

BERDO REVIEW BOARD PUBLIC MEETING

November 20, 2023



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

BERDO REVIEW BOARD



Rashida Boyd

Board Member



Stephen Ellis

Board Member



Lovette Jacobs

Board Member



Gail Latimore

Board Member



Jack Nelson

Board Member



Matt O'Malley

Board Member



Kai Palmer-Dunning

Board Member

CITY OF BOSTON STAFF



**Diana
Vasquez**

*Environment
Department*



**Hannah
Payne**

*Environment
Department*



**Claudia
Diezmartinez**

*Environment
Department*



**Aladdine
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*Environment
Department*

Agenda

Today's Meeting



1. Approval of Meeting Minutes

2. Phase 3 Regulations Development

- a. Comments Received*
- b. Hardship Compliance Plans*
- c. Equitable Emissions Investment Fund*
- d. Fines & Enforcement*
- e. Miscellaneous Clarifying Regulations and Policies*
- f. Next Steps*

3. Administrative Updates

4. Adjournment

Approval of Meeting Minutes

Board votes on approving previous meeting's minutes.



Phase 3 Regulations Updates

Hardship, the Fund, Enforcement, and Miscellaneous Clarifying Topics.

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) and other clarifying regulations.*

We received feedback from multiple public comment periods



- **Formal public comment period on draft regulations for [Hardship Compliance Plans](#) and the [Equitable Emissions Investment Fund](#).**
 - *Friday, September 29, 2023 - Friday, October 20, 2023.*
- **Formal public comment period on draft policies for [Hardship Compliance Plans](#) and informal public comment period on preliminary proposals for [Fines and Enforcement](#).**
 - *Thursday, October 19, 2023 - Thursday, November 9, 2023.*

Letters received during public comment periods

On Hardship Compliance Plans and the Equitable Emissions Investment Fund:

- A Better City
- Alternatives for Community & Environment and partners
- Conference of Boston Teaching Hospitals
- Eversource
- Green Ribbon Commission Higher Education Working Group
- Longwood Medical Energy Collaborative
- Longwood Collective
- Mass General Brigham
- NAIOP
- Nicole Voss, isgenuity Architects
- Loie Hayes & Tom MacDonald, Boston Climate Action Network

On Hardship Compliance Plans and Fines and Enforcement:

- A Better City
- Alternatives for Community & Environment
- Conference of Boston Teaching Hospitals
- Longwood Medical Energy Collaborative
- Longwood Collective
- Heidi Buckley
- Nicole Voss, isgenuity Architects



Hardship Compliance Plans

Draft language.

Main themes in public comments

Hardship Compliance Plans (HCP)

- Clarifying the distinction between “circumstances and characteristics that could create hardship” and “eligible hardships”
- Suggesting additional “circumstances and characteristics that could create hardship”
- Requesting to eliminate application fees for HCP and to define “reasonable fees” to secure outside consultants to evaluate a HCP application
- Suggesting potential conditions of approval for HCP
- Requesting to extend the application deadline for HCP
- Requesting to clarify the process to review long-term HCP every five years and to modify Building Portfolios with an approved HCP
- Concerns about the length of the application form as well as concerns about not requesting enough information, particularly related to environmental justice and impacts to tenants
- General clarifying questions regarding the meaning of draft language
- Requesting more time to provide public feedback

Applications for Hardship Compliance Plans (HCP)



Step 1	Step 2	Step 3	Step 4
<p>Demonstrate the existence of unique circumstances and characteristics in Section XIII.b.:</p> <ul style="list-style-type: none"> • Financial • Regulatory or contractual • Technical or operational • Other <p><i>The existence of one or more of these circumstances and characteristics alone does not constitute an eligible hardship</i></p>	<p>Evaluate all compliance and flexibility options:</p> <ul style="list-style-type: none"> • Building Portfolios • Individual Compliance Schedules • Community Choice Electricity • On-site renewable energy • Renewable Energy Certificates • Power Purchase Agreements • Alternative Compliance Payments 	<p>Demonstrate how Step 1 and Step 2 create an eligible hardship in Section XIII.c. by:</p> <ul style="list-style-type: none"> • Requiring space, equipment, or electric service that is not available; • Significantly interfering with, or significantly increasing the cost, to provide services that are critical to community health and safety; and/or • Creating an undue burden on a Building Owner in terms of costs. 	<p>Request relief and propose an alternative compliance plan:</p> <ul style="list-style-type: none"> • Short-term HC • Long-term HCP <ul style="list-style-type: none"> ◦ Including proposals for conditions of approval that provide benefits to Environmental Justice Populations and/or advance the purpose of the Ordinance.

Revisions to draft language: HCP

Sections with revisions are marked in **red**. New sections are marked in **blue**.

Draft regulations

XIII. Hardship Compliance Plans

- a. **Types of HCP**
- b. **Circumstances and Characteristics**
- c. **Eligibility for HCP**
- d. **Types of relief for HCP**
- e. **Applications for HCP**
- f. **Consultant review**
- g. **Conditions of approval for HCP**
- h. **Process for HCP applications**
- i. **Modifications of approved HCO**
- j. **Periodic review of long-term HCP**
- k. **Termination of HCP**

Draft policy

11. **Hardship Compliance Plans**

Revisions to draft regulations language: HCP

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XIII. Hardship Compliance Plans

a. Types of HCP

- Clarified that a **short-term HCP may be extended once due to extenuating conditions for up to 12 months**. An Owner seeking relief for additional time must apply for a long-term HCP.

b. Circumstances and Characteristics

- Clarified that the “regulatory or contractual” category includes long-term energy contracts and long-term leases without reopeners **signed prior to October 2021**.
- Added **“low-income Owners of Buildings that provide affordable housing to low-income tenants”** as an example of circumstance in the “other” category.
- Clarified that the “other” category includes other circumstances and characteristics that are financial, regulatory, contractual, technical or operational.
- Minor revisions to improve syntax and clarity.

Revisions to draft regulations language: HCP

Sections with revisions are marked in **red**. New sections are marked in **blue**.

c. Eligibility for HCP

- Clarified that **“if a HCP is for a Building Portfolio, an eligible hardship must be shown to exist at the Building Portfolio level”**.
- Clarified that **“for a Building Portfolio, the requested HCP would apply to all Buildings in the Building Portfolio”**.
- Clarified that, if an Owner requests a waiver or reduction of fines as part of the HCP application process, the Review Board may consider the factors described in the enforcement regulations.
- Added that, to be eligible to apply for a HCP, **the Owner must not have previously been denied a HCP for the same application**. However, Owners may submit a new application if there are material changes to the unusual circumstances or characteristics of an Owner, Building, Building Portfolio, or the hardship they create.
- Minor revisions to improve syntax and clarity.

e. Applications for HCP

- Minor revisions to improve syntax and clarity.

Revisions to draft regulations language: HCP

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f. Consultant review

- Eliminated application fees, but maintained that the Review Board may request **reasonable payments from applicants to secure outside consultants** to advise in the review of applications for HCP.
- Clarified the factors that the Review Board may use to determine this **“reasonable payment”**.

g. Conditions of approval for HCP

- Minor revisions to improve syntax and clarity.

h. Process for HCP applications

- Revised language to allow **applications for short-term HCP to be submitted at least 3 months before the first year in which the HCP would be effective**.
 - Owners who experience unexpected or unforeseeable events or conditions outside their control after this deadline may apply for short-term HCP during a compliance year.
 - However, an Owner's failure to plan for compliance shall not constitute a cause to submit an application during a compliance year.

Revisions to draft regulations language: HCP

Sections with revisions are marked in **red**. New sections are marked in **blue**.

h. Process for HCP applications

- Revised language to allow **applications for long-term HCP to be submitted at least 9 months before the first year in which the HCP would be effective.**
- Clarified that the Review Board shall hold a public hearing **within 45 Days** of the Environment Department's finding of completeness for applications seeking relief that would begin in the next 2 years.
- Added that, prior to the hearing, Owners must provide proof that the **Owner notified tenants in writing about the hearing** (at least 7 Days before the hearing).
 - Owners shall follow a **template prepared by the Environment Department in multiple languages.**
- Clarified that Owners only need to record decisions that approve a HCP.
- Added that a **pending application for HCP, or an appeal of a Review Board decision regarding a HCP, shall not stay a Building Owner's compliance obligations.**

Revisions to draft regulations language: HCP

Sections with revisions are marked in **red**. New sections are marked in **blue**.

i. Modifications of approved HCP

- Clarified language regarding **modifications to Building Portfolios with an approved HCP**.
- Clarified that Owners must record any modification to a HCP.
- Clarified that Owners seeking to modify both a Building Portfolio that already has a HCP and the HCP may submit a **combined modification application to the Review Board**.

j. Periodic review of long-term HCP

- Added language about the **information** Owners will need to present as part of the periodic review of long-term HCP.
- Clarified that if the Review Board determines that there has been a **material change** in (a) the circumstances, characteristics or hardship that were the basis for the HCP, (b) relevant technology, (iii) applicable regulatory requirements, or (iv) other relevant factors, **the Review Board may amend the relief and conditions of a HCP**.

k. Termination of HCP

- Renumbering of references to regulations.

Revisions to draft policy language: HCP

Sections with revisions are marked in **red**. New sections are marked in **blue**.

11. Hardship Compliance Plans

- Added language specifying the information Owners will need to provide when **proposing special conditions** for the approval of a Hardship Compliance Plan.
- Deleted language regarding reasonable fees for outside consultants, as this was moved into regulations.
- Deleted language regarding periodic review of long-term HCP, as this was moved into regulations.
- Minor revisions to improve syntax and clarity.



Equitable Emissions Investment Fund

Draft language.

Main themes in public comments

Equitable Emissions Investment Fund (EEIF)

- Requesting to create a project evaluation form for funding decisions
- Suggesting emissions reductions should be prioritized in funding decisions
- Clarifying language for certain project evaluation criteria
- Suggesting additional project evaluation criteria related to energy justice
- Suggesting potential conditions for expenditure
- Requesting transparent tracking, monitoring, and evaluation of the Fund
- General clarifying questions regarding the meaning or interpretation of draft language

Process for funding decisions



Per the Ordinance, the EEIF will only fund projects that produce direct emissions reductions in buildings located in Boston



** Environment Department filters applications that are incomplete or do not meet eligibility criteria (e.g. producing direct emissions reductions in local buildings)*

Revisions to draft language: EEIF

Sections with revisions are marked in *red*.

Draft regulations

XIII. Hardship Compliance Plans

- a. Eligibility for funding
- b. Application process**
- c. Funding decisions**
- d. Conditions for expenditure**

Revisions to draft language: EEIF

Sections with revisions are marked in *red*.

XVII. Equitable Emissions Investment Fund

b. Application process

- Added that application must include, if applicable, a **description of any previous funding received by the applicant from the Fund and/or past applications to the Fund.**

c. Funding decisions

- Clarified description of “**benefits to affordable housing and tenant protections**”.
- Clarified name and description of “**benefits to indoor air quality and healthy environments for building occupants**”.
- Added new evaluation criteria: “**Energy justice benefits.** The expected timeline and scale of benefits related to reducing energy bills for building occupants and/or contributing to community ownership or control over energy infrastructure.”
- Added that the Review Board shall develop, and may periodically update, **a project review form.** The Review Board will present said project review form for comment at **a public hearing** and shall use the project review form to **inform funding decisions.**

Revisions to draft language: EEIF

Sections with revisions are marked in *red*.

c. Funding decisions

- Clarified that, if there are **insufficient eligible proposals for 3 or more consecutive application cycles or 3 years**, the Environment Department shall conduct **community outreach and education about the Fund**.

d. Conditions for expenditure

- Added **three standard conditions**:
 - For long-term projects or projects that include distinct phases or deliverables, **a schedule for allocating awarded funds**.
 - **Reporting** by fund recipients to the Review Board **related to special conditions**.
 - If the funding recipient (i) fails to spend the funding and/or (ii) fails to comply with the terms and conditions of expenditure, the Review Board may consider **limiting their access to new funding applications**.
 - Minor revisions to improve syntax and clarity.

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.

Board Q&A

Board Members may discuss and ask staff questions.

A nighttime photograph of a city street, likely in New Orleans, featuring a streetcar and people walking. The scene is illuminated by streetlights and building lights, with a dark blue overlay. The text 'Fines & Enforcement' is prominently displayed in white, bold font across the middle of the image.

Fines & Enforcement

Draft language.

Main themes in public comments

Equitable Emissions Investment Fund

- Requesting clarification of fines applying to Building Portfolios due to failure to comply with the Emissions standards
- Requesting that Environment Department issues multiple notices before initiating the enforcement process
- General clarifying questions regarding the enforcement process and appeal process

Draft language: fines and enforcement

New sections are marked in *blue*.

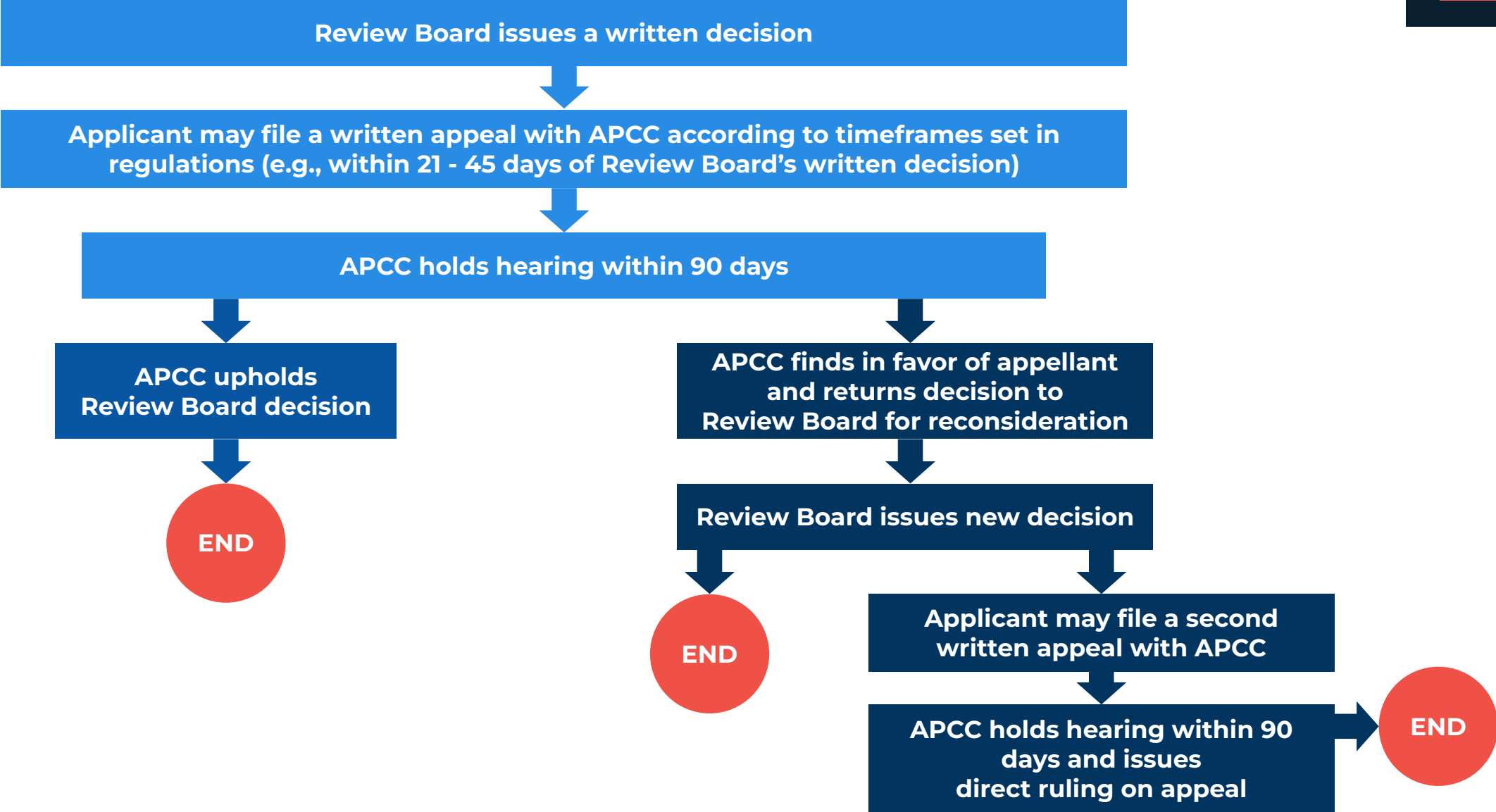
Draft regulations

XVIII. Appeals, Enforcement, and Penalties

- a. Appeals of Review Board decisions
- b. Notice and appeals of violations
- c. Penalties
- d. Notice and appeals of penalties and fines for failure to comply
- e. Notice of appeal hearings

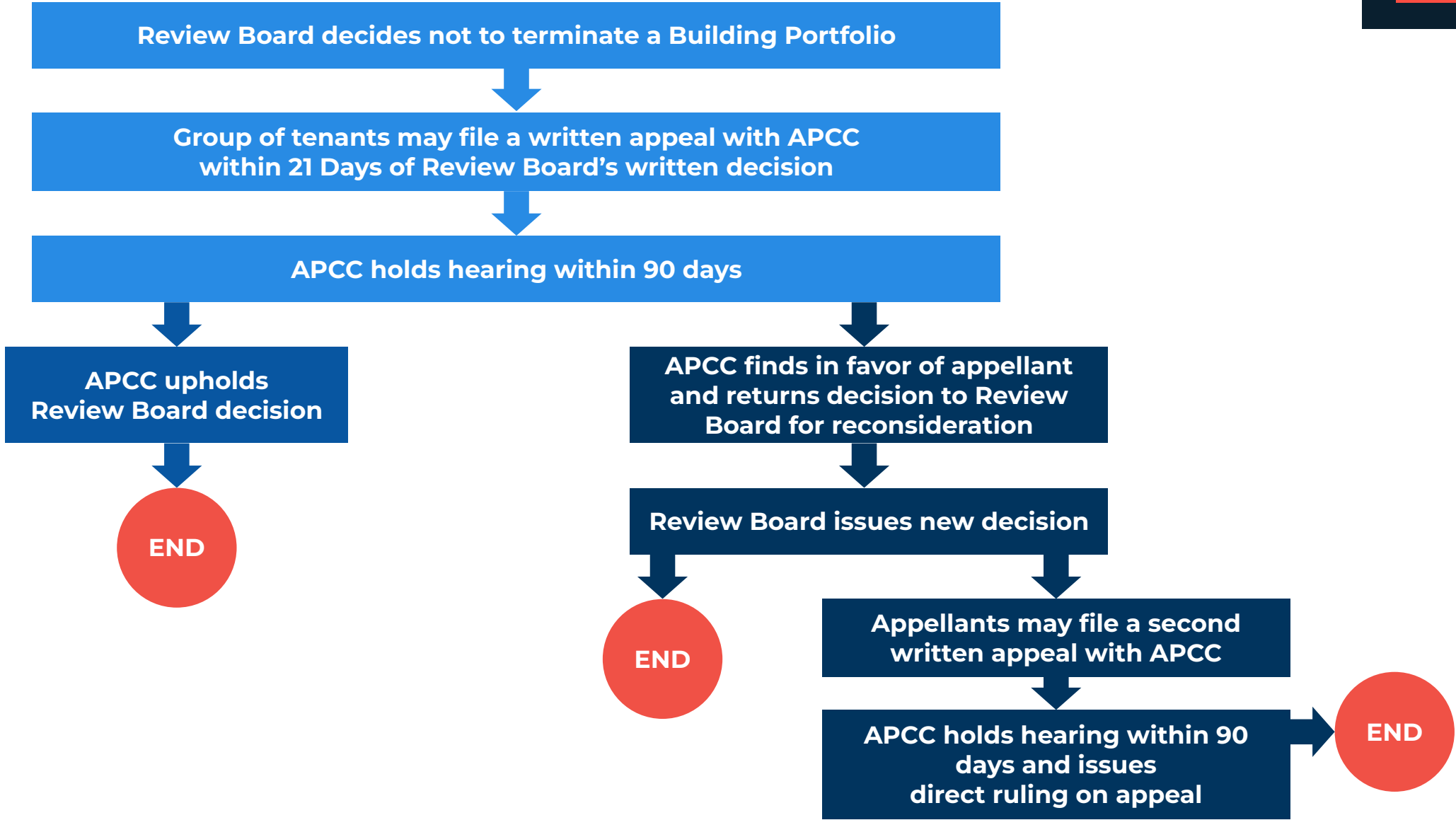


a. Appeals for Review Board decisions on flexibility mechanisms

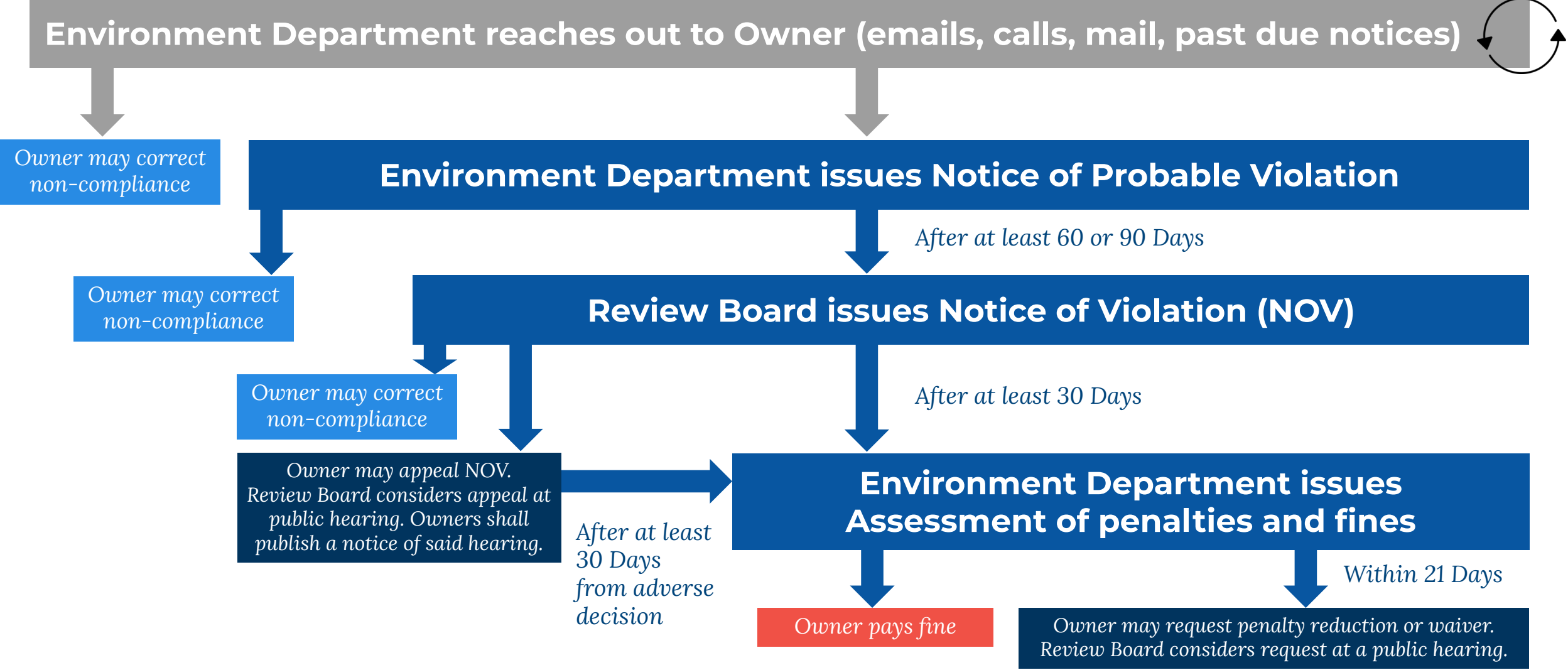




a. Appeals for Review Board decisions on Building Portfolio terminations requested by tenants



b., d., and e. Enforcement process



Fines for Building Portfolios

Draft language

- **Failure to comply with reporting and verification requirements**
 - Fines shall apply to each Building for which the requirements were not met
- **Failure to accurately report information**
 - Fines shall apply to each Building for which the requirements were not met
- **Failure to comply with Emissions standards**
 - Building Portfolios comply with a single, portfolio-level Emissions standard. Therefore:
 - Fines apply to each Building in the Building Portfolio, except for any Building that is required to, and does meet, a more stringent or net-zero Emissions standard prior to 2050 set through zoning requirements.



Miscellaneous Clarifying Regulations and Policies

Draft language.

Miscellaneous clarifying regulations

Draft language

- **To add in Section VI. Special Conditions:**
 - Moved process to determine if a Building is vacant from Section 4.A of the Policies to Regulations.
 - Clarified that Buildings that are determined by the Environment Department to be **fully vacant for the entire compliance year are not subject to the Emissions standard** for that compliance year.
 - Owners must still follow applicable **reporting requirements**.
 - When a Building no longer meets the definition of a vacant Building or receives a Certificate of Occupancy, compliance obligations with the Emissions standards shall resume.
 - To maintain the status of a vacant Building, Owners must submit documentation in writing to the Environment Department **annually**.
- **To add in Section XI. Building Portfolios:**
 - If a Building Portfolio includes a vacant Building or an existing Building in a Building Portfolio becomes vacant, **the vacant building shall not be included in determining the Emissions standard or used to achieve compliance with the Building Portfolio's Emissions standard**.
 - When a Building no longer meets the conditions of a vacant Building or receives a Certificate of Occupancy, it shall be included in the Emissions standard compliance obligations of the Building Portfolio.

Miscellaneous clarifying regulations

Draft language

- **To clarify in Section XI.b.iv and XI.c.i., and XI.c.ii. Building Portfolios:**
 - “(a) on-site Campus District Energy Systems ~~that use non-renewable or CO2e emitting fuels, or~~ on-site Combined Heat and Power plants ~~that use non-renewable or CO2e emitting fuels,~~ industrial or manufacturing Buildings, or energy/power station Buildings located in Environmental Justice Populations, (b) a combination of Residential Buildings located in both Environmental Justice Populations and non Environmental Justice Populations, or (c) a combination of Deed-Restricted Residential Buildings and other Residential Buildings”
- **To add in Section IV.c. Building Use Classifications:**
 - If ENERGY STAR Portfolio Manager updates the property types listed in Appendix A, **the Environment Department may update Appendix A** to reflect those changes.
- **To add in in Section IX a. Emissions Standards:**
 - When calculating square footage to determine compliance with Section 7-2.2(i), **third-party verified Gross Floor Area shall be used.** When third-party verified Gross Floor Area is not available, square footage as it appears in the records of the Boston Assessing Department shall be used.

Miscellaneous clarifying policies

Draft language

- **To clarify in Section 9.A.a. and 9.B.a.iii.2. Building Portfolios:**
 - “(a) on-site Campus District Energy Systems ~~that use non-renewable or CO2e emitting fuels,~~ or on-site Combined Heat and Power plants ~~that use non-renewable or CO2e emitting fuels,~~ industrial or manufacturing Buildings, or energy/power station Buildings located in Environmental Justice Populations, (b) a combination of Residential Buildings located in both Environmental Justice Populations and non Environmental Justice Populations, or (c) a combination of Deed-Restricted Residential Buildings and other Residential Buildings”
- **To add in Section 12. Review Board**
 - The Review Board shall hold one meeting per year dedicated to hear concerns raised by tenants of Residential Buildings covered by Ordinance and provide information directed towards tenants of said Buildings. Such information may include a report of the Hardship Compliance Plans granted to Residential Buildings and their conditions of approval and a report of any projects funded through the Equitable Emissions Investment Fund that are anticipated to provide benefits to tenants of Residential Buildings.
- **Moved process to determine if a Building is vacant from Section 4.A of the Policies to Regulations**

Next Steps



Supporting actions

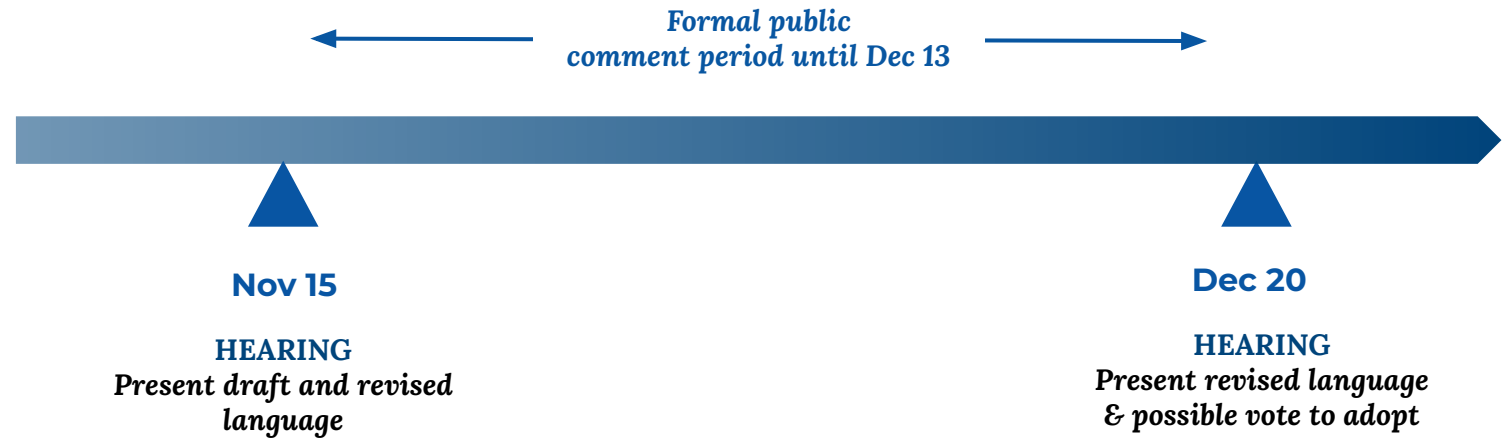
- Finalizing a public **emissions calculator** to help building owners understand their estimated emissions performance and targets
- Developing **explanatory materials** targeted towards tenants, condo owners, and other groups
- Updating **guidance documents** to improve clarity and reflect regulations
- Developing information on **how the City of Boston is complying** with BERDO
- Conducting **outreach to building owners with a 2025 emissions deadlines** to provide information about compliance strategies and incentive programs.
 - Owners are invited to reach out to retrofit@boston.gov to set up meetings to discuss their emissions reduction strategies.
- Developing grant programs to **support owners in making decarbonization plans**

Next steps follow APCC hearing

- The Air Pollution Control Commission voted to open a comment period on draft language for **Hardship Compliance Plans**, the **Equitable Emissions Investment Fund**, and **Fines and Enforcement**, and **miscellaneous clarifications**.
 - The public comment period opened on **Thursday, November 17** and will close on **Wednesday, December 13 at 5:00 p.m.**
- Based on feedback received from the public, the BERDO team will revise the draft regulations and policies and present them to the APCC at a special BERDO hearing on December 20.

Tentative timeline subject to change

*Proposed comment schedule
for revised regulations*



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Board Q&A

Board Members may discuss and ask staff questions.

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Public Q&A

The public 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 light blue and create a complex, geometric pattern.

Additional Administrative Updates

Staff presents administrative updates

Proposed 2024 Meeting Schedule

Second and fourth Mondays



<u>MEETING DATES</u>	
January 8	July 8
January 22	July 22
February 12	August 12
February 26	August 26
March 11	September 9
March 25	September 23
April 8	October 14*
April 22	October 28
May 13	November 11*
May 27*	November 25
June 10	December 9
June 24	December 23*

Adjourn

Thank you for your participation!

