



November 9th, 2023

OFFICERS

James M. Tierney
CHAIR

Kara Buckley
VICE CHAIR

Kimberly Sherman Stamler
VICE CHAIR

Edward H. Ladd
TREASURER

Jeanne Pinado
ASSISTANT TREASURER

Elizabeth Grob
CLERK

EXECUTIVE COMMITTEE

Michael Cantalupa*
Joseph Carroll
Donald Chiofaro
Andrew J. Dankwerth
Lawrence S. DiCara, Esq.*
John E. Drew*
Ronald M. Druker
Kirsten Hoffman
Thomas J. Hynes, Jr.
Mark R. Johnson
William F.X. Kane
James G. Keefe
Rachel Kelly
Kevin M. Lemire
Christopher W. Maher
Michael E. Mooney, Esq.*
Young K. Park
Yanni Tsipis
Dana E. Warren
John Wolff

Kate Dineen
PRESIDENT & CEO

Richard A. Dimino
PRESIDENT EMERITUS

* Former Chair

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 Hardship Compliance Plan Draft Policies and Application Form, and Preliminary Proposals for Fines and Enforcement

Dear Commissioners:

On behalf of A Better City's nearly 130-member businesses and institutions, thank you for the opportunity to provide comments on the Hardship Compliance Plans draft policies and application form and the preliminary proposals for fines and enforcement.

We understand that the City is aiming to complete BERDO regulations by the end of the year, but this is creating some timing challenges for stakeholders. For example, we are currently reviewing the Hardship Compliance Plan draft policies and application form but do not yet have an update on the draft Hardship Compliance Plan regulations which had comments due on October 20. It would be very helpful to have relevant policies and applications of any given regulation reviewed at one time to cut down on the time stakeholders spend providing comments on each set of regulations/policies/applications.

Our comments include those for the Hardship Compliance Plan draft policies and application form and those for the preliminary proposals for fines and enforcement. Under the Hardship Compliance Plan draft policies, comments include: defining reasonable fees to secure outside consultants; and a request that all materials relating to Hardship Compliance Plans be reviewed together. Under the Hardship Compliance Plan application form, comments include: limiting information requested in the application form; and adding "other" to all sections of characteristics and circumstances of hardship. Under the preliminary proposals for fines and enforcement, comments include: clarity on failing to accurately report information; notice enforcement of violations, notice enforcement of penalties; and the repository for fines and penalties.

HARDSHIP COMPLIANCE PLAN DRAFT POLICIES COMMENTS:

Defining Reasonable Fees to Secure Outside Consultants: As discussed in the regulations and draft policies, the Review Board may require a Hardship Compliance Plan applicant to pay an additional reasonable fee for the purposes of securing an outside consultant to advise the Review Board on their application. There is, however, no definition of "reasonable," no criteria for determining whether an applicant will be required to pay an additional "reasonable fee," and no indication as to the amount of the fee.



- ***Recommendation: A Better City recommends defining “reasonable fee,” providing criteria for determining when an applicant is required to pay the fee and clarifying the amount of the fee.***

Timing: As mentioned above, the Hardship Compliance Plan draft policies mimic the regulations that have not yet been completed. We therefore request that Hardship Compliance Plan regulations, policies and the application form be updated based on comments received, so they can be reviewed together in the next comment period.

- ***Recommendation: A Better City recommends that all Hardship Compliance Plan materials—regulations, policies, and the application form—be reviewed together during the next comment period.***

HARDSHIP COMPLIANCE PLAN APPLICATION FORM COMMENTS:

Limiting Information Requested in the Application Form: Following A Better City’s previous comments on Hardship Compliance Plan draft regulations, we would like to reiterate our request for simplifying the information requested in the application form. Currently, an Owner is asked to describe how the building has used, plans to use, and/or has evaluated the use of all the compliance mechanisms and flexibility measures in a hardship application. However, if an Owner has an historic Building designation, affordable housing refinancing timeline, or pre-existing long-term Energy contract without reopener, as detailed in the Ordinance language, should they also be required to hire a consultant to describe how the building has used, plans to use, and/or has evaluated the use of all the compliance mechanisms and flexibility measures that may not be available to them? A Better City therefore recommends limiting the information requested in the application form to that required by the Review Board to make its determination.

In addition, not all buildings have had the same Owner since 2013 but the application form asks for a narrative of significant emissions reduction efforts and work on heating/cooling systems and high-energy systems/process loads in the Building or Building Portfolio since 2013. A Better City therefore recommends changing the language to read “where feasible.”

- ***Recommendation: A Better City recommends re-evaluating the information requested on the Hardship Compliance Plan application form and limiting it to only the information that is needed for the Review Board to make its determination, as detailed above. Further we request “where feasible” be added to the language on emissions reduction efforts since 2013 to ensure buildings not owned by the same Owner since 2013, are not negatively impacted.***

Addition to Characteristics or Circumstances: The table on pages 9-11 of the application form defines characteristics or circumstances of hardship for the sections on financial, regulatory or contractual, and technical or operational hardships, but adds “other circumstances and/or characteristics that a Building would like the Review Board to consider” to the “other” section. We request this wording be added to all sections.

- ***Recommendation: A Better City recommends adding “other circumstances and/or characteristics that a Building would like the Review Board to consider” to all the sections of hardship.***



PRELIMINARY PROPOSALS FOR FINES AND ENFORCEMENT COMMENTS:

Failing to Accurately Report Information: The current proposal states that \$1,000-\$5,000 would be required at the Review Board's discretion. However, the unit of measurement isn't specified. Is it per day, which is the measurement used for other fines? Also, A Better City requests a definition of "failure to accurately report information," so that honest mistakes or missing information are not included under failure to report accurate information.

- ***Recommendation: A Better City recommends defining the unit of measurement for failing to accurately report information and recommends defining this term so honest mistakes and missing information are not included.***

Enforcement - Notice and Appeal of Violations: As those responsible for reporting BERDO information (either within a company, or a third party) can change frequently, A Better City members do not think one violation notice is adequate before enforcement proceeds and recommend at least three notices be sent. In addition, we recommend clarifying the amount of time between each notice of violation and including other communication strategies to reach those responsible for reporting BERDO information e.g., email, to increase the chance of response.

- ***Recommendation: A Better City recommends increasing the number of violation notices sent, clarifying the time between notices, and including other communication strategies when reaching out to those responsible for reporting BERDO information.***

Enforcement - Notice and Appeal of Penalties: As currently written, any fine for failure to comply with reporting requirements will apply to each Building within a Building Portfolio for which reporting requirements were not met. However, any fine for failure to comply with a required Emissions standard shall apply to each Building in the Building Portfolio, regardless of whether some of the buildings have met the Emissions standard or not. A Better City requests using the same criteria for reporting requirements as Emissions standard requirements so that only Buildings in a Building Portfolio that are not in compliance be fined.

- ***Recommendation: A Better City recommends using the same criteria for reporting requirements as Emissions standard requirements so that only Buildings in a Building Portfolio not in compliance be fined, rather than fining the entire Building Portfolio.***

Repository for Fines and Penalties: Although the Ordinance clearly states what will happen if fines or penalties are not paid in the required time, no indication is given to the repository for fines and penalties. Do they go into the Equitable Emissions Investment Fund, the City's General Fund, or something else?

- ***Recommendation: A Better City requests information as to the repository for fines and penalties paid to the City under BERDO.***



Thank you for the opportunity to provide comments on behalf of A Better City members. 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