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BUILDING EMISSIONS REDUCTION AND DISCLOSURE ORDINANCE REGULATIONS



BOSTON AIR POLLUTION CONTROL COMMISSION BUILDING EMISSIONS REDUCTION AND DISCLOSURE ORDINANCE CITY OF BOSTON CODE, ORDINANCES, CHAPTER VII-II.II

Approved by vote of the Boston Air Pollution Control Commission, 12/20/2023

CONTENTS

- I. Introduction
 - II. References
 - III. Definitions
 - IV. Reporting Process
 - V. Ownership Changes and Designations
 - VI. Special Conditions
 - VII. Third-Party Data Verification
 - VIII. Emissions Factors
 - IX. Emissions Standards
 - X. Additional Compliance Mechanisms
 - XI. Building Portfolios
 - XII. Individual Compliance Schedules
 - XIII. Hardship Compliance Plans
 - XIV. Preservation of Records
 - XV. Disclosure of Records and Information
 - XVI. Review Board
 - XVII. Equitable Emissions Investment Fund
 - XVIII. Enforcement and Penalties
- Appendix A Building Use Classifications

I. **Introduction.** The following Regulations are promulgated by the City of Boston Air Pollution Control Commission (“the Commission”) pursuant to the authority granted to it under Chapter VII, Section 7-2.2 of the City of Boston Code.

II. **References.** References to Section 7-2.2 are to Chapter VII, Section 7-2.2 of the City of Boston Code.

III. **Definitions.** Terms defined in Section 7-2.2 have the same meanings for purposes of these Regulations and those definitions are hereby incorporated by reference. Terms related to data reporting that are not otherwise defined shall have the same meanings as in the ENERGY STAR Portfolio Manager. For the purposes of this section, the following additional terms are defined as follows:

Campus District Energy System means a District Energy System where the central generating plant, piped infrastructure, and all connected buildings that receive one or more of the generated products share a common Owner.

Deed-Restricted Residential Building means any Residential Building that has and maintains a recorded deed restriction or covenant that restricts the occupancy of fifty (50) percent or more of the units to households earning incomes below eighty (80) percent of the Area Median Income, as defined by the U.S. Department of Housing and Urban Development. These recorded deed restrictions may be connected to funding provided by sources such as the U.S. Department of Housing and Urban Development, the Massachusetts Department of Housing and Community Development, or the City of Boston, including the federal Low Income Housing Tax Credit program.

District Energy System means a system providing energy to more than one building, or fixed energy-consuming use, from one or more thermal-energy production facilities through pipes, or other means, to provide space heating, space conditioning, hot water, steam, chilled water, compression, electricity, process energy, or other end uses for that energy.

Emissions Intensity means Emissions divided by the gross floor area for which those Emissions are applicable.

Energy Type means any Energy source used in a building, including, but not limited to, electricity, natural gas, fuel oil, propane, steam, and hot and chilled water, and any other Energy Types that the Commission may designate.

Energy Use Intensity means Energy consumption divided by the gross floor area for which that consumption is applicable.

Owner, as defined in Section 7-2.2, means a Building’s Owner of record, provided that the "Owner" may be deemed to include (i) multiple Owners in common ownership; (ii) the association or organization of unit Owners responsible for overall management in the case of a condominium; and (iii) the board of directors in the case of a cooperative apartment corporation. In the case of a Building subject to a lease that assigns maintenance, regulatory compliance and/or capital improvement costs to Tenants with a term of at least

thirty (30) years, inclusive of all renewal options, the Owner may designate the lessee as “Owner” for purposes of compliance with this Subsection; such designation must be provided in writing to the Commission as required by the Regulations. An Owner may designate an agent to act on its behalf, including reporting as required by this Subsection; provided, however, that such designation (i) must be provided in writing to the Commission, and (ii) does not relieve the Owner of any compliance obligation under this Subsection.

Space Type, also referred to as *Building Use*, means the primary activity for which a given building or part of a building is utilized.

Sponsor means a nonprofit organization that: (i) is exempt from income taxation pursuant to section 501(c)(3) of the Internal Revenue Code; (ii) has material control over the operations of a Building; and (iii) either: (1) is a certified Community Development Corporation as defined in G.L. chapter 40H; (2) is a certified Community Housing Development Organization pursuant to 24 CFR section 92.2; or (3) has been determined by the Massachusetts Department of Housing and Community Development to have a history of successful development of affordable housing projects in the commonwealth.

Tenant, as defined in Section 7-2.2, means any tenant, tenant-stockholder of a cooperative apartment corporation, and condominium unit Owner.

Verification Year, as defined in Section 7-2.2, means any year where an Owner must report third-party verified reporting data. Verification Years will be 2022, 2026, and every five years thereafter.

Whole-Building Data means complete Energy consumption data for all Energy Types used in a building and complete water data for an entire building, inclusive of Tenant spaces and uses.

IV. **Reporting Process.** Owners must annually report data through the ENERGY STAR Portfolio Manager and/or other methods as outlined in guidance documents issued by the Commission. Data should be reported in accordance with the requirements in Section 7-2.2, the following provisions and any other methods detailed in guidance documents issued by the Commission.

a. **Energy and Water Use.**

- (i) Owners shall report Whole-Building Data for all Energy and water uses. Owners that are unable to obtain Whole-Building Data shall follow the procedures in section IV.e. of these Regulations.
- (ii) Owners that procure Energy through the City of Boston’s Community Choice Electricity (CCE) program, or Owners whose Tenants procure Energy through the CCE program, may provide evidence of enrollment in the CCE program when reporting a Building’s Energy use in accordance with any guidance documents issued by the Commission.

- (iii) Owners that authorize an Energy or water utility or other third party to report Building-specific data on their behalf shall remain responsible for verifying the accuracy of such data. Any discrepancies between data provided by a utility or other third-party and reported data must be indicated in the “Property Notes” section of Portfolio Manager. The direct upload of such data by a utility or other third party does not relieve an Owner of the duty to report other required data.

b. Calculation of Gross Floor Area.

- (i) For the purpose of determining if a building meets the definition of Building in Section 7-2.2, Gross Floor Area or Area must be determined using records from the Boston Assessing Department. Assessing Department records may be disputed in accordance with section VI.d of these Regulations. For any other purpose, Owners may either:
 - (a) Use the Gross Floor Area listed in the Boston Assessing Department; or
 - (b) Calculate Gross Floor Area in accordance with the following provisions: (i) Gross Floor Area means the total number of square feet measured between the principal exterior surfaces of the enclosing fixed walls of the building, including Tenant areas, lobbies, common areas, restrooms, stairways, elevator shafts, mechanical equipment rooms, basement space, and storage rooms; (ii) Gross Floor Area excludes all surface parking areas, unroofed courtyards, outdoor balconies, exterior loading docks, plenums between floors, and unroofed light wells; (iii) for atria, Gross Floor Area includes only the area of atrium floors; and (iv) for Tenant spaces or interior Building Use(s), interior demising walls should be measured to the centerline of the wall. Owners that calculate Gross Floor Area in accordance with this provision must preserve the supporting documentation pursuant to section XIV.

c. Building Use Classifications. For purposes of Section 7-2.2, the Building Use classifications in Appendix A are assigned to ENERGY STAR Portfolio Manager property types. Owners are encouraged to report all Building Uses and associated square footage in Portfolio Manager, including Building Uses that occupy less than ten percent (10%) of the Building’s square footage.

- (i) If ENERGY STAR Portfolio Manager updates the property types listed in Appendix A, the Environment Department may update Appendix A to reflect those changes.

d. Vacant Space. Owners must account for any vacant or unoccupied space in Portfolio Manager in accordance with Portfolio Manager instructions or with guidance documents issued by the Commission.

e. **Buildings without Whole-Building Data.** If an Owner is not able to obtain Whole-Building Data for any Energy Type or water use, then the Owner must report such Energy Type use or water use as provided in this Subsection. In the event that an Owner does not have Whole-Building Data because Tenant(s) failed to respond to data requests and utilities have not provided Whole-Building Data within the time period specified in Section 7-2.2(o), the Owner shall also comply with the requirements in section IV.i.

- (i) **Common Area Energy and Water Use.** The Owner shall submit Energy and water use data for all common areas and all centrally metered areas.
- (ii) **Calculating Energy Use in Tenant Spaces.** For each Energy Type used in separately metered Tenant space, the Owner must report known Energy usage data and then use one of the following methods to determine Energy usage for the areas in which it is unknown, for each month.
 - (a) **With Significant Partial Data for a Building Use.** If an Owner has actual Energy use data for at least 50 percent of a given Building Use, the Owner shall extrapolate the Energy data for the remainder of Gross Floor Area with the same Building Use. This extrapolation shall be applied only to those areas for which Energy use is unknown and shall be calculated by (i) multiplying the average Energy Use Intensity of the floor areas for which Energy Use Intensity is known by the total floor area for which the Energy Use Intensity is not known, and (ii) multiplying the result from step (i) by one hundred and fifty percent (150%).
 - (b) **Without Significant Partial Data for a Building Use.** If an Owner does not have actual Energy use data for at least 50 percent of any particular Building Use, the Owner shall utilize the default values set by the Commission, applied only to those areas for which Energy use is unknown, and following the methodology included in policies and procedures as adopted by the Commission.
- (iii) **Noting When Whole-Building Use Data Are Not Available.** In accordance with guidance documents issued by the Commission, Owners shall indicate when Whole-Building Data for Energy or water use is not available and where extrapolated data is used.

g. **Contextual Information.** Owners may supply contextual information regarding their required data, including hyperlinks, in the “Property Notes” section of Portfolio Manager or via any supplemental reporting methods detailed by the Commission in guidance documents. Such contextual information may be included

in public disclosures. Contextual information shall conform to guidance that the Commission may issue regarding acceptable length and formats.

h. **New Information.** If, after having submitted a report to the Commission, the Owner of a Building changes or an Owner receives or becomes aware of new or updated information that would result in a change to whole building Emissions, Energy or water use, or Emissions or Energy Intensity of two percent (2%) or more over the period of one (1) calendar year, the Owner shall, within thirty (30) Days of the change or of receiving the new information, submit the additional or corrected data to the Commission in accordance with guidance documents issued by the Commission, and notify the Commission accordingly. Owners may submit other updates at any time. The Commission will include such updates in its annual disclosure of data.

i. **Obligation to Request and Report Information from Building Tenants.**

- (i) **Delegating Reporting Duties to a Single Tenant.** If an Owner has leased a Building to a single Tenant and that Tenant has assumed management, maintenance, regulatory compliance and/or capital improvement costs of the entire building, the Owner may, with the consent of the Tenant, delegate all responsibility regarding reporting under 7-2.2 to that Tenant. The Owner shall report such delegation in accordance with guidance documents issued by the Commission.
- (ii) **Tenant Non-Response.** Owners shall report in writing to the Commission if any non-residential Tenant fails to respond to data requests from the Owner within the time period specified in Section 7-2.2(o), accompanied by documentation of the Owner's request. Owners seeking data from Tenants shall document reasonable steps to collect such data, including making the written request using the most up-to-date contact information for the Tenant at least twice.

j. **Requesting Alternative Reporting Dates.** A request for an alternative reporting date to that otherwise required by Section 7-2.2(e)(ii) must explain the extenuating circumstances that make an Owner unable to complete the report or third-party data verification by the deadline and must be submitted prior to the applicable deadline. Such requests must comply with any procedures created by the Review Board or guidance documents issued by the Commission. The Review Board may grant a request for an alternative reporting date and/or third-party verification deadline for a period not to exceed six months. In 2022, the Commission may grant a request for an alternative third-party verification deadline beyond the one-time, six-month extension allowed by the Ordinance.

V. **Ownership Changes and Designations**

a. **Change of Ownership.**

- (i) When a Building changes ownership, the previous Owner shall provide to the new Owner any required data that has been collected and is necessary for completing the next required report under Section 7-2.2.
- (ii) If a Building changes ownership, any outstanding compliance obligations and liabilities shall become the responsibility of the new Building Owner.
- (iii) New Building Owners shall provide notice of change of ownership to the Environment Department within thirty (30) of the change. Notice shall include (a) a copy of the instrument evidencing the transfer of the rights and obligations to the successor-Owner and assumption by the successor-Owner of said rights and obligations and (b) the name, address and contact information of the new Owner and any designated agent.

b. **Designation of Tenant as Owner.**

- (i) A Building Owner seeking to designate the lessee of a Building as “Owner” for purposes of Compliance shall submit to the Commission or its designee a letter of agreed designation as “Owner”, including a commencement date and term length, signed by both the Building Owner and the lessee, following any guidance set forth by the Environment Department.
- (ii) Once a notice of designation is submitted, the lessee shall be responsible for compliance with the Ordinance.
- (iii) If the lease is terminated or the Owner and lessee otherwise agree to terminate the designation of Tenant as “Owner”, the responsibility for Compliance and any outstanding compliance obligations will revert back to the Building Owner. The Owner and lessee are jointly and separately responsible for notifying the Environment Department within fourteen (14) days of any change in the designation of a Tenant as Owner.

VI. **Special Conditions**

- a. **Multiple Buildings on a Single Tax Lot or on Multiple Tax Lots that Share Energy or Water Systems.** If there are multiple buildings on a single tax lot or on multiple tax lots that share Energy or water systems, the Owner(s) shall report data required by Section 7-2.2 as follows:

- (i) For any building that has Energy or water use that is separately metered or sub-metered, data must be reported at the building level.
- (ii) For buildings that are classified as the same Building Use and whose Energy or water use is not separately metered or sub-metered, the total shared Energy or water use should be apportioned by the Gross Floor Area of each building and reported for each such building. The apportioned data shall be marked as an “Estimation” in Portfolio Manager.
- (iii) Buildings that are not classified as the same Building Use and whose Energy or water use is not separately metered or sub-metered, should be reported as a campus as defined in Portfolio Manager.
- (iv) The Commission may approve an alternative apportionment process proposed by the Owner.

b. **Newly Constructed Buildings.** The first reporting requirement for newly-constructed Buildings shall be the first full calendar year following the issuance of a Temporary Certificate of Occupancy for the Building or Certificate of Occupancy for the Building, whichever is earlier.

c. **Extenuating circumstances.** Owners with extenuating circumstances may file a request with the Environment Department to report information required by Section 7-2.2 on a basis other than the building level. Such requests shall be made in accordance with any guidance issued by the Environment Department and the Environment Department must issue decisions in writing. The Environment Department shall provide summaries of such requests to the Commission in the first quarter of each calendar year or upon request from the Commission. Such extenuating circumstances may include, but are not necessarily limited to:

- (i) Parcels with multiple Buildings that (a) have three (3) or fewer residential tenants, (b) have no Energy metering at the building level, or (c) have no building level Gross Floor Area data.
- (ii) Buildings that (a) share building walls, (b) are located on the same parcel or adjacent parcels and (c) have a common Owner.

d. **Disputing Assessing Department Records.** In the event that an Owner disputes the Boston Assessing Department’s records of Gross Floor Area or unit count and believes the property does not meet the Ordinance’s definition of a Residential Building or Non-Residential Building, the Owner may make a written request for the Assessing Department to reassess the property and shall provide a copy of the request to the Environment Department.

- (i) An Owner that provides a copy of a reassessment request to the Environment Department shall not be subject to penalties for failure

to comply with the Ordinance until the next update of the Property Assessment has been published.

- (ii) If after reassessment, the Property Assessment indicates that the property meets the Ordinance's definition of a Residential Building or Non-Residential Building, the Owner shall be responsible for all outstanding reporting requirements and compliance with Emissions standards since the request for reassessment was filed with the Assessing Department. In such cases, if an Owner fails to comply with the Ordinance within four months of publication of the updated Property Assessment, penalties defined in the Ordinance may be issued.

e. **Vacant Buildings.**

- (i) The Environment Department may determine a Building is vacant and therefore not subject to third-party verification or compliance with an Emissions standard.
- (ii) A vacant building shall be demonstrated by one or more of the following: (1) an active demolition permit issued by the City of Boston's Inspectional Services Department and proof of filing an Article 85 Demolition Delay application with the Boston Landmarks Commission, (2) insurance policies, (3) no active water or gas utilities, (4) transfer of all utilities to a construction company with an active construction permit, or (5) if Energy use is less than five (5) percent of previously reported annual BERDO data. Owners shall submit requests to determine a Building as vacant in accordance with any guidance or standard form provided by the Environment Department. The Environment Department may ask for additional documentation and will issue a determination in writing to the Owner. An Owner may appeal the Environment Department's decision to the Review Board in writing.
- (iii) To maintain the status of a vacant Building, Owners must submit documentation in writing to the Environment Department annually.
- (iv) 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 is no longer determined to be vacant by the Environment Department or when it receives a Certificate of Occupancy, compliance obligations with the Emissions standards shall resume.

VII. **Third-Party Data Verification**

Third party verifications of a Building Owner's reporting data shall be performed by a qualified energy professional who is not on the staff of a Building's Owner or Building's management company. Pursuant to 7-2.2(h), third-party verification is required for all reporting data for the specified time period, including, but not limited to, data necessary to show compliance with and qualification for Emissions Standards, Individual Compliance Schedules and Hardship Compliance Plans, if applicable.

- a. **Qualified energy professionals** include individuals who hold an active qualification of at least one of the credentials listed in policies and procedures as adopted by the Commission. The Review Board may approve additional credentials for designation as qualified energy professionals.
- b. **Corrections to Reported Data.** In the event of errors found in previously reported data or discrepancies between previously reported data and third-party verified data, Owners shall submit an updated report as outlined in guidance documents provided by the Commission.
- c. **Vacant Buildings.** Third-party verification for reporting data is not required for Buildings that were vacant, as defined in policies and procedures issued by the Commission, for an entire compliance year.

VIII. **Emissions Factors**

- a. By April 1st of each year, the Environment Department shall adopt guidance, updated as needed, establishing Emissions Factors in accordance with the following conditions. Building Owners shall use these Emission Factors for calculating compliance with the Emissions standards.
 - (i) Emissions Factors for natural gas, propane, fuel oil, diesel oil, and kerosene, and any other fuels not otherwise specified in the Regulations or policies and procedures issued by the Commission or Environment Department, shall be the most recent Emissions Factors reported by ENERGY STAR Portfolio Manager.
 - (ii) Annual Emissions Factors for the electric grid shall be based on real data published by ISO New England, NEPOOL, any other relevant governmental sources for the compliance year, and any other factors determined relevant by the Environment Department.
 - (a) In the event that the Environment Department's annual electric grid Emissions Factor is higher than the Environment Department's projected electric grid Emissions Factor, the projected electric grid Emissions Factor shall be used for calculating compliance.

- (b) In the event that the Environment Department fails to adopt an annual electric grid Emissions Factor by April 1st, the lower of (i) the previous year's Emissions Factor or (ii) the Environment Department's projected Emissions Factor, shall be used for compliance.
 - (iii) Emissions Factors for District Energy Systems shall be calculated for each end product using an efficiency methodology, as defined in policies and procedures issued by the Commission.
 - (a) District Energy System operators shall provide annual Emissions Factors for their systems to the Environment Department by April 1st of each year and shall have the respective data, calculations, and Emissions Factors verified by a third party following any requirements included in policies and procedures.
 - (b) If a District Energy System operator fails to provide third-party verified annual Emissions Factors for its systems by April 1st, the most recent verified Emissions Factor from the District Energy System shall be used for compliance, provided, however, that if there is no verified Emissions Factor for the District Energy System, then the current Emissions Factors reported by ENERGY STAR Portfolio Manager for the corresponding products shall be used.
 - (iv) Owners of Campus District Energy Systems may either (a) follow the Emissions Factors requirements for District Energy Systems as outlined in Section VIII.a.iii or (b) apply the appropriate Emissions Factors to their central plant's fuel inputs and apportion the Emissions across their connected buildings following Section VI.a of the Regulations.
 - (v) Emissions Factors for thermal Energy generated from non-emitting renewable sources shall have an Emissions Factor of 0 kgCO₂e/MMBTU, provided that:
 - (a) Any renewable Energy or Renewable Energy Certificates are purchased in accordance with the requirements in Section X, and
 - (b) Any required third-party verification is provided.
- b. The Commission may adopt, via policies and procedures, Emissions Factors to be applied to fuels not referenced in the Regulations.
 - (i) Any Owner or entity that generates or delivers Energy with fuels or Energy sources without Emissions Factors covered by Regulations,

policies, or procedures may petition the Commission to approve custom Emissions Factors to be applied to Buildings. Such custom Emissions Factors may include, but are not limited to, biogenic fuels, hydrogen, and fuel cells.

- (ii) The Commission or Environment Department shall develop guidance for reviewing petitions for custom Emissions Factors.

c. Subject to approval by the Environment Department, and in accordance with conditions set forth in the policies and procedures issued by the Commission, Owners with hourly-metered or more frequently metered Energy data may opt to use time-of-use Emissions Factors. Owners must provide third-party verification of annual time-of-use data, methodology, and Emissions Factors; such data shall be subject to audit. If a time-of-use Emissions Factors is not approved, the Emissions Factors adopted by the Environment Department shall be used.

IX. **Emissions Standards**

a. **Emissions Standards.**

- (i) 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.
- (ii) In any year that Owners identify or change an Emissions standard for Building(s) or Building Portfolio(s), the annual report required by Section 7-2.2(e) shall include third-party verification, regardless of whether it is a Verification Year.

b. **Blended Emissions Standards.**

- (i) Owners may-opt-in or opt-out of a blended CO₂e Emissions standard in 2026, for the 2025 compliance year, and during each subsequent Verification Year.
- (ii) Blended Emissions standards shall be calculated following the methodology specified in policies and procedures issued by the Commission.
- (iii) Owners seeking to use a blended CO₂e Emissions standard for their Building(s) or Building Portfolio shall submit the proposed blended CO₂e Emissions standard and documentation verifying the qualification of each primary Building Use in annual reports required by Section 7-2.2(e).
- (iv) If a blended Emissions standard is updated due to a change of primary Building Use(s) before a Verification Year, Owners must submit the

updated blended CO₂e Emissions standard and new documentation verifying the qualification of each primary Building Use in annual reports required by Section 7-2.2(e), provided that such reports shall include third-party verification regardless of whether it is a Verification Year.

X. **Additional Compliance Mechanisms**

a. **Boston Municipal Electricity Aggregation Program.**

- (i) Renewable Energy Certificates (RECs) procured on behalf of customers by the Boston municipal electricity aggregation program are eligible as a method of compliance per Ordinance Section 7-2.2(m)(a). For Energy purchased from the Boston municipal aggregation program that is not matched with one hundred percent (100%) RECs, the appropriate Emissions Factor adopted by the Commission or Environment Department pursuant to Section VIII of these Regulations shall apply to the portion of the Energy not matched with RECs.

b. **Renewable Energy Certificates.**

- (i) Owners that utilize unbundled or bundled RECs, including local Power Purchase Agreements that generate MA Class I RECs pursuant to 225 CMR 14.05, as a method of compliance shall provide documentation demonstrating that the RECs comply with the conditions in Section 7-2.2(m)(b), provided, however, that, notwithstanding anything to the contrary in the Ordinance:
 - (a) RECs may be generated within the twelve (12) months before the compliance year or within the compliance year in which they are used, and
 - (b) Owners must demonstrate that RECs are retired within six (6) months of the compliance year in which they are used.

This provision supersedes Sections 7-2.2(m)(b)(iii) and (iv).

c. **Power Purchase Agreements.**

- (i) Owners that procure Electricity and bundled RECs through Power Purchase Agreements, including virtual Power Purchase Agreements, for compliance with the Ordinance shall provide documentation demonstrating compliance with the requirements in Section 7-2.2(m)(c) and the following additional requirements:
 - (a) Power Purchase Agreements are for electricity generated by non-emitting renewable sources that meet the RPS Class I eligibility criteria outlined in 225 CMR 14.05, as those criteria

may be amended from time to time, provided, however, that any requirements for metering and location in 225 CMR 14.05 are not applicable.

- (b) Power Purchase Agreements are with electricity generators connected to an electric grid in the jurisdiction of the North American Electric Reliability Corporation.
- (c) The Power Purchase Agreement is for electricity from a project that begins commercial operation after a Power Purchase Agreement is executed by or on behalf of the Owner of a covered Building, provided, however, that this timing requirement will not apply to Owners that join an existing eligible Power Purchase Agreement that was executed by a different Owner in accordance with this provision.
 - 1. Owners may request, based on extenuating circumstances, the Review Board to approve a Power Purchase Agreement that does not meet this requirement.

(ii) Notwithstanding anything to the contrary in the Ordinance:

- (a) RECs associated with the Energy purchased pursuant to a Power Purchase Agreement may be used for compliance if they are generated twelve (12) months before the compliance year or within the compliance year in which they are being used; and
- (b) The RECs associated with the Energy purchased under a Power Purchase Agreement are retired within (6) months of the end of the compliance year in which they are being used.

This provision supersedes Sections 7-2.2(m)(c)(i) and (ii).

(iii) Power Purchase Agreements that satisfy the criteria in the Ordinance and Regulations as exist at the time of execution may be used for compliance with the Ordinance for the length of the contract term, including extensions to the original term, and for any quantity or price of Energy purchased from the original generating source(s) identified in the Power Purchase Agreement.

d. **Local Renewable Generation.**

- (i) Electricity and associated generation credits, such as net-metering credits, directly attributable to electricity generated by non-emitting electricity generating systems are eligible as a compliance mechanism regardless of (i) who owns the electric generating system and (ii)

whether or not the corresponding RECs are retired by or on behalf of the Owner, provided that one of the following conditions is met:

- (a) (i) the system is a solar generating system, (ii) it is located in Eversource's Eastern Massachusetts territory, (iii) the system began operation prior to 2024, and (iv) the Owner or Tenant(s) of a covered Building first began to acquire electricity or generation credits from the solar generation system prior to 2024.
 - (b) (i) the Owner or Tenant(s) of a covered Building acquires electricity or generation credits from a non-emitting renewable electricity generating system and (ii) the generating system is located in the City of Boston.
- (ii) Electricity or generation credits acquired from non-emitting electricity generating systems shall be reported following any requirements in guidance documents.

XI. **Building Portfolios**

a. **Eligibility for Building Portfolios.** To confirm eligibility for a Building Portfolio, Owners must attest to the following and provide supporting documentation upon request:

- (i) All Buildings in the proposed Building Portfolio have the same Owner as listed in the records of the Boston Assessing Department or at least one of the following is true:
 - (a) The same Sponsor of two or more Deed-Restricted Residential Buildings may be considered the Owner of record for purposes of creating a Building Portfolio, provided, however, that a Building may not be in more than one Building Portfolio.
 - (b) The same majority owner or beneficial owner (provided that the beneficial owner is the entity legally responsible for BERDO compliance) 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.
 - (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, directly or indirectly through its subsidiaries, (i) has ownership interest, (ii) is the entity legally responsible for BERDO compliance, and (iii) in the case of a limited partnership, is a general partner) of

two or more special purpose entities or charitable corporations may be considered the Owner of record for purposes of creating a Building Portfolio; provided, however, that a Building may not be in more than one Building Portfolio.

- (d) Charitable organizations under common ownership and control of an entity that is legally responsible for BERDO compliance 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.
- (ii) For Building Portfolios based on Institutional Master Plans, all Buildings in the Building Portfolio are part of one approved Institutional Master Plan. Buildings from different Institutional Master Plans may not be combined into a single Building Portfolio unless all Buildings share the same Owner, as defined in Section XI.a.i.
- (iii) The Building Uses, Energy Use, Gross Floor Area, and Emissions data of all Buildings in the proposed Building Portfolio were third-party verified during the last applicable Verification Year.
- (iv) All Buildings in the proposed Building Portfolio are in compliance with the Ordinance and Regulations, including, as applicable, requirements for Individual Compliance Schedules or Hardship Compliance Plans, and (i) the payment of any applicable fines for any failure to comply with reporting requirements, accurately report information, or comply with an Emissions standard, (ii) where feasible, the submission of any missing required reporting data, and (iii) the submission of compliance mechanisms in the amount required to correct any failure to meet an Emissions standard in any calendar year.
- (v) None of the Buildings in the proposed Building Portfolio are vacant, as defined in Section VI.e.ii.;

b. **Requirements for Building Portfolios.** Owners must maintain compliance with (i) any conditions attached to approval of a Building Portfolio and (ii) the following requirements; failure to do so may result in revocation of the Building Portfolio.

- (i) Any Building Portfolio that contains Buildings with different Building Uses shall comply with a blended Emissions standard, provided, however, that a blended Emissions standard is not required for Building Portfolios that are subject to an Individual Compliance Schedule. Blended Emission standards shall be calculated in accordance with the methodology outlined in guidance adopted by the Commission.

- (ii) For any Building Portfolio that combines Buildings with Emissions standard requirements starting in 2025 and 2030, the Owner shall meet the applicable 2025-2029 Emissions standards in Table 1 for the whole Building Portfolio until 2030; and
- (iii) Any Building in the proposed Building Portfolio that is required to meet a more stringent or net-zero Emissions standard prior to 2050 set through zoning requirements must meet its Building-specific Emissions standard every year.
- (iv) For any Building Portfolio that includes (a) on-site Campus District Energy Systems 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, Owners must:
 - (a) Submit an Emissions standard compliance plan within two (2) years of the Review Board's initial approval of the Building Portfolio. Such plan must comply with any guidance adopted by the Commission.
 - (b) Submit annual progress reports that identify any progress made on the Emissions standard compliance plan. Such reports must comply with any guidance adopted by the Commission.
 - (c) Submit an updated Emissions standard compliance plan every Verification Year.
- (v) If a Building Portfolio includes a vacant Building, as defined in Section VI.e.ii, or an existing Building in a Building Portfolio becomes vacant, the vacant building shall not be included in determining the Emissions standard for said Building Portfolio or used to achieve compliance with the Building Portfolio's Emissions standard. When a Building is no longer determined to be vacant by the Environment Department or when it receives a Certificate of Occupancy, it shall be included in the Emissions standard compliance obligations of the Building Portfolio.

c. **Application Process for Building Portfolios.** Applications for Building Portfolios may be submitted on a rolling basis, provided, however, that, beginning in 2024, applications must be submitted by September 1 to use the Building Portfolio in the next year. Applications shall be made in accordance with any guidance or standard form issued by the Environment Department. Owners shall utilize one of the following application pathways.

- (o) **Pathway Zero.** For Buildings that are subject to BERDO because a parcel with a single Owner contains multiple Buildings that cumulatively meet the coverage thresholds in the Ordinance's definition of Residential Building (ii) or Non-Residential Building (ii).
 - (a) Owners may elect to create a Pathway Zero Building Portfolio by submitting the following information:
 - 1. Confirmation of compliance with the eligibility criteria listed in Section XI.a.
 - 2. A list of all Buildings on the parcel that will be in the Building Portfolio.
 - (b) Pathway Zero Building Portfolios do not need to prepare or submit Emissions standard compliance plans.
 - (c) Within fourteen (14) Days of receiving an application to create or modify a Building Portfolio, the Environment Department shall inform the applicant whether the application is complete.
 - (d) At the next regularly scheduled meeting of the Review Board after the Environment Department's finding of completeness, the Review Board shall approve the application.
 - (e) A written copy of the Review Board's decision shall be provided to the applicant within seven (7) Days. Applicants must record decisions approving a Building Portfolio with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision.
- (i) **Pathway One.** For proposed Building Portfolios that do not include (a) on-site Campus District Energy Systems 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.
 - (a) Applications must include:
 - 1. Confirmation of compliance with the eligibility criteria listed in Section XI.a.
 - 2. A list of all Buildings included in the Building Portfolio.

- (b) The Environment Department shall review each application for completeness and recommend approval or denial to the Review Board.
 - (c) Within fourteen (14) Days of receiving an application to create or modify a Building Portfolio, the Environment Department shall inform the applicant whether the application is complete.
 - (d) Within forty-five (45) Days of the Environment Department's finding of completeness, the Review Board shall vote to approve with standard conditions or deny an application. A decision shall be based on whether the applicant meets the eligibility criteria set forth in Section XI.a.
 - (e) A written copy of the Review Board's decision shall be provided to the applicant within seven (7) Days after the vote. Applicants must record decisions approving a Building Portfolio with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision.
 - (f) Within twenty-one (21) Days of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.
- (ii) **Pathway Two.** For proposed Building Portfolios that include (a) on-site Campus District Energy Systems 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.
- (a) Applications must include:
 1. Confirmation of compliance with the eligibility criteria listed in Section XI.a.
 2. A list of all Buildings included in the Building Portfolio.
 3. A map that identifies (i) each Building included in the Building Portfolio and (ii) any Environmental Justice Population criteria at the location of each Building based on data from the Massachusetts Executive Office of

Energy and Environmental Affairs. Owners shall highlight (i) any on-site Campus District Energy Systems that use non-renewable or CO₂e emitting fuels, industrial or manufacturing Buildings, energy/power station Buildings located in Environmental justice Populations, (ii) any Deed-Restricted Residential Buildings, and (iii) Residential Buildings in Environmental Justice Populations. Owners shall provide maps that overlay asthma rates, the Air Toxics Respiratory Hazard Index, and heat resilience metrics; data sources for these maps will be provided in guidance, as may be amended from time to time, from the Commission or Environment Department.

4. A brief narrative description of any existing plans to achieve compliance across the proposed Building Portfolio. This may include, but need not be limited to, (i) any anticipated building audits, retrofits, capital improvements, or any other Emissions reduction efforts that may be implemented in the Building Portfolio in the near term, (ii) any anticipated strategies for developing the Emissions standard compliance plan, and (iii) if applicable, any expected efforts to inform and engage tenants in the development of the Emissions standard compliance plan.
- (b) The Environment Department shall review each application for completeness, evaluate the applicant's narrative to assess potential impacts on and benefits to Environmental Justice Populations, and recommend approval or denial to the Review Board.
 - (c) Within thirty (30) days of receiving an application, the Environment Department shall inform the applicant whether the application is complete.
 - (d) The Review Board may hold a hearing to evaluate the application and request more information on how the applicant will address any impacts on or provide benefits to Environmental Justice Populations. Regardless of whether the Review Board holds a hearing, there shall be an opportunity for the public to submit comments on an application prior to the Review Board's vote.
 - (e) Within sixty (60) Days of the Environment Department's finding of completeness, the Review Board shall vote to approve with standard conditions, approve with special conditions, or deny an application. A decision shall be based on whether the applicant meets the eligibility criteria set forth in Section XI.a

and on consideration of potential impacts on and benefits to Environmental Justice Populations based on information from the application and, if applicable, any public hearing.

(f) A written copy of the Review Board's decision shall be provided to the applicant within seven (7) Days after the vote. Applicants must record decisions approving Building Portfolios with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.

(g) Within twenty-one (21) Days of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

(iii) **Pathway Three.** For proposed Building Portfolios that (a) do not meet the eligibility criteria in Section XI.a, (b) are unable to calculate blended Emissions standards as required in Section XI.b.i., or (c) are concurrently applying for or already have an Individual Compliance Schedule.

(a) Applications must include:

1. A list of all Buildings included in the Building Portfolio.
2. If applicable, an explanation of why the Owner is unable to meet the eligibility criteria in Section XI.a. or is unable to calculate a blended Emissions standard.
3. For Building Portfolios that are required to complete an Emissions standard compliance plan, the map and narrative required by Section XI.c.ii.
4. If applying for an Individual Compliance Schedule, any data and documentation required by Section XII.

(b) The Environment Department shall review each application for completeness, evaluate the applicant's narrative to assess potential impacts on and benefits to Environmental Justice Populations, and recommend approval or denial to the Review Board.

(c) Within thirty (30) Days of receipt of an application, the Environment Department shall inform the applicant whether the application is complete.

- (d) The Review Board shall hold a hearing to evaluate the application. If applicable, the Review Board may request more information on how the applicant will address any impacts on or provide benefits to Environmental Justice Populations. There shall be an opportunity for the public to submit comments on an application prior to the Review Board's vote.
- (e) Within ninety (90) Days of the Environment Department's finding of completeness, the Review Board shall vote to approve with standard conditions, approve with special conditions, or deny an application. A decision shall be based on whether, if applicable, (i) the applicant provided a reasonable basis for not meeting one or more of the eligibility criteria set forth in Section XI.a, (ii) the applicant provided a reasonable basis for not using a blended Emissions standard, (iii) the applicant meets the eligibility criteria for Individual Compliance Schedules, and (iv) consideration of the potential impacts on and benefits to Environmental Justice Populations based on information from the application and any public hearing.
- (f) A written copy of the Review Board's decision shall be provided to the applicant within seven (7) Days after the vote. Applicants must record decisions approving a Building Portfolio with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
- (g) Within twenty-one (21) Days of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

d. **Conditions of Approval for Building Portfolios.**

- (i) The Review Board shall include the following standard conditions on the approval of any Building Portfolio:
 - (a) Timely compliance with reporting and third-party verification requirements in the Ordinance.
 - (b) Timely compliance with the requirements in Section XI.b, including, when applicable, the submission of a satisfactory Emissions standard compliance plan.

(c) The Review Board or its designee may inspect any Building that is part of an approved Building Portfolio, at reasonable times and with reasonable notice, in order to assess compliance with the terms and conditions of said Building Portfolio.

(i) For Building Portfolios that are required to complete an Emissions standard compliance plan, the Review Board may include special conditions relevant to the distribution of benefits to Environmental Justice Populations. Such conditions may be added to the approval of a Building Portfolio at the time of the initial approval or following an Owner's submission of their first Emissions standard compliance plan. Any proposal to add special conditions shall be discussed at a public meeting of the Review Board and Owners shall be provided notice of such meeting at least thirty (30) Days in advance, provided, however, that any Review Board vote to add special conditions must be made within ninety (90) Days of receipt of an initial or updated Emissions standard compliance plan. The Review Board may hold a public hearing at its discretion. If the Review Board approves addition of special conditions following submission of an initial or update Emissions standard compliance plan:

(a) A written copy of the Review Board's decision shall be issued to the applicant within seven (7) Days after the vote. Owners must record such decisions with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days. Recording deadlines shall be stayed pending any appeal

(b) Within twenty-one (21) Days of issuance of the Review Board's written decision, a Building Portfolio Owner may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

e. **Modifications of Approved Building Portfolios.** Beginning in 2024, notifications and requests to modify an approved Building Portfolio must be submitted by September 1 for the modification to be used in the next year. For Building Portfolios using a blended Emissions standard, the Owner must update the blended Emissions standard to reflect any modification to the Building Portfolio according to the requirements in Section IX.b.

(i) Notice to the Review Board is required to remove a Building from an approved Building Portfolio due to (a) change of Owner of an existing Building or (b) vacancy of an existing Building.

(a) If Building(s) are removed from an approved Building Portfolio for these reasons after September 1 of a year, Owners must

calculate and comply with an adjusted blended Emissions standard for the Building Portfolio.

- (ii) Approval from the Review Board is required to remove any Building from an approved Building Portfolio for any reason other than in (e)(i) or to add any Building. Any Building added to an approved Building Portfolio must meet the eligibility criteria and requirements for Building Portfolios in Section XI.
- (iii) For Building Portfolios that are required to complete an Emissions standard compliance plan, Building Owners must submit a short update to their Emissions standard compliance plans to reflect any modification to the Building Portfolio in accordance with any guidance adopted by the Commission. The update shall be submitted at the time of notice or application to modify the Building Portfolio. Any modifications to the Building Portfolio must also be reflected in any subsequent progress reports and updates to the Emissions standard compliance plan.
 - (a) If adding a Building to a Building Portfolio would trigger the need to complete an Emissions standard compliance plan, when one was not required before, Owners shall submit an initial Emissions standard compliance plan within two (2) years of the Review Board's approval of the modification.
- (iv) The Review Board shall vote to approve or deny a requested modification at the next regularly scheduled public meeting. A decision shall be based on whether the Building Portfolio is, at the time of the request, in material compliance with the Ordinance and any requirements in Section XI, including any standard or special conditions set by the Review Board.
 - (a) A written copy of the Review Board's decision shall be provided to the applicant within seven (7) Days after the vote. Applicants must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
 - (b) Within twenty-one (21) Days of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

f. **Transfer of Building Portfolios.** Approved Building Portfolios are transferable upon change of ownership. The original and new Owners are jointly

and separately responsible for notifying the Environment Department within thirty (30) Days of the change of ownership.

g. Termination of Building Portfolios.

- (i) Beginning in 2024, an Owner may terminate an approved Building Portfolio with notice to the Review Board by September 1 for the termination to be effective in the next year.
- (ii) The Review Board (i) may initiate a proceeding to terminate a Building Portfolio at its own initiative or (ii) shall initiate a proceeding to evaluate a petition from the greater of twenty (20) percent of Tenants or five (5) Tenants of a Building included in a Building Portfolio to terminate the Building Portfolio. The Review Board may revoke an approved Building Portfolio if the Review Board determines that (a) an Owner does not materially comply with the requirements in Section XI 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.
 - (a) In the event of a proceeding initiated by a petition from Tenants, the Review Board may, at its discretion, amend the special conditions of an approved Building Portfolio rather than terminate the Building Portfolio.
- (iii) Any proposed revocation or amendment shall be discussed at a public hearing of the Review Board. Owners shall be provided notice of such hearing at least thirty (30) Days in advance.
- (iv) A written copy of the Review Board's decision shall be provided to an Owner within seven (7) Days after the vote. Owners must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
- (v) Within twenty-one (21) Days of issuance of the Review Board's written decision, Owners may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

XII. Individual Compliance Schedules

a. Eligibility for Individual Compliance Schedules. To confirm eligibility for an Individual Compliance Schedule, an Owner of a Building or approved Building Portfolio must attest to the following and provide supporting documentation upon request:

- (i) For all Buildings, the Energy use, Gross Floor Area, Building Use(s), and Emissions Factors data for the year selected as the baseline have been third-party verified.
 - (a) Energy use data shall be based on utility data, utility bills, or other factors outlined in guidance, as may be updated from time to time, provided by the Commission.
 - (b) Emissions Factors shall be based on factors outlined in guidance, as may be updated from time to time, provided by the Commission.
- (ii) For an individual building or for each building in a Building Portfolio, the total Gross Floor Area has not been reduced from the baseline year by more than ten (10) percent and the largest primary Building Use remains the same.
- (iii) All Buildings are currently in compliance with the Ordinance and Regulations, including, as applicable, requirements for Building Portfolios and the payment of (i) fines for any failure to comply with reporting requirements, accurately report information, or comply with an Emissions standard and (ii) the submission of relevant compliance mechanisms in the amount required to correct any failure to meet an Emissions standard in any calendar year.

b. Applications for Individual Compliance Schedules for Individual Buildings.

Applications for Individual Compliance Schedules may be submitted on a rolling basis, provided, however, that, beginning in 2024, applications must be submitted by September 1 to use the Individual Compliance Schedule in the next year.

Applications shall be made in accordance with any guidance or standard form issued by the Environment Department. An application for an Individual Compliance Schedule for a Building shall include the following information and any other material required by standards issued by the Review Board:

- (i) The baseline year for Emissions.
- (ii) An alternative CO₂e Emissions standard reduction schedule that meets the requirements set in the Ordinance.
- (iii) A brief narrative description of (a) any significant Emissions reduction efforts completed in the Building from the baseline year to date and (b) any cumulative increase of Gross Floor Area of ten (10) percent or more from the baseline year to date that did not significantly increase Energy use or Emissions.
- (iv) A brief narrative description of expected methods to meet the alternative CO₂e Emissions standard reduction schedule. This may include, but need not be limited to, any anticipated building audits,

retrofits, capital improvements, or any other Emissions reduction efforts that may be implemented in the Building in the near term.

- (v) If relevant, an explanation for any inability to meet the eligibility criteria in Section XII.a.

c. Applications for Individual Compliance Schedules for Building Portfolios.

Applications to approve an Individual Compliance Schedule for Building Portfolios may be submitted on a rolling basis, provided, however, that, beginning in 2024, applications must be submitted by September 1 to use the Individual Compliance Schedule in the next year. Applicants applying for a Building Portfolio and an Individual Compliance Schedule concurrently must follow the application requirements in Section XI. Applications shall be made in accordance with any guidance or standard form issued by the Environment Department. Applications pursuant to this section shall include the following information and any other material required by standards issued by the Review Board:

- (i) The baseline year for Emissions. Buildings in a Building Portfolio may have different baseline years, provided, however, that there will be one declining Emissions standard for the whole Building Portfolio.
- (ii) An alternative CO₂e Emissions standard reduction schedule for the Building Portfolio that meets the requirements set in the Ordinance. For Building Portfolios with multiple baseline years, the alternative CO₂e Emissions standard reduction schedule proposed in an application for or modification to an Individual Compliance Schedule must be verified by a third party. Third party verification of the alternative CO₂e Emissions standard reduction schedule is not required for Building Portfolios with a single baseline year. In the event an Owner had a Building Portfolio before applying for an Individual Compliance Schedule, the alternative CO₂e Emissions standard reduction schedule shall supersede the Building Portfolio's blended Emissions standard. The Individual Compliance Schedule must cover all Buildings in the Building Portfolio.
- (iii) A brief narrative description of (a) any significant Emissions reduction efforts completed across the Building Portfolio from the baseline year to date, and (b) any cumulative increase of Gross Floor Area of ten (10) percent or more from the baseline year to date that did not significantly increase Energy use or Emissions.
- (iv) For Building Portfolios that are required to complete an Emissions standard compliance plan, a copy of such plan, provided, however, that if the Emissions standard compliance plan is not completed at the time of application, submission upon completion shall be a required condition of the Individual Compliance Schedule.

- (iv) For Building Portfolios that are not required to complete an Emissions standard compliance plan, a brief narrative description of expected measures to meet the alternative CO₂e Emissions standard reduction schedule. This may include, but need not be limited to, any anticipated buildings audits, retrofits, capital improvements, or any other Emissions reduction efforts that may be implemented in the Building Portfolio in the near term.

d. **Review of Applications for Individual Compliance Schedules.**

- (i) The Environment Department shall review each application for completeness and technical accuracy and recommend approval or denial to the Review Board.
- (ii) The Review Board shall hold a hearing to evaluate applications for Building Portfolios and may hold a hearing for applications for individual Buildings seeking an Individual Compliance Schedule. The Review Board shall consider whether an application demonstrates that (a) a Building or Building Portfolio should have an Emissions standard different than the one applicable under Table 1 in the Ordinance, (b) there have been significant Emission reductions at the Building or Building Portfolio since the baseline year, (c) there are extenuating circumstances that support the need for an Individual Compliance Schedule, and/or (d) if relevant, the reason for and impact of any inability to meet the eligibility criteria in XII.a.
- (iii) The Review Board may vote to deny or approve applications with standard conditions regarding (a) timely compliance with reporting and third-party verification requirements in the Ordinance, and (b) timely compliance with the requirements in Section XII. The Review Board may include special conditions for Individual Compliance Schedules that do not meet the eligibility criteria in Section XII.a.

e. **Application Timeline for Individual Compliance Schedules.**

- (i) Within thirty (30) Days of receiving an application to create or modify an Individual Compliance Schedule, the Environment Department shall inform the applicant whether the application is complete.
- (ii) Within ninety (90) Days of the Environment Department's finding of completeness, the Review Board shall vote on an application.
- (iii) A written copy of the Review Board's decision shall be provided to the applicant within seven (7) Days after the vote. Applicants must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.

- (iv) Within twenty-one (21) Days of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

f. **Modifications of Approved Individual Compliance Schedules.** Review Board approval is required to make any modifications to an Individual Compliance Schedule. Beginning in 2024, requests to modify an approved Individual Compliance Schedule must be submitted by September 1 for the modifications to be effective in the next year. Situations for which modifications are required include:

- (i) Individual Compliance Schedules for individual Buildings if the Building's total Gross Floor Area is reduced by more than ten (10) percent or the largest primary Building Use changes.
- (ii) Individual Compliance Schedules for Building Portfolios if the Building Portfolio's total Gross Floor Area is reduced by more than ten (10) percent or the three largest primary Building Use(s) across the Building Portfolio change.
- (iii) Changes to an approved alternative CO₂e Emissions standard reduction schedule because of the addition of a Building to a Building Portfolio or Institutional Master Plan that has an Individual Compliance Schedule.

The Review Board shall approve requests for modifications that adjust approved alternative CO₂e Emissions standard reduction schedules using the standard methodology adopted in guidance provided by the Commission. The Review Board may hold a hearing for requests for applications that use a different methodology and may approve a proposed methodology and outcome that the Review Board determines is reasonable.

g. **Transfer of Individual Compliance Schedules.** Approved Individual Compliance Schedules for individual Buildings or whole Building Portfolios are transferable upon change of ownership. The original and new Owners are jointly and separately responsible for notifying the Environment Department within thirty (30) Days of the change of ownership.

h. **Termination of Individual Compliance Schedules.** Upon termination of an Individual Compliance Schedule, the Building or Building Portfolios will be subject to the Emissions standards in Table 1 of the Ordinance.

- (i) Beginning in 2024, an Owner may terminate an approved Individual Compliance Schedule. Notice must be provided to the Review Board by September 1 for the termination to be effective for the next year.
- (ii) An Individual Compliance Schedule for a Building Portfolio shall be automatically terminated if the associated Building Portfolio is terminated in accordance with Section XI.

- (iii) 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 in Section XII or the conditions of an Individual Compliance Schedule.
 - (a) If an Owner demonstrates that material noncompliance was due to unique circumstances beyond the Owner's control, the Review Board may, at its discretion, amend an approved Individual Compliance Schedule rather than terminate it.
- (iv) Any proposed revocation shall be discussed at a public hearing of the Review Board. Owners shall be provided notice of such meeting at least thirty (30) Days in advance.
- (v) A written copy of the Review Board's decision shall be provided to an Owner within seven (7) Days after the vote. Owners must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
- (vi) Within twenty-one (21) Days of issuance of the Review Board's written decision, Owners may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

XIII. **Hardship Compliance Plans**

Explanatory Text: This overview is for informational purposes, not part of the regulatory requirements. As described in this section, Owners requesting a hardship compliance plan must complete the following steps:

Step 1. Demonstrate the existence of any of the circumstances and characteristics listed in section XIII.b. The existence of these circumstances and characteristics alone does not constitute a hardship.

Step 2. Consider the use of all compliance and flexibility options.

Step 3. Demonstrate how Steps 1 and 2 together create one of the eligible hardships listed in Section XIII.c.

Step 4. Request one of the types of Hardship Compliance Plan listed in Section XIII.a, propose an alternative compliance plan consistent with the types of relief authorized by Section XIII.d, and provide any additional information required by Section XIII.e.

Any additional or different requirements in the Ordinance, Regulations or application forms apply regardless of the language in this explanatory text.

- a. **Types of Hardship Compliance Plans.** Owners may apply for either a:
 - (i) Short-term Hardship Compliance Plan, which may grant relief from compliance with applicable Emissions standards for one (1) to three (3) years. A short-term Hardship Compliance Plan may be extended once due to extenuating conditions for up to twelve (12) months. An Owner

seeking relief for additional time must apply for a long-term Hardship Compliance Plan; or

- (ii) Long-term Hardship Compliance Plan, which may grant relief from compliance with applicable Emissions standards for four (4) or more years.

b. Circumstances and Characteristics that Could Create Hardship in Complying with Emissions standards. The following circumstances and characteristics of an Owner, Building, or Building Portfolio could, either singularly or collectively, create a hardship in complying with the Emissions standards in the Ordinance. The existence of such circumstances and characteristics must be demonstrated in accordance with any policy adopted by the Commission and guidance issued by the Environment Department.

- (i) Financial circumstances and characteristics, including:
 - (a) Owner bankruptcy for all or part of a year in which an Emissions standard must be met.
 - (b) 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.
- (ii) Regulatory or contractual circumstances and characteristics, including:
 - (a) Long-term Energy contracts signed prior to October 2021 without reopeners for a significant portion of a Building's or Building Portfolio's Energy demand.
 - (b) Long-term leases without reopeners signed prior to October 2021 that prohibit any significant compliance-related work at a Building.
 - (c) Delays in delivery of Renewable Energy Certificates pursuant to executed Power Purchase Agreements because of delays in initial commercial operation for reasons beyond a Building Owner's control.
 - (d) Delays in electric system interconnections or adequate delivery of electricity for reasons outside of a Building Owner's control, provided that requests for interconnections and notification of anticipated electricity demands were made in a timely manner in light of planned work and Emissions standard compliance deadlines.
 - (e) Denial or significant delays in government permits or approvals, including delays in Mass Save determinations or any

equivalent state energy efficiency program, for significant compliance-related work, provided that applications for such permits or approvals were made in a timely manner in light of planned work and Emissions standard compliance deadlines.

(f) Government regulations affecting minimum Energy use, provided, however, that any resulting hardship arises from reducing Emissions from such Energy use.

(g) Accreditation/certification standards affecting minimum Energy use, provided, however, that any resulting hardship arises from reducing Emissions from such Energy use.

(iii) Technical or operational circumstances and characteristics, including:

(a) Building and/or site space constraints that limit significant compliance-related work.

(b) Equipment needed for significant compliance-related work is not adequately demonstrated or available in the United States, including due to supply chain constraints.

(c) High process loads, provided, however, that any resulting hardship arises from reducing Emissions from such Energy use.

(iv) Other unusual circumstances or characteristics, including:

(a) Low-income Owners of Building(s) that provide affordable housing to low-income tenants.

(b) Delays in significant compliance-related work due to a natural disaster or declared state of emergency.

(c) Other circumstances and characteristics, including financial, regulatory, contractual, technical or operational circumstances and characteristics, that, in its discretion, the Review Board deems relevant on a case-by-case basis.

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

(i) Due to the circumstances or characteristics of an Owner and/or Building or Building Portfolio, meeting the applicable Emissions standard through all combinations of compliance mechanisms and flexibility measures authorized by the Ordinance would, at either the Building or Building Portfolio level:

- (a) Require space, equipment, or electric service that is not available;
- (b) 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
- (c) Create an undue burden on a Building Owner by resulting in costs that would:
 1. Be significantly higher due to the circumstances or characteristics of a Building Owner, Building or Building Portfolio;
 2. Interrupt financial ability to operate a Building or its primary Building Uses;
 3. 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
 4. 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.

If a Hardship Compliance Plan is for a Building Portfolio, an eligible hardship must be shown to exist at the Building Portfolio level.

- (ii) The Building or Building Portfolio does not have an Individual Compliance Schedule or is requesting to replace an Individual Compliance Schedule with a Hardship Compliance Plan.
- (iii) For a Building Portfolio, the requested Hardship Compliance Plan would apply to all Buildings in the Building Portfolio.
- (iv) The Building or Building Portfolio is in compliance with the Ordinance and Regulations, including, as applicable, (i) requirements for Building Portfolios, (ii) payment of fines for any failure to comply with reporting requirements or Emissions standards, (iii) where feasible, the submission of any missing required reporting data, and (iv) the correction of any failure to meet an Emissions standard by using any compliance mechanism(s) authorized in Section 7-2.2(m).
 - (a) Applicants may request, for financial reasons, a waiver or reduction of (i) fines for failure to comply with an Emissions standard or (ii) submission of compliance mechanisms to

correct such failure. Relief shall be granted at the Review Board's discretion. The Review Board may consider the factors in Section XVIII(d)(iv) when assessing requests for relief.

- (v) The Owner has not previously been denied a Hardship Compliance Plan for the same Building or Building Portfolio, provided, however, that Owners may submit a new application if there are material changes to the circumstances or characteristics of an Owner, Building, Building Portfolio, or the hardship they create.

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

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

e. **Applications for Hardship Compliance Plans.** Unless otherwise noted in this section, all applications for Hardship Compliance Plans must include the following information and supporting documentation in accordance with any guidance adopted by the Commission and application instructions issued by the Environment Department.

- (i) A brief narrative description of how the Owner has used, plans to use, and/or considered the use of all the compliance mechanisms and flexibility measures authorized by the Ordinance other than direct Emission reductions, including: on-site renewable Energy, Community Choice Electricity, Renewable Energy Certificates, Power Purchase Agreements, Building Portfolios and Individual Compliance Schedules.

- (ii) A description, accompanied with supporting documentation, of the existence and scope of the circumstance(s) or characteristic(s) in Section XIII.b. that apply to the Owner, Building, or Building Portfolio.
- (iii) A description, accompanied with supporting documentation, of the hardship resulting from the combination of:
 - (a) The compliance actions described in (e)(i); and
 - (b) The circumstances and characteristics described in (e)(ii).
- (iv) An evaluation of opportunities, feasibility, costs and financial support for direct compliance-related work in the Building or Building Portfolio, including, where applicable, opportunities for conducting compliance-related work in phases to reduce or avoid hardships.
- (v) A brief narrative description of significant Emissions reduction efforts and work on heating/cooling systems and high-energy systems/process loads in the Building or Building Portfolio prior to the time of application.
- (vi) The requested type, scope and length of relief the Owner is requesting for a Building or Building Portfolio.
- (vii) For applications for long-term Hardship Compliance Plans for Building Portfolios with an Emissions standard compliance plan, a description of how a Hardship Compliance Plan will impact the development and implementation of such Emissions standard compliance plan.
- (viii) For applications for long-term Hardship Compliance Plans, proposed conditions for the approval of the Hardship Compliance Plan that provide benefits to Environmental Justice Populations and/or advance the purpose of the Ordinance in Section 7-2.2.(a). Such conditions may include, but need not be limited to, measures related to equitable workforce development, housing affordability and stabilization, Energy cost- and benefit-sharing, public health, and climate resilience.

f. **Consultant Review.**

- (i) The Review Board may, at its discretion, request reasonable payment from applicants for the purpose of securing outside consultants to advise the Review Board in its review of applications for Hardship Compliance Plans. The Review Board shall determine the scope of the consultant review in consultation with the applicant. Such consultants shall work for and represent the interests of the Review Board and must have an educational degree in or related to the field at issue or

three or more years of practice in the field at issue or a related field. In deciding whether to request a payment, and the amount, the Review Board may consider, among other factors:

- (a) The number, size and uses of Buildings to which the Hardship Compliance Plan would apply;
 - (b) The number and type of circumstances and characteristics from Section XIII(b) that the application asserts contribute to a hardship;
 - (c) The type(s) and amount of relief requested; and
 - (d) The extent to which application material was provided by a third-party not related to the applicant.
- (ii) The Review Board may, at its discretion, waive the consultant payment for applications from government agencies or for applicants that demonstrate financial difficulty in making the payment.
 - (iii) The Review Board shall develop, and may periodically update, guidance regarding limits on payments that may be requested from applicants for the purpose of securing outside consultants.

g. Conditions of Approval for Hardship Compliance Plans.

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

- (ii) On a case-by-case basis, the Review Board may include special conditions relevant to the distribution of benefits to Environmental Justice Populations and advancing the purpose of the Ordinance. Any proposal to add special conditions shall be discussed at a public meeting of the Review Board.
- h. **Process for Hardship Compliance Plans Applications.** Applications for Hardship Compliance Plans may be submitted on a rolling basis in accordance with the following schedule:
- (i) Applicants for short-term Hardship Compliance Plans must be submitted at least three (3) months before the first year in which the Hardship Compliance Plan would be used. Owners who experience unexpected or unforeseeable events or conditions outside the Owner's control after this deadline may apply for a short-term Hardship Compliance Plan during a compliance year, provided, however, that an Owner's failure to plan for compliance shall not constitute a cause to submit an application during a compliance year.
 - (ii) Applications for long-term Hardship Compliance Plans must be submitted at least nine (9) months before the first year in which the Hardship Compliance Plan would be used.
 - (a) For a long-term Hardship Compliance Plan to be effective in 2025, applications must be submitted by July 1, 2024.
 - (iii) Applications may be submitted in advance of the start of an anticipated hardship, provided, however, that the Review Board may prioritize the review of applications based on the year that the anticipated hardship would begin.
 - (iv) Within forty-five (45) Days of receiving an application to create or modify a Hardship Compliance Plan, the Environment Department shall inform the applicant whether the application is complete.
 - (v) For applications seeking relief that would begin in the next two (2) years, the Review Board shall hold a public hearing on an application within forty-five (45) Days of the Environment Department's finding of completeness.
 - (a) Prior to the hearing, Owners must provide the Environment Department proof that the Owner provided Tenants written notice about the hearing in accordance with this Section at least seven (7) Days before the hearing. Acceptable forms of notice include posting a notice on Tenants' doors or in multiple common spaces such as Buildings' lobbies.

- (b) The notice shall be made in accordance with any template that may be produced by the Environment Department. Notice to Tenants must be provided in English and the second most commonly spoken language(s) in the neighborhood(s) where the Building or Building Portfolio is located, as determined by guidance from the City of Boston. The Environment Department will provide translated notice templates for the Owner to complete.
 - (vi) A written copy of the Review Board's decision to approve with standard conditions, approve with special conditions, or deny an application or modification to an approved Hardship Compliance Plan shall be provided to an applicant within seven (7) Days after the vote. Applicants must record decisions that approve a Hardship Compliance Plan with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
 - (vii) Within forty-five (45) Days of issuance of the Review Board's written decision, an applicant may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.
 - (viii) A pending application for a new or modified Hardship Compliance Plan, or an appeal of a Review Board decision regarding a Hardship Compliance Plan, shall not stay a Building Owner's compliance obligations under the Ordinance or Regulations.
- i. **Modifications of Approved Hardship Compliance Plans.** Review Board approval is required to make any modification to a Hardship Compliance Plan or to extend the relief granted in such plan to any additional Building. For Building Portfolios with Hardship Compliance Plans, a Building added to the Building Portfolio must meet the Emissions standard required by the Ordinance every year unless the Review Board approves a modification of the Hardship Compliance Plan for the Building Portfolio. Beginning in 2024, requests to modify an approved Hardship Compliance Plan must be submitted by September 1 for the modifications to be effective in the next year. The Review Board shall review and vote to approve with standard conditions, approve with special conditions, or deny a requested modification in accordance with the schedule in XIII.h. Decisions on modifications shall be made in accordance with the following requirements and other conditions the Review Board deems appropriate:
- (i) Any Building removed from a Hardship Compliance Plan will be subject to the Emissions standards set in Table 1 of the Ordinance or, if applicable, a Building Portfolio blended Emissions standard.

- (ii) If a Building is removed from a Building Portfolio with a Hardship Compliance Plan, the Review Board will reassess the Hardship Compliance Plan and may modify the relief and conditions provided, however, that:
 - (a) For Buildings that are removed from a Building Portfolio due to change of ownership of an existing Building or vacancy of an existing Building, the Owner of the remaining Building Portfolio may continue to rely on the terms of the Building Portfolio's Hardship Compliance Plan, and must continue to comply with all conditions, until the Review Board makes a decision on a request for modification.
 - (a) Reassessment is not required if the term of the relief in the Hardship Compliance Plan will end in less than eighteen (18) months.
- (iii) Existing Buildings added to a Building Portfolio with a long-term Hardship Compliance Plan may be subject to the long-term Hardship Compliance Plan only if the Review Board approves the modification to the Hardship Compliance Plan. Such modification may include changes to the relief and conditions of the Hardship Compliance Plan as the Review Board deems appropriate.
- (iv) An Owner seeking to modify both a Building Portfolio with a Hardship Compliance Plan and the Hardship Compliance Plan may submit a combined application to the Review Board. Such application shall be reviewed in accordance with the schedule in XIII.h.
- (v) Existing Buildings added to a Building Portfolio with a short-term Hardship Compliance Plan may not be subject to short-term Hardship Compliance Plans.
- (vi) Newly constructed Buildings, and new Buildings that begin zoning review or apply for a building permit after approval of a long-term Hardship Compliance Plan, may not be added to a Building Portfolio with a Hardship Compliance Plan.
- (vii) Owners must record any modification to a Hardship Compliance Plan with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.

j. **Periodic Review of Long-Term Hardship Compliance Plans.**

- (i) In accordance with the schedule for reassessments of an approved long-term Hardship Compliance Plan, Owners shall provide the Review Board an update of the information provided in the application for the Hardship Compliance Plan. Such update should include a narrative description of any efforts to resolve or mitigate any circumstance, characteristic or hardship that contributed to the original Hardship Compliance Plan. Updates shall be provided in accordance with any forms or guidance issued by the Environment Department.
- (ii) 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 Hardship Compliance Plan, (b) relevant technology, (iii) applicable regulatory requirements, or (iv) other relevant factors, the Review Board may amend the relief and conditions of a Hardship Compliance Plan.
- (iii) The Review Board's review of updates and determinations regarding modifications shall be made in accordance with the timeline for modifications in Section XIII.h. Owners must record any modification to a Hardship Compliance Plan with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.

k. **Termination of Hardship Compliance Plans.** Upon termination of a Hardship Compliance Plan, the Building or Building Portfolios will be subject to the Emissions standards in Table 1 of the Ordinance or, if applicable, a Building Portfolio blended Emissions standard.

- (i) An Owner may terminate an approved Hardship Compliance Plan. Notice must be provided to the Review Board by September 1 for the termination to be effective for the next year.
- (ii) A Hardship Compliance Plan for a Building Portfolio shall be automatically terminated if the associated Building Portfolio is terminated in accordance with Section XI of the Regulations.
- (iii) The Review Board may initiate a proceeding to revoke an approved Hardship Compliance Plan if the Review Board determines that an Owner does not materially comply with the requirements in Section XIII, including requirements to report modifications to Building Portfolios subject to Hardship Compliance Plans, or the conditions of a Hardship Compliance Plan.
 - (a) If an Owner demonstrates that material noncompliance was due to unique circumstances beyond the Owner's control, the

Review Board may, at its discretion, amend an approved Hardship Compliance Plan rather than terminate it.

- (iv) Any proposed revocation shall be discussed at a public hearing of the Review Board. Owners shall be provided notice of such meeting at least thirty (30) Days in advance.
- (v) A written copy of the Review Board's decision shall be provided to an Owner within seven (7) Days after the vote. Owners must record decisions with the Registry of Deeds and send proof of such recording to the Environment Department within thirty (30) Days of issuance of the decision. Recording deadlines shall be stayed pending any appeal.
- (vi) Within thirty (30) Days of issuance of the Review Board's written decision, Owners may file a written appeal to the Commission. Appeals shall be made in accordance with any guidance or standard form provided by the Environment Department.

XIV. **Preservation of Records**

- a. Building Owners shall retain, in printed or electronic format, the following records for a period of ten (10) years:
 - (i) All records and information submitted pursuant to 7-2.2, including records and information that is optional to report, whether submitted via the ENERGY STAR Portfolio Manager or otherwise;
 - (ii) All records and information necessary to demonstrate compliance with 7-2.2, including, but not limited to, any back-up information substantiating a Building's Energy and water data, Emissions, and qualifications for Building Portfolios, blended Emission standards, Individual Compliance Schedules or Hardship Compliance Plans, if applicable;
 - (iii) Confirmation of submissions from ENERGY STAR Portfolio Manager or other systems designated for reporting by the Commission;
 - (iv) Requests to Tenants for information pursuant to 7-2.2(o) or as otherwise needed to comply with Section 7-2.2;
 - (v) Third-party verifications and a copy of the credentials and the contact information for the qualified energy professional that were uploaded to Portfolio Manager or other systems designated for reporting by the Commission; and
 - (vi) Requests for extensions of reporting deadlines.

Building Owners shall make such records and information available for inspection or audit upon request by the Commission, Environment Department, Review Board or any third-party acting at their direction.

XV. Disclosure of Records and Information

a. All records and information submitted pursuant to 7-2.2, including records and information that is optional to report, whether submitted via the ENERGY STAR Portfolio Manager or otherwise, may be disclosed as determined appropriate by the Commission, Environment Department or Review Board.

b. The Commission's public disclosure of any Building's compliance with the Emission Standards in 7-2.2 may include information regarding a Building Owner's use of "Estimated" data and the Additional Compliance Mechanisms in Section 7-2.2(m), including, but not necessarily limited to, the type and amount of each Additional Compliance Mechanism used in a compliance year.

XVI. Review Board

a. Designation of Community-Based Organizations.

(i) Qualified not-for-profit organizations may apply to the Environment Department for designation as a Community-Based Organization using the application form developed, and updated as needed, by the Environment Department. All applicants must demonstrate and self-attest to their qualification as a Community-Based Organization as defined by Section 7-2.2(b).

(a) The requirement in Section 7-2.2(b) that the majority of the governing body and staff in Community-Based Organizations be local residents means residents of the Greater Boston area.

(ii) The first application period for Community-Based Organizations shall begin in 2023, for a period set by the Environment Department, with subsequent application periods every five years thereafter.

(a) If fewer than six (6) qualifying Community-Based Organizations apply in any relevant application period, the Environment Department shall open an additional application period that will remain open until this number is met. Such an extended application period shall not delay nominations or appointments for members of the Review Board beyond any timeline established by the Environment Department.

(iii) The Environment Department shall create a list of organizations that qualify as Community-Based Organization as defined by Section 7-2.2(b) based on its review of (a) applications and (b) any additional documentation that the Environment Department may request, at its

discretion, from applicants in order to determine whether an organization meets the definition of a Community-Based Organization.

- (a) Organizations on the list of qualified Community-Based Organizations must notify the Environment Department about any changes that would change their status as Community-Based Organizations. The Environment Department may, at its discretion, remove organizations from the list if it determines that they no longer qualify as Community-Based Organizations as defined by Section 7-2.2(b).
- (b) If an applicant or member of the public disagrees with a decision by the Environment Department as to whether an organization qualifies as a Community-Based Organization, they may request the Commission to review the determination. Any decision by the Commission shall be final.

b. Selection of Review Board Members.

- (i) All members of the Review Board must be residents of Boston at the time of their appointment and for the duration of their term.
- (ii) Excluding the Chair of the Boston City Council's Environment, Resiliency and Parks Committee, or their designee, the remaining Review Board members may not be elected officials in the City of Boston or full-time employees of the City of Boston or a quasi-City agency.
- (iii) Members of the Review Board shall have expertise in at least one of the areas listed in Section 7-2.2(s). Expertise can be demonstrated through academic degrees, professional experience, volunteer experience, lived experience or as otherwise provided in guidance documents. The Environment Department shall set nomination periods and may provide forms that must be used for nominations.
- (iv) Each qualified Community-Based Organization, as listed by the Environment Department in accordance with section XVI.a.iii., may nominate individuals to serve on the Review Board.
- (v) Six (6) individuals nominated by Community-Based Organizations will be appointed to the Review Board subject to the Mayor's selection and Council's approval. Preference may be given to nominees with expertise in multiple areas listed in Section 7-2.2(s) and any other criteria provided in policies and procedures issued by the Commission. In the event that fewer than six (6) qualified individuals are nominated or appointed, the Environment Department shall open

a new round of nominations from qualified Community-Based Organizations.

- (vi) No more than two (2) individuals nominated exclusively by the same Community-Based Organization shall serve on the Review Board at the same time, except when a seated member nominated exclusively by the same Community-Based Organization is serving as a holdover after their term of appointment has expired. In such cases, three individuals nominated exclusively by the same Community-Based Organization may serve on the Board until a qualified individual has been nominated by a separate Community-Based Organization to fill the open seat, subject to the Mayor's selection and Council's approval.
- (vii) Members of the public, in their individual capacity or on behalf of organizations, may nominate individuals to serve on the Review Board and two (2) such nominees will be appointed to the Review Board subject to the Mayor's selection and the Council's approval. Preference may be given to nominees with expertise in multiple areas listed in Section 7-2.2(s) and any other criteria provided in policies and procedures issued by the Commission.
- (viii) Nominations that are selected by the Mayor but not approved by the City Council within three (3) months of referral to the Council shall be presumed to have been approved and appointed to the Review Board in the order they were submitted to the City Council. Nothing in this provision shall increase the total membership of the Review Board.
- (ix) Members of the Review Board shall serve for terms of three (3) years. Individuals may serve more than one term, but no more than three (3) consecutive terms, provided that everyone must go through the nomination and selection process outlined in this Section for each term.
- (x) If there is a vacancy(ies) on the Review Board, the Mayor shall, subject to Council approval, appoint an individual to complete the term from the relevant pool of nominees for the current term. If there are not enough qualified individuals in the relevant existing pool of nominees, the Environment Department shall, as relevant, solicit new nominations from either the list of Community-Based Organizations or the public.
- (xi) A member of the Review Board may continue to serve on the Board after their term is expired until the appointment process for a replacement is complete and the new member is seated on the Board.

c. **Review Board Procedures.**

- (i) Upon appointment or reappointment to the Review Board, members must participate in any training required by the City regarding ethics, the Ordinance, and the Review Board's responsibilities and procedures.
- (ii) A majority of seated members in office shall constitute a quorum.
- (iii) The Chair of the Review Board may increase the frequency of regular meetings and convene additional meetings as they deem necessary, provided, however, that notice of any meeting must be published at least ten (10) days prior to said meeting by the Boston City Clerk. The Review Board shall be subject to Open Meeting Law, G.L. c. 30A, §§18-25.
- (iv) The Review Board shall follow the latest language access policies of the City of Boston.
- (v) If any member should fail to attend six (6) consecutive meetings or more than fifty (50) percent of total meetings in a calendar year, their seat shall be considered vacated and filled pursuant to Section XVI.b.ix.
- (vi) Any Review Board member requesting compensation in accordance with 7-2.2(s) shall submit such a request to the Environment Department; compensation will not be provided retroactively. Any member receiving compensation must notify the Environment Department of any change that would disqualify them from receiving compensation for their service on the Review Board. The Commission may, at its discretion, revoke compensation for any Review Board member if the Commission determines that they no longer qualify pursuant to Section 7-2.2(s). The Environment Department or Commission shall publish a compensation schedule, including rate and annual cap, for Review Board members via guidance documents.
- (vii) All records of the Review Board shall be public unless an exemption applies under the Massachusetts public records law, G. L. c. 66, § 10.

XVII. Equitable Emissions Investment Fund

- a. **Eligibility for Funding.** Any Building Owner or resident located in the City of Boston, or entity acting on behalf of Boston buildings, is eligible to receive funding from the Fund to evaluate, design, implement, support and/or administer projects that produce direct Emissions reductions from Energy use in buildings located in the City of Boston.
- b. **Application Process.** The Review Board shall hold at least one application cycle per calendar year and shall provide at least a thirty (30) day period for interested parties to submit applications. The Review Board may, at its discretion,

dedicate any application cycle to specific types of benefits or types of applicants that align with the goals of the Fund and the Ordinance. An application shall include the following information and any other material required by standards issued by the Review Board, and shall utilize any standard form issued by the Environment Department:

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

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

c. Funding Decisions.

- (i) The Review Board shall hold public hearings for all funding decisions.

- (ii) For all funding decisions, the Review Board must:
 - (a) Prioritize project proposals that provide direct benefits to Environmental Justice Populations and populations disproportionately affected by air pollution.
 - (b) Evaluate project proposals based on their expected impacts and benefits, according to the following criteria:
 1. **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.
 2. **Benefits to affordable housing and tenant protections.** The expected timeline and scale of direct benefits provided to low-income residents or residents of affordable housing, including, but not limited to:
 - i. Whether projects will support the development or protection of low-income or affordable housing.
 - ii. Whether projects will directly benefit low-income residents or residents of affordable housing.
 - iii. Whether projects include anti-displacement measures, such as rent stabilization, rent assistance, and/or relocation assistance.
 3. **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.
 4. **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.
 5. **Benefits to indoor air quality and healthy environments for building occupants.** The expected timeline and scale of improvements related to indoor air quality, thermal

comfort, and/or improvements resulting in a healthy environment for building occupants produced by the proposed project.

6. **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.
7. **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.
8. **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.

- (iii) The Review Board shall develop, and may periodically update, a project review form that incorporates the criteria in Section XVII.c.ii. The Review Board will present the project review form for comment at a public hearing. The Review Board shall use the project review form to inform funding decisions.
- (iv) If there are insufficient project proposals that meet the requirements of the Fund, funds may be held over to the next application cycle. If there are insufficient eligible proposals for three (3) or more consecutive application cycles or three (3) years, the Environment Department shall conduct community outreach and education about the Fund.

d. **Conditions for Expenditure.**

- (i) The following standard conditions shall apply to the award of any money from the Fund:
 - (a) If funding is provided for a project in Building(s) covered by the Ordinance, timely compliance with reporting requirements in the Ordinance.
 - (b) For long-term projects or projects that include distinct phases or deliverables, a schedule for allocating awarded funds.
 - (c) Reporting by funding recipients to the Review Board regarding project progress and use of funding. The frequency of reporting may vary according to the project's lifetime.

- (d) Reporting by funding recipients to the Review Board related to special conditions. The frequency of reporting may vary according to the project's lifetime.
 - (e) Completion of the funded project within the projected time frame.
 - (f) The Review Board or its designee may inspect any funded project and related records, at reasonable times and with reasonable notice, in order to assess compliance with the terms and conditions of the funding provided.
 - (g) 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 a recipient's access to new funding applications.
- (ii) On a case-by-case basis, approvals for funding may include special conditions relevant to the distribution of benefits to Environmental Justice Populations and advancement of the Purpose set in Section 7-2.2.(a). Any proposal to add special conditions shall be discussed at a public meeting of the Review Board.

XVIII. ***Enforcement and Penalties***

- a. **Appeals of Review Board Decisions.** For any Review Board decision regarding Building Portfolios, Individual Compliance Schedules or Hardship Compliance Plans:
- (i) Applicants may file a written appeal of a Review Board decision with the Commission in accordance with the timeframes set forth in the Ordinance and Regulations. Appeals should include a memorandum in support of an applicant's position and must comply with any form or guidance issued by the Environment Department.
 - (a) For Review Board decisions applicable to condominium associations, appeals must be brought by the association, and the association must demonstrate to the Commission that it provided notice of such appeal to its members.
 - (ii) A group of Tenants that requests a proceeding to terminate a Building Portfolio may file a written appeal within twenty one (21) Days of a Review Board decision to deny a petition to terminate or to modify a Building Portfolio in lieu of the requested termination.
 - (iii) The Commission shall hold a public hearing on an appeal within ninety (90) Days of receipt. Hearings shall include an opportunity for comment by the appellant, the Review Board, and the public.

- (a) If an appellant fails to appear at a scheduled hearing, the appeal shall be continued until the next regularly scheduled Commission hearing. If an appellant fails to attend both meetings without providing notice to the Commission, the appeal shall be dismissed with prejudice.
- (iv) The Commission shall reverse a Review Board's decision if it determines that:
 - (a) The decision was inconsistent with the Ordinance or Regulations;
 - (b) The decision ignored material information in the record; or
 - (c) There was no reasonable basis for the decision.

The Commission shall base its decision on the record that was in front of the Review Board. In the event that the Commission determines that significant information relevant to the application materially changed or became available after the Review Board's decision, the Commission shall, at the request of an appellant, return the decision to the Review Board for further consideration.

- (v) Appellants shall carry the burden of proof except with respect to Review Board termination proceedings for Building Portfolios, Individual Compliance Schedules or Hardship Compliance Plans.
- (vi) If the Commission finds in favor of an appellant, the underlying decision shall be returned to the Review Board for reconsideration consistent with the Commission's findings and directions. The Review Board shall issue its revised decision within sixty (60) Days of the Commission's remand of an appeal. In the event that the Review Board's revised decision is appealed to the Commission, the Commission shall issue a direct ruling on the appeal.
- (vii) A Review Board decision to grant, modify or terminate a Building Portfolio, Individual Compliance Schedule or Hardship Compliance Plan shall not take effect pending an appeal and any reconsideration by the Review Board.
- (viii) An appeal shall not stay a Building Owner's compliance obligations, including as required by Section XIII.h.viii., provided, however, that, the Review Board's termination, or modification in lieu of termination, of a Building Portfolio, Individual Compliance Schedule, or Hardship Compliance Plan shall not take effect until the Commission's decision on an appeal and any reconsideration by the Review Board.

b. **Notice and Appeals of Violations.**

(i) For any alleged violation of the Ordinance or Regulations, the Environment Department shall issue at least one notice of probable violation sixty (60) Days prior to the Review Board issuing a notice of violation with potential for penalties pursuant to Section 7-2.2.(q). Notices shall be sent to either (i) the mailing address provided by an Owner via its BERDO reporting, or (ii) in the case of an Owner that has not reported, to the address provided by the Assessing Department.

(a) With respect to violations based on a discrepancy between third-party verification of information reported by a Building Owner and an Owner's self-certified reporting:

1. There shall be at least ninety (90) Days between the Environment Department's notice of probable violation and the Review Board's issuance of a notice of violation with potential for penalties; and

2. The Environment Department shall, at an Owner's request, meet with the Owner and/or their third-party verifier to discuss the discrepancy in the data and options to come into compliance.

(ii) Building Owners may dispute a notice of violation by sending a written request for a hearing to the Review Board. Such appeals must comply with any guidance or standard form issued by the Department and should include a memorandum in support of an Owner's position and relevant material to demonstrate compliance with the Ordinance and Regulations.

c. **Penalties.** The violation of any provision of these Regulations is subject to the imposition of penalties as outlined in Sections 7-2.2(q) and 7-2.2(r).

d. **Notice and Appeals of Penalties and Fines for Failure to Comply.**

(i) The Environment Department shall issue an assessment of penalties and fines to Owners that fail to correct a noticed violation of the Ordinance within 30 Days after the Review Board's issuance of the written notice of violation or within thirty 30 Days after the issuance of an adverse decision on an appeal to the Commission. Fines shall continue to accrue after the issuance of an assessment of penalties.

(ii) For Building Portfolios:

- (a) Any fine for a failure to comply with reporting requirements or to accurately report information shall apply to each Building for which reporting requirements were not met; and
- (ii) Any fine for a failure to comply with a required Emissions standard shall 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 standards prior to 2050 set through zoning requirements.
- (iii) An Owner may request a reduction or waiver of an assessed penalty or fine by filing a written request to the Review Board within twenty-one (21) Days of the issuance of an assessment of penalties or fines. The Review Board shall hold a public hearing on a request to reduce or waive an assessed penalty or fine within forty-five (45) Days of receipt. Hearings shall include an opportunity for comment by the appellant and the public.
- (iv) In exercising its discretion to (i) reduce or waive an assessed penalty or fine or (ii) recommend seeking injunctive relief or placing an assessment on an Owner's tax bill or lien on a Building, the Review Board may consider and condition relief on factors such as:
 - (a) An Owner's plans for bringing a Building or Building Portfolio into full compliance;
 - (b) An Owner's record of compliance with the requirements of the Ordinance, Regulations, and the terms and conditions of any Building Portfolio, Individual Compliance Schedule and/or Hardship Compliance Plan issued to the Owner;
 - (c) Whether a failure to comply with the Ordinance or Regulations was due to unexpected or unforeseeable events or conditions outside the Owner's control;
 - (d) Whether the Owner has an application pending for a Building Portfolio, Individual Compliance Schedule and/or Hardship Compliance Plan;
 - (e) Whether payment of the full penalty or fine would cause significant effects that the Review Board determines should be mitigated in light of benefits provided by and/or greenhouse gas Emissions avoided by a Building or Building Portfolio; and
 - (f) With respect to violations based on a discrepancy between third-party verification of information reported by a Building Owner and an Owner's self-certified reporting, (1) the extent to which an Owner responded to any informal notifications from

the Environment Department that there appeared to be inconsistencies or problems with their self-reported data and (2) whether the discrepancy caused a more than negligible impact on the Owner's compliance with applicable Emissions Standards.

e. **Notice of Appeal Hearings.** For appeals of Review Board decisions, violations, assessments of fines, or other enforcement actions:

- (i) Appellants shall publish a notice of public hearing on the appeal, in conformance with any guidance or standard form issued by the Department, in a local newspaper of general circulation. The notice shall be published at least fourteen (14) Days, but not more than twenty-one (21) Days in advance of the hearing. A copy of the notice, as published, and the date, page, and name of the publication, shall be submitted to the Commission prior to the hearing date. Such notice shall include:
 - (a) The date, time and place of such hearing;
 - (b) A brief description of the subject of the appeal;
 - (c) The street address of the relevant Building(s), provided, however, that for Building Portfolios with more than five (5) Buildings, notice may instead include: (i) the name of the Owner of the Building Portfolio, (ii) a list of the neighborhoods in which the Buildings are located, and (iii) a link to the full list of the street addresses for the Buildings in the Building Portfolio and directions for members of the public to request a printed copy of such list from the appellant; and
 - (d) Notice that a copy of the appeal is available for public inspection at the Environment Department.

APPENDIX A: BUILDING USE CLASSIFICATIONS

Building Use	Energy Star Portfolio Manager Property Type
<u>Assembly</u>	Aquarium Convention Center Fitness Center/Health Club/Gym Heated Swimming Pool Indoor Arena Ice/Curling Rink Museum Movie Theater Other - Entertainment/Public Assembly Other - Recreation Other - Stadium Performing Arts Race Track Social/Meeting Hall Stadium (Open) Swimming Pool Worship Facility
<u>College/ University</u>	College/ University
<u>Education</u>	Adult Education K-12 School Other - Education Pre-school/Daycare Vocational School
<u>Food Sales & Service</u>	Bar/Nightclub Fast Food Restaurant Food Sales Food Service Other - Restaurant/Bar Restaurant Supermarket/Grocery Store
<u>Healthcare</u>	Ambulatory Surgical Center Hospital (General Medical & Surgical) Medical Office Other - Specialty Hospital Outpatient Rehabilitation/Physical Therapy Urgent Care/Clinic/Other Outpatient Veterinary Office
<u>Lodging</u>	Barracks Hotel

Building Use	Energy Star Portfolio Manager Property Type
	Other - Lodging/Residential Residence Hall/Dormitory Residential Care Facility Senior Care Community Senior Living Community Single Family Home
<u>Manufacturing/ Industrial</u>	Manufacturing/ Industrial
<u>Multifamily housing</u>	Multifamily housing
<u>Office</u>	Financial Office Office
<u>Retail</u>	Automobile Dealership Bank Branch Enclosed Mall Lifestyle Center Other - Mall Retail Store Strip Mall Wholesale Club/Supercenter
<u>Services</u>	Convenience Store without Gas Station Courthouse Energy/Power Station Fire Station Library Other - Public Services Other - Services Other - Utility Personal Services (Health/Beauty Dry Cleaning etc.) Police Station Repair Services (Vehicle, Shoe, Locksmith, etc.)
<u>Storage</u>	Distribution Center Non-Refrigerated Warehouse Parking Refrigerated Warehouse Self-Storage Facility
<u>Technology/Science</u>	Data Center Laboratory Other - Technology/Science

