



September 15, 2023

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Air Pollution Control Commission
Boston City Hall
Environment Department, Room 709
1 City Hall Square
Boston, MA 02201

RE: A Better City’s Comments on BERDO 2.0 Phase 3 Building Portfolios and Individual Compliance Schedules, and Preliminary Comments on Hardship Compliance and the Equitable Emissions Investment Fund

Dear Commissioners:

On behalf of A Better City’s nearly 130-member business organizations, thank you for the opportunity to provide comments on regulations and policies for the BERDO 2.0 Phase 3 Building Portfolios and Individual Compliance Schedules (ICS), and comments on preliminary proposals for the Hardship Compliance Pathway and the Equitable Emissions Investment Fund.

We appreciate the inclusion of our comments in the latest draft regulations and policies for Building Portfolios and ICS and have only three remaining comments that relate to: the definition of ownership, the application process for building portfolios, and the termination of Building Portfolios or ICS.

Preliminary comments on the Hardship Compliance Pathway include: critical services, financial hardship, regulatory or contractual hardship, technical and operational hardship, and application content.

Preliminary comments on the Equitable Emissions Investment Fund (EEIF) include: selecting projects to receive funding, project evaluation, and EEIF management.

BUILDING PORTFOLIOS AND INDIVIDUAL COMPLIANCE SCHEDULE (ICS) COMMENTS:

Definition of Ownership: We appreciate the edits made to the definition of ownership regarding Building Portfolios and suggest two additional edits to the draft regulations XX.a.(i)(b) and (c):

(b) The same majority owner **or beneficial owner** (~~provided that the beneficial owner is also the legal owner~~) of two or more special purpose entities or charitable organizations **each owning a single Building** 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.

- **Recommendation: A Better City recommends including the edits, detailed above, to the definition of Ownership as it relates to Building Portfolios.**

Application Process for Building Portfolios: In the draft regulations XX.c., beginning in 2024, applications for building portfolios must be submitted by September 1 to use the Building Portfolio in the next year. Some institutions and other building portfolios buy and sell properties regularly and a building could be bought or sold without prior/advance knowledge. If a new building is completed or acquired, that means it will not be included in a portfolio until the following year. However, in the case where a building in a portfolio is sold/exits, the Ownership (and therefore the Owner's Building Portfolio) and this sale could not be foreseen by September in the preceding year, we are asking that a good faith clause be included, so Owners won't be penalized, or the portfolio terminated due to a property transfer unforeseen by the filing deadline.

- **Recommendation: A Better City recommends a good faith clause be included for buildings being added to or removed from portfolios with short notice, so they do not get penalized and/or their Building Portfolio does not get terminated.**

Termination of Building Portfolios or ICS: In the draft regulations XX.g (ii) and YY.h.(iii) the Review Board can determine that an Owner does not materially comply with the requirements in XX or the conditions of a Building Portfolio, or the requirements in YY or the conditions of an ICS. Beyond an Owner not prioritizing distribution of benefits to Environmental Justice Populations under Building Portfolios, no additional guidelines or criteria are offered for potential termination.

- **Recommendation: A Better City recommends guidelines and criteria be developed for the termination of a Building Portfolio or ICS, and further requests any termination decisions be made in consultation with the Environment Department.**

HARDSHIP COMPLIANCE PATHWAY COMMENTS:

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

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

Financial Hardship: A Better City members have expressed concern that financial hardship language may be too restrictive. Schedules of compliance costs should not prohibit or take the place of essential infrastructure repair and replacement, such as electrical, HVAC, plumbing, elevators, doors, roofs, etc., and needs to be balanced with other essential needs for the good of the operation and safety of the buildings. Additional circumstances to consider for financial hardship include: 1) when required capital investments exceed a specified percentage of the property's assessed value—a reasonable percentage



would need to be determined; and 2) when permitting, supply chain, or other delays beyond an Owner's control result in a substantial increase in project costs.

- ***Recommendation: A Better City recommends making changes to the financial hardship language and considering circumstances detailed above.***

Regulatory or Contractual Hardship: Building on the examples provided for Regulatory or Contractual Hardship, A Better City members have the following comments and additional circumstances for consideration:

- Regarding “delays in electric system interconnections beyond (x) months for reasons beyond a building owner’s control,” members have suggested leaving the time for interconnection open, and have it just read “beyond a building owner’s control,” as interconnections can be very slow.
- When there are significant delays by the utilities in approving energy efficiency projects under MassSave.
- When there are any other delays on the part of the utilities through no fault of the owner’s control e.g., capacity, transmission, distribution.
- When PPAs/VPPAs have been executed, but Commercial Operation Date is delayed beyond an owner’s control.
- When regulatory guidance is provided in a public emergency e.g., hospitals and other buildings during COVID needed to increase the number of air exchanges to promote infection control.
 - ***Recommendation: A Better City recommends considering circumstances detailed above for regulatory or contractual hardship.***

Technical and Operational Hardship: Building on the examples provided for Technical and Operational Hardship, A Better City members have the following comments and additional circumstances for consideration:

- Under the example given for “Equipment needed for significant compliance related work is not adequately demonstrated or available in the US,” add the following: “Specific manufacturing or industrial equipment replacements (in conjunction with attempts to decarbonize process loads).”
- Under “Equipment needed for significant compliance related work is not adequately demonstrated or available in the US,” add lead times on the delivery of equipment.
- When labs/museums/data centers have unique temperature/humidity constraints.
- When equipment trials fail.
- When timing of decarbonization projects need to be considered in the context of lease obligations, e.g., a building retrofit may be able to be completed within 2 years if the building is closed down but lease obligations may require the building to remain open, so the project could take much longer.
- When there are infrastructure capacity limitations, e.g., electrification requires more rooftop space that competes with space for solar panels or green roofs/rooftop gardens.
 - ***Recommendation: A Better City recommends considering circumstances detailed above for technical and operational hardship.***

Application Content: Building on the materials to support why hardship is necessary, A Better City members have the following comments and additions for consideration:

- Adding “other forms of evidence proving hardships” to the list of supporting materials.



- Adding ASHRAE audits to the list of supporting materials.
- Adding letters of support to the list of supporting materials.
- Considering staff capacity support for the submissions and administration of applications when this is not available in-house.
 - ***Recommendation: A Better City recommends considering additional application content detailed above.***

EQUITABLE EMISSIONS INVESTMENT FUND (EEIF)

Selecting Projects to Receive Funding:

- **Prioritizing Emissions Reduction in Project Selection:** Projects must “provide benefits to Environmental Justice Populations and/or advance the purposes of the Ordinance.” As the goal of the Ordinance is emissions reduction, which is the greatest benefit to Environmental Justice and all populations, we suggest prioritizing projects with large emissions reduction, or short time horizons, or both.
 - ***Recommendation: A Better City recommends prioritizing large emissions reduction projects or projects with short time horizons, or both, when considering projects for funding under the EEIF.***
- **Considering Replicable or Scalable Projects:** To scale up building decarbonization as quickly as possible, A Better City members recommend including replicability as a project evaluation criterion. Building projects that can be replicated will be a win for all.
 - ***Recommendation: A Better City recommends including replicability as a project evaluation criteria.***
- **Considering Projects that Support District Energy Solutions for Building Decarbonization:** A Better City members suggests considering district energy solutions, e.g., networked geothermal energy that serve buildings located in Boston, as potential projects for EEIF funding.
 - ***Recommendation: A Better City recommends considering district energy projects that serve Boston buildings as recipients of EEIF funding.***
- **Considering Projects with Climate and Community Resilience Co-Benefits:** A Better City supports projects that provide multiple climate and community resilience co-benefits alongside decarbonization. We also recommend engaging the BERDO Community Advisory Board in the evaluation of co-benefits.
 - ***Recommendation: A Better City supports projects that provide multiple climate and community resilience co-benefits alongside emissions reduction.***
- **Considering Green Bank Models and Carbon Removals Best Practices for Selection Criteria:** A Better City recommends exploring existing green and climate bank models as selection criteria are considered for project selection and evaluation. Some examples include the [DC Green Bank](#) and [Connecticut Green Bank](#), and the PAVER+ framework from carbon removals verification and accreditation best practices (please see A Better City’s carbon removals [report](#) for more information).



- **Recommendation: A Better City recommends exploring existing green bank selection criteria methodologies, as well as the PAVER+ framework from carbon removals best practices, for project selection criteria of the EEIF.**

Project Evaluation: Once EEIF projects are completed, projects should be independently reviewed and audited, and a report on project deliverables should be made publicly accessible. Results could be accessible on an EEIF Projects page where information on projects completed, their overall impact on greenhouse gas emissions reductions, and the co-benefits provided, are found. A portion of EEIF funding could pay for independent reviews once projects are completed. If a project does not meet its intended emissions reduction goals, future Alternative Compliance Payments can be structured to fill the non-compliance gap.

- **Recommendation: A Better City recommends including a project review and independent audit component to EEIF-funded projects once completed. Additionally, A Better City recommends that information on EEIF-funded projects and their associated emissions reduction and other co-benefits are publicly accessible.**

EEIF Management: To ensure the credibility and effectiveness of the EEIF, it must be transparently managed and independently verified and validated. To ensure this, we recommend adequate funding is provided for EEIF administration.

- **Recommendation: A Better City recommends EEIF funds be used to transparently manage the EEIF including independent verification and validation.**

We thank you for your leadership and remain committed to working with you throughout the development of BERDO 2.0 Phase 3. Please reach out to Yve Torrie (ytorrie@abettercity.org) with any comments and questions.

Sincerely,

A handwritten signature in black ink that reads 'Y. L. Torrie'.

Yve Torrie
Director of Climate, Energy & Resilience
A Better City