Additional:</b> Activities that would have happened without such incentives are business-as-usual and do not represent new emission reductions.</li> <li>● <b>Verifiable:</b> Credible local carbon abatement projects require that emission reductions be monitored and regularly verified by an independent, qualified third party.</li> <li>● <b>Enforceable:</b> Local carbon abatement projects must be backed by contracts or legal instruments.</li> <li>● <b>Real:</b> Local carbon abatement projects represent actual emissions reduction in Boston and are not remnants of incomplete or flawed accounting elsewhere.</li> <li>● + <b>Co-benefits:</b> Projects should consider educational, social, economic development, and resiliency benefits or other benefits in addition to CO2, this is accomplished through the Environmental Justice Populations and other criteria indicated in BERDO.</li> <li>● + <b>Contemporary:</b> Project delivers associated emissions reduction or avoidance at the time the project is executed, rather than over time.</li> </ul>		<p>consider metrics such as expected absolute Emissions reductions or expected Emissions reductions achieved per dollar spent.</p> <ul style="list-style-type: none"> <li>● Benefits to affordable housing and tenant protections. 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.</li> <li>● Benefits to labor and workforce development. 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.</li> <li>● Benefits to outdoor air quality. 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.</li> <li>● Benefits to indoor air quality and quality of life. 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.</li> <li>● Climate resilience benefits. The expected timeline</li> </ul>
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		<p>and scale of climate resilience benefits produced by the project, including heat resilience, energy resilience, and coastal and stormwater flood management.</p> <ul style="list-style-type: none"> <li>• Other benefits. 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.</li> </ul>
<ul style="list-style-type: none"> <li>• How will the Commission and Review Board ensure GHG reductions are realized? <ul style="list-style-type: none"> <li>◦ We suggest that one of the metrics for project selection be anticipated GHG reduction per dollar spent (MTCO<sub>2e</sub>/)\$)</li> </ul> </li> <li>• Are there criteria for or priority given to projects that are replicable?</li> <li>• Is the Commission considering having the Environment Department or Review Board adjust how projects are prioritized based on the seven criteria once the decarbonization criterion is met each year?</li> <li>• How does the Commission envision prioritizing and weighing these criteria?</li> </ul>	<p>Green Ribbon Commission Higher Education Working Group (GRC HEWG)</p>	<p>Thank you for these questions. The draft language proposes that the Review Board shall use evaluation criteria in Section AA.c. to evaluate project proposals.</p> <p>Please note that, while the regulations and policies will set requirements and guidelines on how the Review Board will make funding decisions, all Fund expenditures will be at the discretion of the Review Board.</p>
<p>While recognizing that the purpose of the Equitable Emissions Investment Fund is to prioritize projects that benefit environmental justice communities, we seek further clarification on how the funds will be allocated and what opportunities there may be for cultural institutions</p>	<p>Green Ribbon Commission Cultural Institutions Working Group</p>	<p>Thank you for this comment. The proposed regulations provide that any Owner or resident located in the City of Boston may be eligible to receive funding from the Equitable Emissions Investment Fund. This includes any cultural institutions located in Boston.</p>

<p>to support the intention of the EEIF while leveraging some of its resources.</p> <ul style="list-style-type: none"> <li>• Are there criteria for or priority given to projects that are replicable?</li> <li>• Is the Commission considering having the Environment Department or Review Board adjust how projects are prioritized based on the seven criteria once the decarbonization criterion is met each year?</li> <li>• How does the Commission envision prioritizing and weighing these criteria?</li> </ul>	<p>(GRC CIWG)</p>	<p>Please note that, per the Ordinance, all projects funded through the Equitable Emissions Investment Fund must result in direct emissions reductions in local buildings and Fund expenditures shall prioritize Environmental Justice Populations and populations disproportionately affected by air pollution. In addition, the draft regulations propose that the Review Board shall use evaluation criteria to evaluate projects according to the benefits they may provide in terms of emissions reductions, affordable housing and tenant protections, labor and workforce development, indoor and outdoor air quality, climate resilience, as well as any other benefits at the discretion of the Review Board.</p> <p>The regulations and policies will set requirements and guidelines on how the Review Board will make funding decisions. However, all Fund expenditures will be at the discretion of the Review Board.</p>
<p><b>Fund Tracking, Monitoring, and Evaluation</b></p>		
<p>Furthermore, Vicinity supports a suggestion made during the working session: the City should gather data as needed and establish a publicly accessible project tracker to ensure that all projects are effectively meeting their objectives. This tracker can also facilitate cost comparisons among various City projects, providing valuable insights to others interested in accessing the fund of the viable projects eligible for funding.</p>	<p>Vicinity Energy</p>	<p>Thank you for this comment. Per the BERDO Ordinance, the City of Boston, in consultation with the Review Board, shall issue annual reports on the Equitable Emissions Investment Fund, including balance of funds, expenditures, funded projects and anticipated impacts relative to greenhouse gas emissions, air quality, and local employment. Administrative costs, Review Board compensation, and other liabilities incurred against and</p>



		<p>spent from the Fund shall also be included.</p> <p>These reports, including a project tracker, will be available for the public on the City of Boston website and follow current City of Boston language and accessibility guidelines.</p>
<p><b>Project Evaluation:</b> Once EEIF projects are completed, projects should be independently reviewed and audited, and a report on project deliverables should be made publicly accessible. Results could be accessible on an EEIF Projects page where information on projects completed, their overall impact on greenhouse gas emissions reductions, and the co-benefits provided, are found. A portion of EEIF funding could pay for independent reviews once projects are completed. If a project does not meet its intended emissions reduction goals, future Alternative Compliance Payments can be structured to fill the non-compliance gap.</p> <p><b>Recommendation: A Better City recommends including a project review and independent audit component to EEIF-funded projects once completed. Additionally, A Better City recommends that information on EEIF-funded projects and their associated emissions reduction and other co-benefits are publicly accessible.</b></p> <p><b>EEIF Management:</b> To ensure the credibility and effectiveness of the EEIF, it must be transparently managed and independently verified and validated. To</p>	<p>A Better City</p> <p>— —</p>	<p>Thank you for this comment. Per the BERDO Ordinance, the City of Boston, in consultation with the Review Board, shall issue annual reports on the Equitable Emissions Investment Fund, including balance of funds, expenditures, funded projects and anticipated impacts relative to greenhouse gas emissions, air quality, and local employment. Administrative costs, Review Board compensation, and other liabilities incurred against and spent from the Fund shall also be included.</p> <p>These reports will be available for the public on the City of Boston website and follow current City of Boston language and accessibility guidelines.</p> <p>We have discussed the use of third-party verification to audit funded projects since the development of the BERDO Ordinance and will continue to consider this suggestion. There is concern of committing a large amount of resources from the Equitable Emissions Investment Fund for auditing, verification, and their related administrative overhead, before we understand the scope of the demand for funding from the Equitable Emissions Investment Fund and address the urgent needs</p>

<p>ensure this, we recommend adequate funding is provided for EEIF administration.</p> <p><b>Recommendation: A Better City recommends EEIF funds be used to transparently manage the EEIF including independent verification and validation.</b></p> <p>— —</p> <p>We believe it is critically important for the BERDO Equitable Emissions Investment Fund to be transparently managed and independently verified and validated to ensure credibility and effectiveness of the program. This is an opportunity for the City of Boston to show leadership nationally on how to meet the goals and criteria established in BERDO. We recommend ensuring adequate funding is provided for EEIF administration and that these local carbon abatement projects are included in a third party validation and verification process such as the Gold Standard or Verra. Further, we recommend a community advisory board or other independent and reputable body provides validation and verification for the other evaluation criteria.</p>	<p>Green Ribbon Commission Higher Education Working Group (GRC HEWG)</p>	<p>from local residents and owners.</p>
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### 3. Other topics and general comments

SUMMARIZED COMMENTS	SUBMITTED BY	STAFF RESPONSE
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<p><b>Establishment of a Cultural Institutions Working Group:</b>  We would like to convene a recognized working group, per Subsection (s) of the BERDO Ordinance, composed of cultural-sector-specific professionals, to advise the Review Board on the specific needs of our sector. We seek guidance in pursuing this status.</p>	<p>Green Ribbon Commission Cultural Institutions Group (GRC CIWG)</p>	<p>Thank you for this question. We will reach out to the Green Ribbon Commission Cultural Institutions Group to discuss next steps for this process.</p>
<p>We appreciate the opportunity file for multiple primary uses, but would appreciate clarification on how we should account for other primary uses, particularly if the usage is less than 10% of square footage, but more than 10% of energy use or the opposite. For large, multi-use historical buildings, this threshold does not accurately reflect the ways in which space is utilized for multiple purposes simultaneously, or at varying percentages at different times</p>	<p>Isabella Stewart Gardner Museum</p>	<p>Thank you for this question. Any Building Use may constitute a primary use if it meets <b>any</b> of the following criteria:</p> <ul style="list-style-type: none"> <li>● Building Use occupies at least 10% of a Building’s square footage</li> <li>● Building Use accounts for more than 10% percent of a Building’s total annual Energy use</li> <li>● Building Use accounts for more than 10% percent of a Building’s total annual CO2e Emissions</li> </ul> <p>Please note that a Building Use does <u>not</u> need to meet all of these criteria to constitute a primary use.</p>