

AIR POLLUTION CONTROL COMMISSION PUBLIC HEARING



October 18, 2023

This public hearing will include opportunity for public comment. During public comment periods, members of the public may submit any comments or questions by “raising their hand” or by typing in the chat box.

AIR POLLUTION CONTROL COMMISSION



Nick Gove

*Transportation
Department*



Alison Brizius

*Environment
Department*



Julien Farland

*Boston Public Health
Commission*



Russell Preston

Commissioner At-Large



Eric Burkman

Commissioner At-Large



Paul Chan

Commissioner At-Large

CITY OF BOSTON STAFF



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*Environment
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Joroff**

*Environment
Department*

Public Hearing

Parking Freeze Permit Applications



**Applications continued to an
upcoming hearing or withdrawn**

CONTINUED TO AN UPCOMING HEARING

Continued: Application for a Modified East Boston Parking Freeze Permit from VHB on behalf of Cargo Ventures LLC for 575 park and fly spaces. This permit is to relocate spaces from a surface lot at 320 McClellan Highway to a new parking garage at 440 McClellan Highway. Modification of the permit would have no effect on the East Boston parking freeze bank.

Continued: Application for a Modified East Boston Parking Freeze Permit from VHB on behalf of Cargo Ventures LLC for 127 park and fly spaces. This permit is to relocate spaces from a surface lot at 380 McClellan Highway to a new parking garage at 440 McClellan Highway. Modification of the permit would have no effect on the East Boston parking freeze bank.

Public Meeting

Status of the Parking Freeze





General Parking Freeze Update

Status as of 10/13/2023

	East Boston	South Boston	Downtown Boston
Spaces allocated	702 park-and-fly 2,610 rental car	28,696	30,717
Spaces in bank	N/A	1,064	4,839
2021 Renewals	5/5 permits renewed	123/127 permits renewed (97%)*	250/272 permits renewed (92%)*
2022 Renewals	4/4 permits renewed	121/126 permits renewed (96%)*	250/271 permits renewed (92%)**
2023 Renewals	4/4 permits renewed	103/124 permits renewed (83%)	189/272 permits renewed (69%)
First Past Due notices (2023)	1	47	136
Second Past Due notices (2023)	0	26	90

* Publicly-owned facilities outstanding

** 20 publicly-owned facilities outstanding; 1 private facility which did not complete renewal and was revoked

2022 Renewal Cycle

25 permits not yet renewed

- All parking freeze permits and exemptions held by federal facilities have been renewed
- Ongoing engagement with quasi-City agencies and state facilities that hold parking freeze permits and exemptions

2023 Renewal Cycle

- Parking freeze permits expired on July 1 and must be renewed annually
- First Past Due (8/31/2023): 183 permits
- Second Past Due (10/5/2023): 116 permits
- 1st Violation Notices will be sent out on 11/6/2023
- **As of October 13, 2023, 74% of permits have been renewed**

Enforcement timeline

Past Dues:

- 60 days → 1st past due
- 35 days → 2nd past due

Violations:

- 30 days → 1st violation
- 30 days → 2nd violation
- 30 days → 3rd violation
- 30 days → final violation

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Building Emissions Reduction and Disclosure Ordinance (BERDO)

Discussion & Potential Vote to Open Public Comment Period

Hardship Compliance Plans:

Draft policy language





Hardship Compliance Plans (HCP)

Reminder of draft regulations

Step 1	Step 2	Step 3	Step 4
<p>Demonstrate the existence of unique circumstances and characteristics:</p> <ul style="list-style-type: none">• Financial• Regulatory or contractual• Technical or operational• Other <p><i>The existence of these circumstances and characteristics alone does not constitute a hardship</i></p>	<p>Evaluate all compliance and flexibility options:</p> <ul style="list-style-type: none">• Building Portfolios• Individual Compliance Schedules• Community Choice Electricity• On-site renewable energy• Renewable Energy Certificates• Power Purchase Agreements• Alternative Compliance Payments	<p>Demonstrate how Step 1 and Step 2 create an eligible hardship by:</p> <ul style="list-style-type: none">• Requiring space, equipment, or electric service that is not available;• Significantly interfering with, or significantly increasing the cost, to provide services that are critical to community health and safety; and/or• Creating an undue burden on a Building Owner in terms of costs.	<p>Request relief and propose an alternative compliance plan:</p> <ul style="list-style-type: none">• Short-term HCP with one or more types of relief.• Long-term HCP with one or more types of relief, and including a proposal for conditions of approval that provide benefits to Environmental Justice Populations and/or advance the purpose of the Ordinance.

Applications for Hardship Compliance Plans (HCP)

Draft policy language



- Applications for HCP shall be prepared in accordance with the following requirements and with any **application forms and guidance** adopted by the Environment Department:
 - For most applications, demonstrating the existence of an eligible hardship and the characteristics and circumstances that contribute to such hardship will require **information and supporting documentation prepared by qualified professionals and/or third parties**.
 - **Applications that do not include the required supporting material will be deemed incomplete.** Upon receiving an incomplete application, the Environment Department shall notify the relevant Owner and provide them an opportunity to complete the application.
 - The Review Board may continue a hearing if additional materials are necessary to make a final decision. Such additional material may include, but need not be limited to, information and analyses prepared for an applicant by a qualified professional. The Review Board may also require the applicant to pay an additional reasonable fee for the purpose of securing an outside consultant to advise the Review Board.

Periodic reviews of long-term HCP

Draft policy language

- For **long-term HCP**, the Review Board's re-assessment of such plans **every 5 years** shall include a public meeting. Owners shall update the information provided in their initial applications for HCP in accordance with any guidance and application instructions issued by the Environment Department.

Draft application form for HCP (Part 1)

Along with the draft policies, the BERDO team will release a **draft of the standard application form for HCP** for public input. This will include the questions and supporting documentation required to complete each of the sections of the application:

- Owner's information
- Buildings Covered by Hardship Compliance Plan
- Emissions Reduction Efforts to Date
- Demonstration of the Existence of Circumstances or Characteristics that may Create Hardship
- Demonstration of Eligible Hardship(s)
- Proposed Relief and Alternative Compliance



Draft application form for HCP (Part 2)

The draft application form also indicates which circumstances and characteristics will require documentation/evidence from a **qualified professional**. These include:

- Regulatory or contractual:
 - Government regulations affecting minimum energy use, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.
 - Accreditation/certification standards affecting minimum energy use, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.
- Technical or operational
 - Building and/or site space constraints that limit significant compliance-related work.
 - Equipment needed for significant compliance-related work is not adequately demonstrated or available in the United States, including due to supply chain constraints.
 - High process loads, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.

DRAFT UPDATED 10/13/23

Category	Circumstances or characteristics	Supporting documentation	Requires qualified professionals?
Technical or operational	Building and/or site space constraints that limit significant compliance-related work.	<ul style="list-style-type: none"> Results from one or more feasibility studies performed by a qualified professional explaining the existing space limitations for significant compliance work. This may include: <ul style="list-style-type: none"> Conceptual retrofit options in the form of sketches or plan mark-ups showing a space planning assessment for all technical solutions evaluated. Conceptual narrative describing each retrofit option, including a clear explanation of why it is not feasible. 	Required
	Equipment needed for significant compliance-related work is not adequately demonstrated or available in the United States, including due to supply chain constraints.	<ul style="list-style-type: none"> Documentation of the following: <ul style="list-style-type: none"> A description of the relevant equipment. This can take the form of manufacturer cut sheets or as-built drawings. A description of the significance of the equipment for the building(s), building operations, or for the operations/business of the building occupants. A conceptual narrative describing each retrofit option, including a clear explanation of why the available technologies are not feasible. 	Required
	High process loads, provided, however, that any resulting hardship arises from reducing Emissions from such energy use.	<ul style="list-style-type: none"> The Energy Use and Emissions generated by the relevant process load(s) for the last five (5) years. Measured data is preferred, but estimates from a third-party qualified professional are also accepted. If applicable, a description of the fuel(s) used for the relevant process load(s), and any feasible alternatives to substitute these fuels and/or to electrify the relevant process load(s). 	Required

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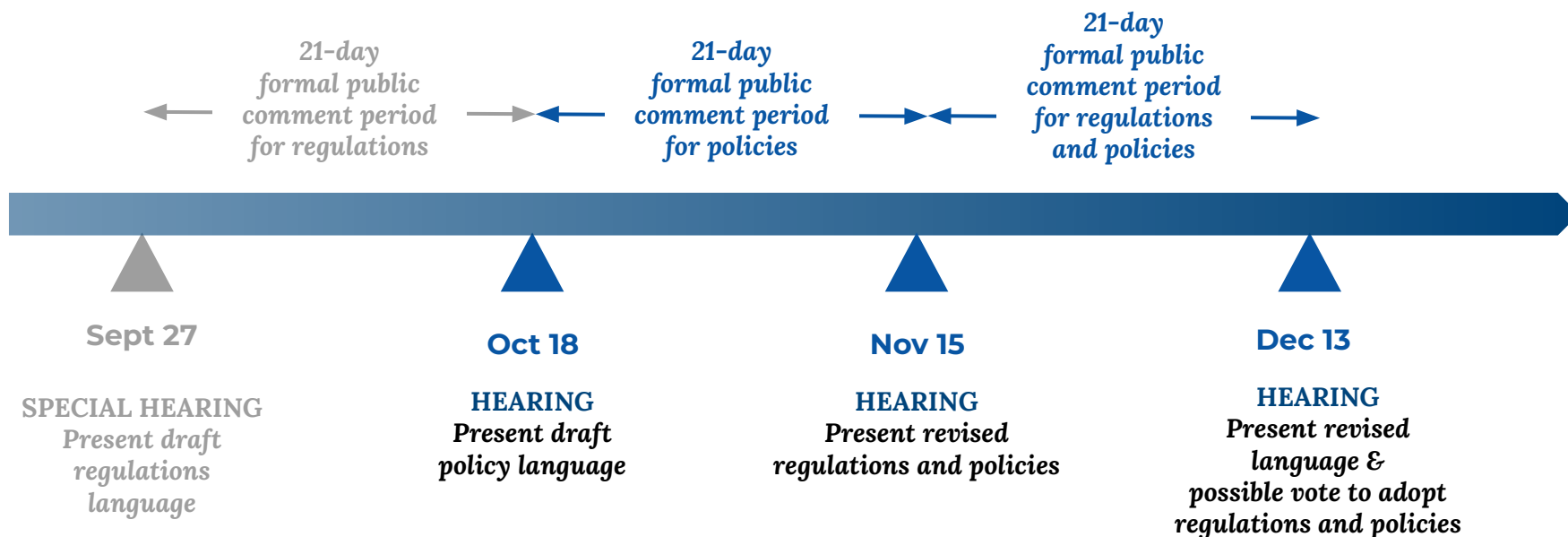
Proposed next steps

- BERDO team asks the Commission to consider **opening a 21-day public comment period** on draft policies for Hardship Compliance Plans.
 - The public comment period would open on **Thursday, October 19** and close on **Thursday, November 9 at 12:00 p.m.**
- Based on feedback received from the public, the BERDO team would revise the draft regulations and policies and present them to the APCC at their scheduled November hearing.

Tentative timeline subject to change



Hardship Compliance Plans



The background of the slide is a dark blue aerial view of a city, overlaid with a white line-art map showing building footprints and street layouts. The map is centered and covers the entire background.

Commission Q&A

Commissioners may discuss and ask staff questions.

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Public Q&A

The public may discuss and ask staff questions.

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Commission Motion & Vote

Open public comment period on draft policies for Hardship Compliance Plans

Fines and enforcement

Preliminary proposals



Fines and enforcement

Ordinance requirements



The Ordinance establishes three types of fines:

Failure to comply with reporting and verification requirements	<ul style="list-style-type: none">Non-Residential Buildings $\geq 35,000$ sq. ft.Two or more Buildings on the same parcel $\geq 100,000$ sq. ft.Residential Buildings ≥ 35 units or $\geq 35,000$ sq. ft.	\$300 per Day
	<ul style="list-style-type: none">Non-Residential Buildings $\geq 20,000$ SF but $< 35,000$ sq. ft.Residential Buildings ≥ 15 units but < 35 units; or $\geq 20,000$ sq. ft. but $< 35,000$ sq. ft.	\$150 per Day
Failure to comply with Emissions standards	<ul style="list-style-type: none">Non-Residential Buildings $\geq 35,000$ sq. ft.Two or more Buildings on the same parcel $\geq 100,000$ sq. ft.Residential Buildings ≥ 35 units or $\geq 35,000$ sq. ft.	\$1,000 per Day
	<ul style="list-style-type: none">Non-Residential Buildings $\geq 20,000$ SF but $< 35,000$ sq. ft.Residential Buildings ≥ 15 units but < 35 units; or $\geq 20,000$ sq. ft. but $< 35,000$ sq. ft.	\$300 per Day
Failure to accurately report information	<ul style="list-style-type: none">All Buildings	\$1,000 - \$5,000, at Review Board's discretion

Fines and enforcement

Ordinance requirements



Regulations will:

- Establish process for administrative appeals
- Clarify process for enforcement in accordance to Section (q) of the Ordinance
- Establish process for reconciling discrepancies in reported data and third-party verification
- Establish process to petition, review, and set conditions for penalty reductions or waivers that may be granted by the Review Board

Appeals of Review Board decisions (Part 1)

Preliminary proposals

For Review Board decisions regarding **Building Portfolios, Individual Compliance Schedules or Hardship Compliance Plans** (i.e., approvals, denials, modifications, terminations):

- **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.
 - 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.
- A **group of tenants** that requests a proceeding to terminate a Building Portfolio may file a written appeal of a Review Board decision to deny a petition to terminate or to modify a Building Portfolio in lieu of the requested termination.

Appeals of Review Board decisions (Part 2)

Preliminary proposals

- The Commission shall hold a **public hearing** on an appeal within 90 days of receipt. Hearings shall include an opportunity for **comment** by the appellant, the Review Board, and the public.
- **The Commission shall reverse a Review Board's decision if it determines that:**
 - The decision was inconsistent with the Ordinance or Regulations;
 - The decision ignored material information in the record; or
 - 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.
- 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.

Appeals of Review Board decisions (Part 3)

Preliminary proposals

- If an appellant fails to appear at a scheduled hearing, the appeal shall be continued until the next regularly scheduled Commission hearing. If an appellants fails to attend both meetings without providing notice to the Commission, the appeal shall be dismissed with prejudice.
- 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. 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.
- A Review Board decision to grant, modify or terminate a Building Portfolio, Individual Compliance Schedule or Hardship Compliance Plan shall not take affect pending an appeal and any reconsideration by the Review Board.
- **An appeal shall not stay a Building Owner's compliance obligations**, 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.

Enforcement: Notice and appeal of violations

Preliminary proposals

- For any alleged violation of the Ordinance or Regulations, the Environment Department shall issue **at least one notice of probable violation** prior to the Review Board's issuing a **notice of violation with potential for penalties.***
 - 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.
- **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.

** The process and timeline to respond to a notice of violation are included in Section (q) of the Ordinance*

Enforcement: Notice and appeal of penalties (Part 1)



Preliminary proposals

- 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.
- For **Building Portfolios**: (i) any fine for failure to comply with reporting requirements shall **apply to each Building** for which reporting requirements were not met; and (ii) any fine for failure to comply with a required Emissions standard shall **apply to each Building in the Building Portfolio**.
- An Owner may request a **reduction or waiver of an assessed penalty or fine** by **filing a written request to the Review Board** within 21 Days of the issuance of an assessment of penalties. The Review Board shall hold a public hearing on a request to reduce or waive an assessed penalty or fine within 45 Days of receipt. Hearings shall include an opportunity for comment by the appellant and the public.

Enforcement: Notice and appeal of penalties (Part 2)



Preliminary proposals

- 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:**
 - An Owner's **plans for** bringing a Building into full **compliance**;
 - 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;
 - Whether a failure to comply with the Ordinance or Regulations was due to **unexpected or unforeseeable events or conditions outside the Owner's control**;
 - Whether the Owner has an **application pending** for a Building Portfolio, Individual Compliance Schedule and/or Hardship Compliance Plan;
 - 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; and
 - 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, **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.

Enforcement: Notice of hearings

Preliminary proposals

- For appeals of Review Board decisions, violations, assessments of fines, or other enforcement actions:
 - **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 14 Days, but not more than 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:
 - The date, time and place of such hearing;
 - A brief description of the subject of the appeal;
 - The street address of the relevant Building(s), provided, however, that for Building Portfolios with more than 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
 - Notice that a copy of the appeal is available for public inspection at the Environment Department.

Process to reconcile reported information

Preliminary proposals

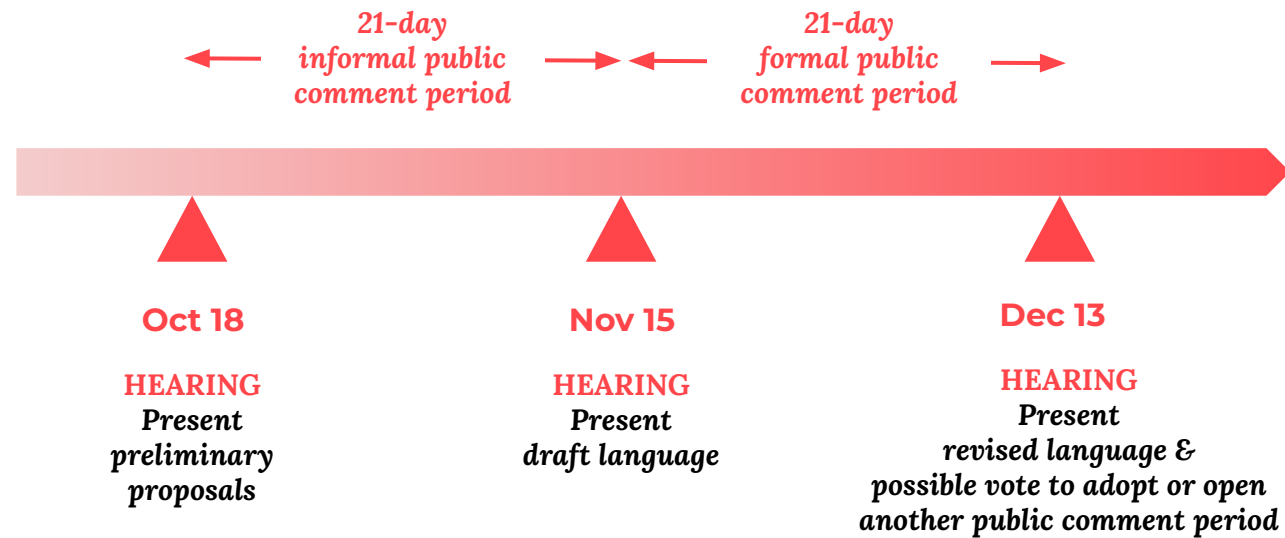
- With respect to violations based on a discrepancy between third-party verification of information reported by a Building Owner and an Owner's self-certified reporting:
 - There shall be at least 90 Days between the Environment Department's notice of probable violation and the Review Board's issuance of a notice of violation with potential for penalties; and
 - **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.

Proposed next steps

- BERDO team will receive informal public comments on preliminary proposals for **finest and enforcement**.
 - The public comment period would open on **Thursday, October 19** and close on **Thursday, November 9 at 12:00 p.m.**
- Based on feedback from the public, the BERDO team would prepare draft regulations and present them to the APCC at their scheduled November hearing.

Tentative timeline subject to change

Fines and enforcement



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Acceptance of the Meeting Minutes



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Commission Motion & Vote

Acceptance of the August 16, 2023 Meeting Minutes

Acceptance of the Meeting Minutes



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Commission Motion & Vote

Acceptance of the September 27, 2023 Meeting Minutes

Adjourn

Thank you for your participation!

