

City of Boston BERDO Review Board
Public Meeting Minutes
Zoom Virtual Meeting
October 23, 2023 at 4:30 pm
[View recording here](#)

Board Members in Attendance: Rashida Boyd, Stephen Ellis, Lovette Jacobs, Jack Nelson, Matt O'Malley, Kai Palmer-Dunning

Board Members not in Attendance: Councilor Kendra Lara, Gail Latimore, Lee Matsueda

Staff Present: Diana Vasquez, Claudia Diezmartinez, Aladdine Joroff, Hannah Payne

Others: Approximately 7 members of the public attended this meeting.

Motion to Nominate Acting Chair

4:36 pm: Environment staff, D. Vasquez, led a vote for Acting Chair. Board Member S. Ellis made a motion to nominate Board Member K. Palmer-Dunning to serve as Acting Chair. Board Member L. Jacobs seconded the motion. All Board Members in attendance (6) were in favor. The motion carried at 4:36 pm.

Call Meeting to Order

4:36 pm: A meeting of the Building Emissions Reduction and Disclosure Ordinance, hereafter referred to as (BERDO), within the Air Pollution Control Commission, was called to order on October 23, 2023 at 4:36 pm. This meeting was held virtually.

Roll Call

4:38 pm: The following BERDO Review Board members were in attendance: Acting Chair Kai Palmer-Dunning, Rashida Boyd, Stephen Ellis, Lovette Jacobs, Jack Nelson, Matt O'Malley.

The following Environment Department staff were in attendance: Diana Vasquez, Claudia Diezmartinez, Aladdine Joroff, Hannah Payne.

Others: Approximately 7 members of the public attended this meeting.

First Agenda Item: Approval of Meeting Minutes

4:39 pm: The Review Board voted on approving [October 2 Meeting Minutes](#). Board Member R. Boyd made a motion to approve the meeting minutes. Board Member L. Jacobs seconded the motion. Five Board Members in attendance (5) voted in favor and one (1)

Board Member abstained. The motion carried at 4:41 pm.

Second Agenda Item: Update and Discussion on BERDO Phase 3 Regulations Development.

4:41 pm: D. Vasquez reviewed the Phase 3 topics that would be discussed: Hardship Compliance Plans and Fines & Enforcement. D. Vasquez also reviewed that the comment period on regulations for Hardship Compliance Plans would close on Friday, October 20 at 12 pm and that the public input period for draft standard application forms for Building Portfolios and Individual Compliance Schedules closed on Monday, October 16 at 12 pm. The BERDO team received one comment.

C. Diezmartinez presented [policies for Hardship Compliance Plans](#). Draft policies described the application process for a Hardship Compliance Plan, periodic reviews of long-term plans, [the draft application form](#), and next steps. Next steps include a public comment period for draft policies that closes on Thursday, November 9 at 12 pm. Based on this feedback received, the BERDO team will present revised regulations and policies to the APCC on November 15 and the APCC, at its discretion, may vote to open another comment period or adopt.

4:51 pm: Board Q&A Session

- S. Ellis asked what kind of guidance the Environment Department is preparing for Building Owners to help them understand compliance pathways that are available to them and ultimately decide the best pathways to pursue.
 - A. Joroff mentioned the City's [Retrofit Resource Hub](#) as an initial step. She also mentioned Owners are welcome to speak with staff, particularly before they get to the point of applying for a Hardship Compliance Plan. The staff is interested in working with Owners.
- S. Ellis clarified he wants to avoid a situation where someone applies for a Hardship and gets denied and does not receive guidance on how to proceed for alternative flexibility measures.
 - A. Joroff mentioned that she believes the goal is to speak with Owners who are filling out applications so they understand their options. She also mentioned the team is working on flow charts and other guidance documents.
- J. Nelson asked if an Owner claims financial hardship, would it be required to hire a third-party, such as a certified accountant, as part of the application process.

- A. Joroff replied that the team welcomes feedback on this and commented that right now the team doesn't think it necessarily requires a hired professional. Financial documents could be submitted by an in-house person who deals directly with financial information.
- J. Nelson asked if someone on staff provided financial information, would it need to be third-party verified.
 - A. Joroff commented that is something for the team to consider. It may depend on the amount of relief requested or it could be left to the Review Board's discretion. Feedback on this topic is welcomed.
- M. O'Malley asked a clarifying question regarding what is considered a 'reasonable fee to secure an outside consultant'.
 - A. Joroff shared that the team has received public comment on this as well asking if there are parameters to this. The team is taking that into consideration and welcome feedback on this topic.
- M. O'Malley inquired if there are any metrics that could indicate how many Owners may be applying to a Hardship Compliance Plan.
 - H. Payne shared that currently there are no clear metrics for indicating how many Owners are likely going to apply for Hardship Compliance Plans, but the 2023 reported data will be helpful in identifying which buildings are going to need to take robust action to meet 2025 Emissions limits. The team is currently analyzing the data to get a sense of which buildings will need assistance and could potentially be good candidates for Hardship.
- K. Palmer-Dunning asked a clarifying question regarding short-term Hardship Compliance Plan length, given that they are meant to last 1 to 3 years.
 - A. Joroff clarified that the current proposal states that if an Owner was approved for a short-term plan, but if at the end of their plan, they still faced a hardship, they would need to reapply. They would not be able to extend their short-term plan indefinitely.

5:02 pm: Acting Chair K. Palmer-Dunning opened a public comment period.

5:03 pm: Acting Chair K. Palmer-Dunning closed the public comment period.

5:03 pm: C. Diezmartinez presented [preliminary proposals for Fines & Enforcement](#). C. Diezmartinez reviewed what is already included in the Ordinance and what the regulations will clarify. Preliminary proposals for Fines & Enforcement described the process for appealing Review Board decisions, noticing of violations, noticing and appealing penalties, noticing of hearings, and reconciling reported information. C. Diezmartinez ended with presenting the next steps.

5:13 pm: Board Q&A Session

- S. Ellis wanted clarification on what should happen after the APCC decides that a decision that has been appealed should be looked at by the Review Board again. What happens if the Review Board does not change its decision.
 - A. Joroff agrees that this requires a lot of balancing. This section applies to Review Board decisions regarding application decisions on Building Portfolios, Individual Compliance Schedules, and Hardship Compliance Plans - not related to decisions on violations or fines. The Review Board is best equipped to issue special conditions and that is why the BERDO team believed it was wise for it to come back to the Board. She also added in order to prevent a continuous loop, if a decision were to get appealed a second time, the APCC would then make a final decision.
- J. Nelson asked how the fines were decided. He was curious why fines were based on a per building basis versus a square footage basis. J. Nelson provided examples where a single building may have a higher square footage than a portfolio of three smaller buildings. In this scenario, the portfolio would pay a much higher fine.
 - A. Joroff shares that she was not with the team when the decision was made, so she was not familiar with the thinking behind this. Because this is what is included in the Ordinance, the team has to work with these parameters. She also mentioned that the Review Board has discretion to reduce or waive fines.
- J. Nelson was curious what analysis had been done to compare fines and penalties to the cost of paying an Alternative Compliance Payment (ACP).
 - A. Joroff responded that it will depend on how far beyond an Emissions limit a building is. Because ACPs are a way to reduce Emissions so a building can be in compliance and fines are calculated on a per day basis. Determining which route will be more expensive will depend on how far beyond an Emissions limit a building is. There is potential that penalties will be less expensive than paying ACPs.

- H. Payne added that there was an analysis conducted on ACPs so that they would be more expensive than investing in one's building to reduce Emissions. A report is available upon request.
- M. O'Malley asked if every condo building had a condo association.
 - A. Joroff shared this is a piece the BERDO team is hoping to receive feedback on and agrees it's a good point for the BERDO team to think through a backup should a condo not have a condo association.
- M. O'Malley wanted clarification if there was thinking behind how many tenants would be needed to request an appeal on a decision the Review Board made regarding the tenants' request to terminate a Building Portfolio.
 - A. Joroff responded that the idea is that it would be the same group that originally filed the request to terminate a Building Portfolio. The greater of 20% or 5 tenants is needed to petition a proceeding to terminate a portfolio.
- M. O'Malley wondered if it would be worth Owners making a good faith effort to notify their tenants when there is a public appeal, i.e. flyering lobbies, etc.
 - A. Joroff replied that the BERDO team will take that comment into consideration and think through how that can be integrated into the policies.
- K. Palmer-Dunning asked what factors should the Review Board take into consideration when assessing a fine for inaccurately reported data.
 - A. Joroff replied that the BERDO team would be receptive to feedback on this and believed that some factors the Board could take into consideration include square footage or size, whether an Owner has been in communication with the City and has shown a good faith effort, among others.

5:25 pm: Acting Chair K. Palmer-Dunning opened a public comment period.

5:26 pm: Acting Chair K. Palmer-Dunning closed the public comment period.

- S. Ellis suggested creating a visual or flow chart of the differing timelines. S. Ellis also asked what is the level of discretion the Review Board has over not issuing fines for Owners who have not reported yet due to a number of circumstances.
 - H. Payne agreed there are still a number of Owners who have not reported or engaged with the BERDO team. The BERDO team typically initiates

contact using addresses from the City's Assessing Department and is continually seeking alternative methods for reaching all Building Owners who are subject to BERDO. She also mentioned that the City has been very receptive to working with people who have reached out and shown a good faith effort to be in compliance. From the City's perspective, the number one priority is getting Owners through the process.

- D. Vasquez added that she has started the foundation for creating flow charts for different application related timelines.
- S. Ellis asked if the BERDO team had utilized the City's Neighborhood Liaisons.
 - H. Payne shared that the BERDO team had worked with the Neighborhood Liaisons in the past and believes they are a good option for trying to reach more Owners.
- S. Ellis recommended working with Boston Neighborhood Liaisons as they may have different connections in differing neighborhoods. S. Ellis also sought clarity on how fines would apply to a Building Portfolio.
 - A. Joroff explained that each building would be subject to the fine separately. For example, as currently drafted, if an Owner has not reported, then each building in the portfolio has not reported. If an Owner has not met an Emissions standard, then each building has not met the Emissions standard.
- S. Ellis asked a clarifying question by providing an example in which a portfolio of ten buildings, but only two buildings were inaccurately reported.
 - A. Joroff confirmed that as currently drafted, all buildings in the portfolio would be subject to a fine, but feedback is welcome if this should be changed.
- S. Ellis recommended considering buildings on a district energy system that face a submetering issue. It may be possible that one building may inaccurately be allocated with more energy than another. S. Ellis does not agree that an entire portfolio should be subject to fines in this kind of scenario.
 - H. Payne added that she believed the City would notify an Owner and provide ample opportunity for an Owner to correct any inaccuracies in a portfolio. She believed it would be unlikely, unless an Owner was wilfully ignoring staff request to connect, that an Owner would face a penalty for inaccurately reported data without ample opportunity to rectify the data.

- S. Ellis agreed and expressed concern over the potential to heavily fine Owners who are not receiving communication or not aware of BERDO.
 - K. Palmer-Dunning asked where the fines for noncompliance would go and what they would be used for.
 - A. Joroff shared that that's an issue the BERDO team is still working on. The Ordinance states that fines and enforcement should go to the Equitable Emissions Investment Fund to the extent that is allowable. That is the first goal, but there are some collection mechanisms, under state law, that the BERDO team is still investigating. Most likely the money would either go to the Equitable Emissions Investment Fund or the City's General Fund.
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Third Agenda Item: Administrative Updates

5:36 pm: D. Vasquez shared that 2023 Reported Data Disclosure (2022 data reported in 2023) is now publicly [available online at Analyze Boston](#). D. Vasquez reminded board members that the following meeting is scheduled for November 6, 2023.

Meeting Adjournment

5:37 pm: Board Member M. O'Malley made a motion to adjourn the meeting. Board Member R. Boyd seconded. All (6) were in favor and the motion carried at 5:38 pm.