

BERDO 2.0 PHASE 2 REGULATIONS

WORKING SESSION #1

September 7, 2022

This document presents a summary of the preliminary regulations proposals presented by the City of Boston during the first public working session for BERDO 2.0 Phase 2 regulations. This meeting focused on regulations related to blended emissions standards, change of ownership, designating tenants as “Owner”, and buildings in special circumstances, such as vacant buildings and demolitions.

Preliminary regulations proposals	Feedback and questions from the public
Topic #1: Blended emissions standard	
<ul style="list-style-type: none"> ● <i>Blended emissions standards would require third-party verification every “Verification Year”, as part of the regular verification process (i.e., starting in 2026 and every 5 years thereafter).</i> ● <i>Owners may update, opt-in, or opt-out from a blended emissions standard every “Verification Year” (i.e., starting in 2026 and every 5 years thereafter).</i> ● <i>If primary uses change, owners may update their blended emissions standard before a “Verification Year”, and this updated standard would require third-party verification.</i> ● <i>To verify their primary use(s), Owners would need to provide:</i> <ul style="list-style-type: none"> ○ <i>Gross Floor Area as listed in City of Boston Assessing Department records; or</i> ○ <i>Building Documentation such as Blueprints, Architectural Plans, or Project Capital Needs Assessments, if calculating alternative Gross</i> 	<ul style="list-style-type: none"> ● <i>Will there be flexibility on the verification process of primary uses?</i> <ul style="list-style-type: none"> ○ <i>Assessing Department Records are usually updated, but they are not as detailed as other documentation or inventory data that buildings owners have.</i> ● <i>The regulations should explicitly state how to calculate the blended emissions standards.</i> ● <i>How would building owners verify that a primary use accounts for more than 10% of the annual energy use or CO2e emissions? Will this require submetered data?</i> ● <i>The regulations should allow some tolerance for variance in measuring Gross Floor Area.</i> ● <i>You have mentioned that building use types less than 10% of the total Gross Floor Area should be rolled into the primary use when calculating the blended emissions standard. If the building has more than one primary use, how then should the small use types <10%</i>

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<p>Floor Area.</p>	<p>be rolled in when calculating the blended standard?</p> <ul style="list-style-type: none"> • The APPC BERDO Regulations Document under 1.04 c notes 'Owners are encouraged to report all Building Uses and associated square footage in Portfolio Manager, including Building Uses that occupy less than 10% of the Building's square footage.' The blended emissions standard notes any use greater than 10%. Clarification on expectation for ESPM and subsequent blended emissions standard would be helpful. • Are mixed-use buildings required to use a blended emissions standard?
<p>Topic #2: Change of Ownership</p>	
<ul style="list-style-type: none"> • If a Building changes ownership, any outstanding Compliance obligations and liabilities shall become the responsibility of the new Building Owner. 	<ul style="list-style-type: none"> • Are there any due diligence requirements related to BERDO? • What does “outstanding compliance obligations” mean? • Transactions to sell/buy a building may not align with the annual compliance disclosure timeline of the City. Will there be a mechanism or process to reach out to the City and inquire about a building’s compliance status as part of due diligence? • Disclosing why a building is out of compliance is also important. Sellers and buyers should have access to that information. • Buyers should also be able to understand whether a building has always been compliant only due to Alternative Compliance Payments and know how far off the building is to comply with the relevant emissions standard.

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	<ul style="list-style-type: none"> ● <i>This regulation may be too detailed and leaves room for arguments between buyers and sellers.</i> ● <i>Is it required for someone to share with a potential building buyer that their building is under BERDO?</i> ● <i>Recommend considering MassDEP air regulations definition of Change in Ownership.</i> ● <i>Sellers' obligation to disclose lead paint issues is already required. Can this carbon emissions disclosure be seen in that light?</i> ● <i>Buyers always get Municipal Lien Certificate and Water Certificate. Why is this much different?</i> ● <i>Will sellers be obliged to include this requirement in the sales process to potential buyers?</i>
Topic #3: Designating Tenant as "Owner"	
<ul style="list-style-type: none"> ● <i>This process would require submitting a letter of agreed designation to the Environment Department, signed by both the Building Owner and the lessee.</i> ● <i>When lease ends, the responsibility of compliance and any outstanding obligations would revert back to the Building Owner.</i> 	<ul style="list-style-type: none"> ● <i>There are cases where the BERDO emission standards are kicking in the middle of the 30 year lease period. In those cases - and they are few though they do exist - the owner has no authority to implement upgrade measures by the terms of the lease till the 30 year lease is done but are still subject to the enforcement measures of BERDO. You need a solution for those edge cases.</i>
Topic #4: Buildings in Special Circumstances	
<ul style="list-style-type: none"> ● <i>Vacant buildings</i> <ul style="list-style-type: none"> ○ <i>A Building that was not occupied, did not use any utilities for all 12 months, and did not have</i> 	<ul style="list-style-type: none"> ● <i>Do parking garages fall under "vacant buildings" as they do not have "tenants"?</i> ● <i>Why does the vacant building exempt only apply for</i>

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<p><i>an active certificate of occupancy (COO) for the relevant calendar year would not be required to report for that year.</i></p> <ul style="list-style-type: none"> ○ <i>Third party verification would not be required until the first year after receiving a COO.</i> ○ <i>Verification would be required on reported data prior to utility shut-off.</i> ● <i>Demolitions</i> <ul style="list-style-type: none"> ○ <i>Buildings with demolition permits will need to report under BERDO and provide third party verification for the relevant calendar years in which the building was still in operation.</i> ○ <i>Following demolition, any new covered buildings on the parcel would need to follow the requirements of the Ordinance.</i> ○ <i>Buildings with active demolition permits would not need to provide third-party verification for 2022.</i> 	<p><i>buildings with no active COO (ie...not just vacant for 12 months)?</i></p> <ul style="list-style-type: none"> ● <i>Should an exemption be available if a tenant vacates but an owner still has a COO?</i> ● <i>Is it likely that a temporarily vacant building would use zero energy? Wouldn't some minimal heating be needed to keep pipes from freezing, and maybe emergency lighting?</i>