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Air Pollution Control Commission
Boston City Hall
Environment Department, Room 709
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RE: A Better City’s Comments on Draft Regulations and Policies for BERDO 2.0 Phase 3 Building Portfolios & Individual Compliance Schedules

Dear Commissioners:

On behalf of A Better City’s 130-member business organizations, thank you for the opportunity to provide comments on the draft regulations and policies for Building Portfolios and Individual Compliance Schedules (ICS) in BERDO Phase 3.

We appreciate the changes made to draft regulations and policies based on feedback from A Better City and other organizations on the preliminary proposals for Building Portfolios and ICS. We have additional comments detailed below, including: a request to delay the vote on Building Portfolios and ICS approval until the Hardship Compliance Pathway is completed; further clarification on the definition of Ownership; changes to Emission Standard Compliance Plans for Building Portfolios that relate to requirements for a map and a narrative description of plans to prioritize the distribution of benefits in Environmental Justice Populations and affordable housing; further clarification on draft regulations that relate to Building Portfolios with different baseline years; and a request to publish draft versions of any forms related to the applications and appeals for Building Portfolios and ICS for public comment as part of the BERDO Phase 3 regulatory process.

Request to Delay the Vote on Building Portfolio and ICS Approval

In A Better City’s comments to the preliminary proposals for Building Portfolios and ICS, A Better City raised concerns from some members regarding the substantial cost of compliance based on simulations through 2050 and recommended potential action steps. Since then, we have continued to hear concerns about compliance costs from a broad range of sectors. Some members suggest meeting one-on-one with BERDO staff to discuss the financial implications of compliance.

These conversations have also drawn attention to the proposed timing for approving Building Portfolio and ICS regulations and policies. A Hardship Compliance Pathway, which will include financial and technical hardships, has not yet been discussed. To understand all the nuances of Building Portfolio and ICS pathways, stakeholders need to understand the Hardship Compliance Pathway and how it will



interact with the other alternative pathways. Until this is completed, we request the voting to approve Building Portfolio and ICS regulations and policies be delayed. We recommend voting on all three alternative compliance pathways once regulations and policies for all three pathways are drafted, understood, and commented on, by all stakeholders.

Recommendation: A Better City recommends BERDO staff meet one-on-one with interested BERDO buildings to understand the true cost of compliance, and that these conversations inform the development of regulations and policies for the Hardship Compliance regulations and policies. To ensure all three alternative pathways—Building Portfolio, ICS, and Hardship—including their nuances and interactions are fully understood, A Better City recommends delaying approval of Building Portfolios and ICS regulations and policies until the three pathways can be considered together.

Definition of Ownership

We appreciate the changes made to the Draft Regulations section XX.a.(i)(a) relating to eligibility for Building Portfolios as it relates to Ownership. There are, however, additional suggestions made by A Better City members that were requested by the BERDO team that have not been included. We ask that these changes be included in the definition of ownership to read: *“The same (i) majority (50% or more) beneficial owner or (ii) entity that, directly or indirectly through its subsidiaries, exercises control over, or acts as managing member or managing partner of two or more special purpose entities or charitable corporations, 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.”*

In addition, we are seeking clarity in both XX.a (i)(a) and (b) that appears to limit charitable corporations – who are not “owners” in the traditional sense - to “each owning a single building.” This language could unintentionally limit the charities that are eligible to combine their buildings into a portfolio.

Recommendation: A Better City recommends making changes to ownership as detailed above and seeks further clarification about “each owning a single building” as it relates to charitable corporations.

Emissions Standard Compliance Plans

We appreciate the efforts to clarify requirements regarding Emission Standard Compliance Plans for Building Portfolios. In addition, we urge you to consider the following comments regarding:

1. In Sections XX(c)(ii)(a)(3) and XX(c)(iii)(a)(3) of the draft regulations, Building Owners seeking to apply for a Building Portfolio under Pathway Two, and some Owners applying under Pathway Three, must include a map of the makeup of the proposed portfolio, including data overlays. We recommend the City create a map that identifies BERDO covered buildings and includes any Environmental Justice Population criteria at the location of each Building based on data from the Massachusetts Executive Office of Energy and Environmental Affairs, with overlays for asthma rates, the Air Toxics Respiratory Hazard Index, and heat resilience metrics. This map produced by the City can then be used by owners applying as a Building Portfolio to add any on-site Campus



District Energy systems, industrial or manufacturing buildings, energy/power station buildings located in Environmental Justice populations, any Deed-Restricted buildings, and residential buildings in Environmental Justice Populations. Members are concerned that without a map developed and updated by the City, numerous different maps will result, burdening both the City and smaller Building Owners who may not have the capacity to develop such a map.

2. In Sections 7(B)(a)(ii) and 7(C)(a) of the draft policies for Building Portfolios, a narrative description of plans to prioritize distribution of benefits in Environmental Justice Populations and affordable housing is required. We agree with the intent that emissions reductions should be prioritized in or near Environmental Justice populations, but the benefits described in the draft policies are outside the scope of emissions reductions in covered buildings. The Equitable Emissions Investment Fund, made up of Alternative Compliance Payments, is the mechanism that was envisioned within BERDO to fund these benefits, where direct investments to the Environmental Justice populations and affordable housing are intended to be made. We therefore suggest changes to the proposed language as follows:

- ii. *A narrative description of plans to prioritize distribution of benefits **in covered buildings located within** Environmental Justice Populations and affordable housing. Examples of benefits include, but need not be limited to:*
 1. *For residential buildings, affordability, including as it relates to rents, energy bills and energy burdens.*
 2. *~~Quality of life, such as public health, indoor air quality and thermal comfort. [There is currently no basis to measure, quantify or evaluate this].~~*
 3. *For residential buildings, climate resilience, such as access to cooling, reliable access to affordable energy, and backup systems in case of climate shocks.*
 4. *Investments in emission reduction strategies, such as energy efficiency and renewable energy projects.*
- iii. *A narrative description of any planned Emissions standard compliance efforts that are expected to be implemented across the Building Portfolio over the next two compliance cycles. This may include, but need not be limited to, narrative discussions of the following:*
 1. *Timeline and type of expected Emissions reduction measures and compliance mechanisms to be implemented across the Building Portfolio. **Examples of such measures may include, but are not limited to: energy efficiency improvements, retrofits, weatherization, electrification, appliance replacements, and installation of local renewable energy.***
 - a. *Any plans regarding the maintenance, upgrade, or replacement of existing heating and cooling systems, stoves, and other fossil fueled appliances, fossil fueled machinery, and industrial equipment.*
 - b. *Plans to incorporate energy efficiency or decarbonization measures into regular operational maintenance procedures, e.g., insulating pipes when they are exposed due to repair or maintenance work.*
 - c. *Any plans to perform energy audits in Buildings, including through Mass Save Audit program or other third-party program.*



2. Where applicable and feasible, a narrative description of any expected strategies to reduce emissions from on-site Campus District Energy Systems, Combined Heat and Power plants *above a system threshold [size to be determined]*, industrial or manufacturing Buildings, and energy/power station Buildings.
3. The types of heating systems, cooling systems, stoves, ventilation, and any air quality monitoring and filtration systems that are currently in operation for each Building.
- ~~4. Any plans regarding the maintenance, upgrade or replacement of existing heating and cooling systems, stoves and other fossil fueled appliances, fossil fueled machinery, and industrial equipment.~~
- ~~5. Plans to incorporate energy efficiency or decarbonization measures into regular operational maintenance procedures, e.g., insulating pipes when they are exposed due to repair or maintenance work.~~
6. Any plans to perform energy audits in Buildings, including through Mass Save Audit program or other third party program.

Recommendation: A Better City recommends making changes to Emission Standard Compliance Plans for Building Portfolios that relate to requirements for a map and a narrative description of plans to prioritize the distribution of benefits in Environmental Justice Populations and affordable housing, as detailed above.

Individual Compliance Schedules for Building Portfolios with Different Baseline Years

We appreciate the additional clarity in draft regulations Section YY(c)(i), providing flexibility to Building Owners to use different baseline years within a Building Portfolio. However, we are seeking additional clarity about how compliance would work for a Building Owner using different baseline years in its Building Portfolio. We are unsure if all buildings would operate on the same compliance schedule or if buildings with the same baseline year would have a different compliance schedule to buildings with a different baseline year.

Recommendation: A Better City recommends clarifying draft regulations that relate to Building Portfolios with different baseline years.

Standard Forms for Building Portfolios and ICS

In the draft regulations for Building Portfolios and ICS, it is noted that applications and appeals will be made “in accordance with any guidance or standard form issued by the Environment Department.” We recommend draft versions of these forms be published for public comment as part of the Phase 3 regulatory process.

Recommendation: A Better City recommends publishing draft versions of any forms related to the applications and appeals for Building Portfolios and ICS for public comment as part of the BERDO Phase 3 regulatory process.



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

Sincerely,

Y. L. Torrie

Yve Torrie

Director of Climate, Energy & Resilience

A Better City