



Committee of the Whole Agenda

City of Newton In City Council

Monday, March 2, 2026

City Council Chamber
7:00 PM

The Committee of the Whole will hold this meeting as a hybrid meeting on Monday, March 2, 2026, at 7PM in the City Council Chamber. The public may access in-person or virtually via Zoom. To attend this meeting via Zoom use this link:

<https://newtonma-gov.zoom.us/j/82441681964> or call 1-646-558-8656 and use the following Meeting ID: 811 5625 0882

The City Council will meet in a Committee of the Whole on Monday, March 2, 2025, at 7PM to discuss the below item:

Referred to Committee of the Whole

#75-26 Request for discussion regarding the draft BERDO Regulations

PRESIDENT OLIVER requesting a discussion in Committee of the Whole with the City's BERDO Administrator and the BERDO Advisory Commission regarding the draft BERDO Regulations. At this meeting, the BERDO Administrator will give an overview of the Regulation development process and discuss the key elements of the draft Regulations. This meeting will mark the beginning of a 30-day public comment period on the Regulations (180 days: 08/17/2026).

Respectfully Submitted,
John Oliver, City Council President

The location of this meeting is accessible, and reasonable accommodation will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator at least two business days in advance of the meeting: ADACoordinator@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Summary of BERDO Regulations

February 2026

Contents

Introduction	2
Key Definitions.....	2
Reporting	2
Reporting Process	2
Calculating Gross Floor Area	2
Building Use Classifications	3
Special Reporting Rules	3
Ownership Changes	3
Buildings with Special Conditions	3
Third-Party Verification*	3
Emissions Compliance.....	3
Emissions Factors*	3
Emissions Standards	4
Flexibility measures	4
Alternative Compliance Payments	4
Building Portfolios	4
Individual Compliance Schedules*	4
Hardship Compliance Plans*	4
Miscellaneous	4
Record Keeping	4
Public Disclosure	4
Equitable Emissions Investment Fund.....	5

Introduction

This document is meant to serve as a summary of the full draft BERDO Regulations. These regulations were created by City staff with extensive input from BERDO Commission members, who reviewed multiple drafts and met with staff over the course of 10 bi-weekly meetings. City staff drafted and presented sections of the document to the Commission for review. **Please note that the starred sections in this summary were those that took notably longer to discuss and revise.** The Regulations explain the process of reporting energy use and emissions reductions, how to follow compliance rules, and meeting emissions standards, as well as how to comply under a variety of circumstances, and when a time extension or hardship waiver may be in order.

Key Definitions

Terms that carry specific meanings within the ordinance and regulations are defined and capitalized throughout the text. Notably, the following terms deserve mention here:

- Co-generation System: Produces electricity and heat at the same time.
- District Thermal System: Provides heating or cooling to multiple buildings.
- Emissions Intensity: Emissions divided by building size.
- Energy Use Intensity: Energy use divided by building size.
- Gross Floor Area (GFA): Total square footage inside exterior walls.
- Whole-Building Data: Complete energy data for all spaces in a building.

Reporting

Reporting Process

Owners must report energy and emissions data every year using **ENERGY STAR Portfolio Manager** or another approved system. Owners remain responsible for data accuracy even when utilities upload data. If whole-building data is missing, owners must estimate usage using approved methods described in the regulations.

Calculating Gross Floor Area

Gross Floor Area is based on city assessor records and includes all indoor spaces like lobbies and basements but excludes outdoor areas. Owners of condominiums must also document and provide floor area of common spaces.

Building Use Classifications

Owners must report building use types that cover more than 10% of the building. Different building types are matched to larger groups and then assigned an emissions standard. If Energy Star updates property types, the City of Newton will update its list of use types accordingly.

Special Reporting Rules

If tenants do not provide data, owners must document efforts to obtain the data and report partial data using approved methods detailed in the regulations.

Ownership Changes

New owners take on all compliance duties. Previous owners must share data with new owners. New owners may request deadline extensions for reporting.

Buildings with Special Conditions

Shared energy systems must be reported as a portfolio if not separately metered. Newly constructed buildings must be reported starting after the first full year of occupancy. Vacant buildings may be exempt from emissions standards and verification requirements but still must report energy usage.

Third-Party Verification*

Data from certain years requires verification by qualified energy professionals unrelated to the building owners or their property management company. Inadvertent errors found later can be corrected without penalty.

Emissions Compliance

Emissions Factors*

The BERDO Ordinance requires emissions reductions only for commercial buildings. Therefore, these regulations do not address standards for residential buildings. BERDO sets emissions factors each year for fuels and systems based on federal Energy Star standards. Emissions compliance will be calculated based on these factors. Special rules apply for co-generation and district systems which require individually calculated emissions factors.

Emissions Standards

Standards vary by building use and size. Owners may apply for blended standards if a building has multiple uses.

Flexibility measures

Alternative Compliance Payments

Owners may pay a fee instead of meeting emissions standards. Payment is based on excess emissions per square foot per year.

Building Portfolios

Owners may group buildings into a portfolio for reporting and emissions compliance.

Individual Compliance Schedules*

Owners may request an adjusted timeline for meeting emissions standards. The timeline would be based on previously collected and verified data and will follow reduction timelines that arrive at 0 emissions in 2050. Applications must include baseline data, reasons for request, and a plan for reductions.

Hardship Compliance Plans*

Owners facing serious challenges such as financial hardship or technical limitations can apply for relief. Plans can be comprehensive (long-term) or prescriptive (short-term). Comprehensive plans aim to be flexible and responsive to the individual building's difficulties. Prescriptive plans aim to be on-ramps for owners who are late to respond.

Miscellaneous

Record Keeping

Owners must maintain all compliance records for at least five years. The city will also maintain records of all applications for at least five years.

Public Disclosure

The BERDO administrator will publish building energy use, emissions, and compliance status. Notes on estimated data and alternative compliance payments may be included.

Equitable Emissions Investment Fund

This fund provides grants for projects that reduce emissions and/or help environmental justice communities. Nonprofits, building owners, and the City may apply. Funding decisions are based on need and expected impact.

Newton BERDO Regulations

Contents

<u>I.</u>	<i>Introduction.</i>	2
II.	<i>References</i>	2
III.	<i>Definitions</i>	2
IV.	<i>Reporting Process</i>	3
V.	<i>Ownership Changes and Designations</i>	7
VI.	<i>Buildings With Special Conditions</i>	8
VII.	<i>Third-Party Data Verification.</i>	10
VIII.	<i>Emissions Factors</i>	10
IX.	<i>Emissions Standards</i>	11
X.	<i>Alternative Compliance Mechanisms</i>	12
XI.	<i>Building Portfolios</i>	12
XII.	<i>Individual Compliance Schedules</i>	18
XIII.	<i>Hardship Compliance Plans</i>	22
XIV.	<i>Preservation of Records</i>	30
XV.	<i>Disclosure of Records and Information</i>	30
XVI.	<i>Equitable Emissions Investment Fund</i>	31

- I. ***Introduction.*** The following Regulations are promulgated by the Building Emissions Reduction and Disclosure Ordinance Administrator (“the BERDO Administrator”) pursuant to the authority granted to them under Ordinance No. C-55.
- II. ***References.*** References to Sections 20-169 through 20-190 are to Chapter 20 of the Revised Ordinances of Newton, Massachusetts.
- III. ***Definitions.*** Terms defined in Ordinance No. C-55 have the same meanings for purposes of these Regulations and those definitions are hereby incorporated by reference. Terms related to data reporting that are not otherwise defined shall have the same meanings as in ENERGY STAR Portfolio Manager. For the purposes of this section, the following additional terms are defined as follows:

Centralized Heating System means any system that heats more than one residence and/or heats any combination of residential spaces, common spaces, or non-residential spaces.

Co-generation System means a system that produces multiple simultaneous outputs, including electricity and one or more thermal outputs such as steam, hot water, or chilled water. Systems that produce multiple thermal outputs and do not produce electricity do not qualify as co-generation systems.

District Thermal System means a system providing energy to more than one building from one or more thermal-energy production facilities through pipes, or other means, to provide space heating, space conditioning, hot water, steam, chilled water, compression, process energy, or other end uses for that energy.

Emissions Intensity means Emissions divided by the Gross Floor Area for which those Emissions are applicable.

Energy Type means any Energy source used in a building, including, but not limited to, electricity, natural gas, fuel oil, propane, steam, and hot and chilled water, and any other Energy Types that the BERDO Administrator may designate.

Energy Use Intensity means Energy consumption divided by the Gross Floor Area for which that consumption is applicable.

Gross Floor Area (GFA) means the sum of the floor area of the Building measured from the exterior face of the exterior walls of the Building as per the city of Newton assessors’ records.

Ordinance means City of Newton Ordinance No. C-55.

Policies and Procedures means those BERDO policies and procedures, as may be amended, modified, or restated from time to time.

Whole-Building Data means complete Energy consumption data for all Energy Types used in a building, inclusive of Tenant spaces and uses.

IV. Reporting Process. Owners must annually report data through ENERGY STAR Portfolio Manager and/or other methods or reporting platforms as outlined in guidance documents issued by the BERDO Administrator. Data should be reported in accordance with the requirements in Section 20-173, the following provisions and any other methods detailed in guidance documents issued by the BERDO Administrator. Residential Buildings that do not utilize one or more Centralized Heating Systems to heat occupant spaces do not need to report data to the City.

a. Energy Use.

- (i) Owners shall report Whole-Building Data for all Energy uses. Owners that are unable to obtain Whole-Building Data shall follow the procedures in section IV.e of these Regulations.
- (ii) Owners that authorize an Energy utility or other third party to report Building-specific data on their behalf shall remain responsible for the accuracy of such data. Any discrepancies between data provided by a utility or other third-party and reported data must be indicated in the “Property Notes” section of ENERGY STAR Portfolio Manager or equivalent reporting platform designated by the BERDO Administrator. The direct upload of such data by a utility or other third party does not relieve an Owner of the duty to report other required data.

b. Calculation of Gross Floor Area.

- (i) For the purposes of determining if a building meets the definition of Building per Section 20-171 and reporting through ENERGY STAR Portfolio Manager (or approved equivalent reporting platform), Gross Floor Area must be determined using the value published by the BERDO Administrator based on records from the City of Newton Assessor’s office. Gross Floor Area values may be disputed in accordance with section VI.c of these Regulations.
- (ii) Owners of condominium buildings are responsible for submitting to the BERDO Administrator calculations of the Gross Floor Area of covered common spaces that are not included in Assessor’s records. Condominium building owners may submit complete building Gross Floor Area including all covered common spaces and individual condo units, or just the Gross Floor Area of all covered common spaces. Owners shall submit this value no later than the deadline provided in the Policies and Procedures document for it to be published by the BERDO Administrator.
 - (a) Owners must calculate Gross Floor Area in accordance with the following provisions: (i) Gross Floor Area means the total number of square feet measured within the principal exterior surfaces of

the enclosing fixed walls of the building, including tenant areas, lobbies, common areas, restrooms, stairways, elevator shafts, mechanical equipment rooms, basement space (finished or unfinished), finished attics, and storage rooms; (ii) Gross Floor Area excludes all surface parking areas, unroofed courtyards, patios, outdoor balconies, exterior loading docks, plenums between floors, unfinished attics, crawl spaces, and detached structures such as sheds; (iii) for atria, Gross Floor Area includes only the area of atrium floors; and (iv) for tenant spaces or interior Building Use(s), interior demising walls shall be measured to the centerline of the wall. Owners must provide supporting documentation for purposes of third-party verification and/or upon request. Supporting documentation must be preserved pursuant to section XIV.

- (b) Owners must also provide to the City a narrative or documentation to support their submission. This narrative should be submitted in accordance with guidance issued by the BERDO Administrator in the Policies and Procedures document.

c. **Building Use Classifications.** For purposes of Section 20-179, the Building Use classifications in Appendix A of the Policies and Procedures document are assigned to ENERGY STAR Portfolio Manager property types. Owners must report square footage for each Building Use in ENERGY STAR Portfolio Manager or equivalent approved reporting platform designated by the BERDO Administrator that occupies more than ten (10) percent of the Building's Gross Floor Area. Owners are encouraged to report Building Uses that occupy less than ten (10) percent of the Building's Gross Floor Area.

- (i) If ENERGY STAR Portfolio Manager updates the property types listed in Appendix A, the BERDO Administrator will update Appendix A of the Policies and Procedures document to reflect those changes.

d. **Buildings without Whole-Building Data.** If an Owner is not able to obtain Whole-Building Data for any Energy Type, then the Owner must report such Energy Type use as provided in this Subsection. In the event that an Owner does not have Whole-Building Data because Tenant(s) failed to respond to data requests and utilities have not provided Whole-Building Data within the time period specified in Section 20-186, the Owner shall also comply with the requirements in section IV.(i).

- (i) **Common Area Energy.** The Owner shall submit Energy data for all common areas and all centrally metered areas.

- (ii) **Calculating Energy Use in Tenant Spaces.** For each Energy Type used in separately metered Tenant space, the Owner must report known Energy usage data and then use one of the following methods to determine Energy usage for the areas in which it is unknown, for each month.
- (a) **With Significant Partial Data for a Building Use.** If an Owner has actual Energy use data for at least fifty (50) percent of the floor area associated with a specific Building Use, the Owner shall extrapolate the Energy data separately by Energy Type for the remainder of Gross Floor Area with the same Building Use. This extrapolation shall be applied only to those floor areas for which Energy use is unknown. The Owner shall calculate the extrapolated energy use for each Building Use and Energy Type according to the following steps:
1. For each Building Use with only partial data available, calculate the average Energy Use Intensity of the floor areas for which the data is available.
 2. Estimate the missing energy use for each Energy Type by multiplying the average EUI for each Energy Type from Step 1 by the total floor area for that Building Use with unknown energy use data.
 3. Multiply the result of Step 2 by one hundred and fifty (150) percent.
 4. Add the result of Step 3 to the known portion of the Energy Use for that same Building Use and Energy Type.
- (b) **Without Significant Partial Data for a Building Use.** If an Owner does not have actual Energy use data for at least fifty (50) percent of any particular Building Use, the Owner shall utilize the default values for fuel burning or fully electric set by the BERDO Administrator, applied only to those areas for which Energy use is unknown, and following the methodology included in Policies and Procedures as adopted by the BERDO Administrator. Fully electric buildings shall attest to having no other Energy use.
- (iii) **Noting When Whole-Building Use Data Is Not Available.** Owners shall indicate when Whole-Building Data for Energy is not available and where extrapolated data is used, in accordance with guidance documents issued by the BERDO Administrator.

g. **Contextual Information.** Owners may supply contextual information regarding their required data, including hyperlinks, in the “Property Notes” section of ENERGY STAR Portfolio Manager or equivalent approved reporting platform, or via any supplemental reporting methods detailed by the BERDO Administrator in guidance documents. Such contextual information may be included in public disclosures. Contextual information shall conform to guidance that the BERDO Administrator may issue regarding acceptable length and formats.

h. **New Information.** If, after having submitted a report to the BERDO Administrator, the Owner of a Building changes or an Owner receives or becomes aware of new or updated information that would result in a change to whole building Emissions, Energy use, or Emissions or Energy Intensity of five (5) percent or more over the period of one (1) calendar year, the Owner shall notify the BERDO Administrator and submit the additional or corrected data to the BERDO Administrator in accordance with the timeline and instructions provided in the Policies and Procedures document. Owners may submit other updates at any time, including changes that result in an impact to Emissions, Energy use, Emissions Intensity, or Energy Intensity of less than five (5) percent. The BERDO Administrator will include all updates in their annual disclosure of data as long as the updates are submitted by the Owner two (2) weeks prior to disclosure.

i. **Obligation to Request and Report Information from Building Tenants.**

(i) **Delegating Reporting Duties to a Single Tenant.** If an Owner has leased a Building to a single Tenant and that Tenant has assumed management, maintenance, regulatory compliance and/or capital improvement costs of the entire building, the Owner may, with the consent of the Tenant, delegate all responsibility regarding reporting under Section 20-173 to that Tenant. The Owner shall report such delegation in accordance with guidance documents issued by the BERDO Administrator.

(ii) **Tenant Non-Response.** Owners shall report in writing to the BERDO Administrator if any non-residential Tenant fails to respond to data requests from the Owner within the time period specified in Section 20-186, accompanied by documentation of the Owner’s request. Owners seeking data from Tenants shall document reasonable steps to collect such data, including making the written request using the most up-to-date contact information for the Tenant at least twice.

j. **Requesting an Extension.** The BERDO Administrator may grant a request for a one-time, six-month extension of the reporting deadline. In an Owner’s first Verification Year, the BERDO Administrator may grant a request for an alternative third-party verification deadline beyond the one-time, six-month extension allowed by the Ordinance. The BERDO

Administrator may also grant a request for an extension of the reporting deadline if the Owner provides documentation of communications with their Energy utility showing that the utility was unable to provide the Owner with necessary Energy use data in a timely manner.

V. *Ownership Changes and Designations*

a. *Change of Ownership.*

- (i) When a Building changes ownership, the previous Owner shall provide to the new Owner any required data that has been collected and is necessary for completing the next required report under Section 20-173.
- (ii) If a Building changes ownership, any outstanding compliance obligations and liabilities shall become the responsibility of the new Owner.
- (iii) New Owners shall provide notice of change of ownership to the BERDO Administrator within thirty (30) days of the change. Notice shall include (a) a copy of the instrument evidencing the transfer of the rights and obligations to the successor-Owner and assumption by the successor-Owner of said rights and obligations and (b) the name, address and contact information of the new Owner and any designated agent.
- (iv) New Owners may apply to the BERDO Administrator to request a one-time, six-month extension of their reporting deadline.
- (v) Previous and new Owners may request the BERDO Administrator to provide a notice of compliance status for a Building.

b. *Designation of Tenant as Owner.*

- (i) A Building Owner seeking to designate the lessee of a Building as “Owner” for purposes of compliance shall submit to the BERDO Administrator or their designee a letter of agreed designation as “Owner,” including a commencement date and term length, signed by both the Building Owner and the lessee, following any guidance set forth by the BERDO Administrator.
- (ii) Once a notice of designation is submitted, the lessee shall be responsible for compliance with the Ordinance.
- (iii) If the lease is terminated or the Owner or lessee decide to terminate the designation of Tenant as “Owner,” the responsibility for Compliance and any outstanding compliance obligations will revert to the Building Owner. The

Owner and lessee are jointly and separately responsible for notifying the BERDO Administrator and the other party within fourteen (14) days of any change in the designation of a Tenant as Owner.

VI. Buildings With Special Conditions

- a. **Buildings with Shared Energy Systems.** If there are multiple buildings that share Energy systems, the Owner(s) shall report data required by Section 20-173 as follows:
 - (i) For any building that has one or more Energy use(s) that are separately metered or sub-metered, said Energy data must be reported at the building level within ENERGY STAR Portfolio Manager or equivalent approved reporting platform, regardless of whether the building has other shared Energy uses.
 - (ii) For buildings that have one or more Energy uses that are not separately metered or sub-metered, said shared Energy uses must be reported as a portfolio. In order to report as a portfolio, Building Owners must submit an application in accordance with any guidance documents or standard form provided by the BERDO Administrator.
 - (a) Building Portfolios that share one or more non-electricity Energy use(s) must comply with Emissions standards as a Building Portfolio according to guidance adopted by the BERDO Administrator.
 - (iii) The BERDO Administrator may approve an alternative apportionment process proposed by the Owner.
- b. **Newly Constructed Buildings.** A newly constructed Building shall be required to submit its first report for the first full calendar year following the issuance of either a Temporary Certificate of Occupancy or a Certificate of Occupancy, whichever is issued first. The Building Owner shall submit this report no later than September 15 of the year after its first full calendar year.
- c. **Disputing Gross Floor Area Values and Building Classification.** In the event that an Owner disputes the Gross Floor Area, as published by the BERDO Administrator based on City of Newton Assessors' office's records, and believes that the published value is incorrect or that the property does not meet the Ordinance's definition of a Residential Building or Non-Residential Building, the Owner may make a written request for the BERDO Administrator to review the published value. The BERDO Administrator may ask for the Assessors' office to review the property.

- (i) An Owner that provides a review request to the BERDO Administrator shall not be subject to penalties for failure to comply with the Ordinance until the review has been completed.
- (ii) If review indicates that the property meets the Ordinance's definition of a Residential Building or Non-Residential Building, the Owner shall be responsible for all outstanding reporting requirements and compliance with Emissions standards since the request for review was filed with the BERDO Administrator. In such cases, if an Owner fails to comply with the Ordinance within four months of completion of the review, penalties as defined in the Ordinance may be issued.

d. **Vacant Buildings.**

- (i) The BERDO Administrator may determine that a Building is vacant and therefore not subject to third-party verification or compliance with an Emissions standard.
- (ii) A vacant building shall be demonstrated by one or more of the following: (1) an active demolition permit issued by the City of Newton's Inspectional Services Department, (2) insurance policies, (3) no active water or gas utilities, (4) transfer of all utilities to a construction company with an active construction permit, (5) if Energy use of less than five (5) percent of previously reported annual data, or (6) rent rolls, lease records, or other owner-supplied verifiable documentation that clearly demonstrates the building is vacant. Owners shall submit requests to determine a Building as vacant in accordance with any guidance or standard form provided by the BERDO Administrator. The BERDO Administrator may ask for additional documentation and will issue a determination in writing to the Owner.
- (iii) To maintain the status of a vacant building, owners must submit documentation in writing to the BERDO Administrator annually by the deadline stated in Policies and Procedures.
- (iv) Buildings that are determined by the BERDO Administrator to be fully vacant for the entire compliance year are not subject to the Emissions standard for that compliance year, nor are they subject to third-party verification requirements for that year. Owners must still follow applicable reporting requirements. When a Building is no longer determined to be vacant by the BERDO Administrator or when it receives a Certificate of Occupancy, compliance obligations with the Emissions standards shall resume.

VII. *Third-Party Data Verification.* Third party verification of a Building Owner’s reporting data shall be performed by a qualified energy professional with one of the certifications outlined in Policies and Procedures who is not on the staff of the Building’s Owner or Building’s management company and was not involved in reporting the Building Owner’s data. Pursuant to Section 20-176, third-party verification is required for all reporting data for the specified time period, including, but not limited to, data necessary to show compliance with and qualification for Emissions Standards, Individual Compliance Schedules, and Hardship Compliance Plans, if applicable.

- a. **Qualified energy professionals** include individuals who hold an active qualification of at least one of the credentials listed in Policies and Procedures as adopted by the BERDO Administrator. Qualified energy professionals are expected to attest that their verification is accurate and free of errors.
- b. **Corrections to Reported Data.** In the event of errors found in previously reported data or discrepancies between previously reported data and third-party verified data, Owners shall submit an updated report as outlined in guidance documents provided by the BERDO Administrator. Building Owners who submit corrections through this process are still considered to be in compliance.
- c. **Verification Years.**
 - i. For any Building’s second year of reporting, Owners shall provide a third-party verification of their reported data for the previous calendar year.
 - ii. For every Verification Year thereafter, Owners shall provide a third-party verification for the five calendar years prior to such verification year. The most recent calendar year included in the verification cycle shall be subject to third-party verification of all reporting data. The four (4) prior calendar years shall be subject to verification of energy use data and any other reporting data specified by the BERDO Administrator in Policies and Procedures.

VIII. *Emissions Factors*

- a. By August 15th of each year, The BERDO Administrator shall adopt guidance, updated as needed, establishing Emissions Factors in accordance with the following conditions. Building Owners will be subject to these Emissions Factors for the purposes of calculating compliance with the Emissions standards.
 - i. Emissions Factors for natural gas, propane, fuel oil, diesel oil, and kerosene, and any other fuels not otherwise specified in the Regulations or Policies and Procedures issued by the BERDO Administrator, shall be the most recent Emissions Factors reported by ENERGY STAR Portfolio Manager or an approved alternative source.

- ii. Building Owners shall calculate Emissions Factors for each Energy output produced from District Thermal Systems by dividing the Emissions of total input Energy by the quantity of output Energy.
- iii. The BERDO Administrator shall, at their discretion, calculate Emissions Factors for each output of a Co-generation System. The BERDO Administrator shall use the efficiency method, as detailed in Policies and Procedures issued by the BERDO Administrator, for this calculation.
- iv. The BERDO Administrator shall calculate the emissions factors in Section VII(a)(iii) for each Co-generation System annually using data provided by system owners.
 - (a) All Co-generation System owners are required to submit complete data needed to calculate the Emission Factor of every energy output of their facility for the previous calendar year by the date specified in Policies and Procedures.
 - (b) If a Co-generation System owner fails to provide annual data for its systems by the date specified in Policies and Procedures, the most recent Emissions Factor calculated for the Co-generation System shall be used for compliance, provided, however, that if there is no data for the Co-generation System, then the current Emissions Factors reported by ENERGY STAR Portfolio Manager for the corresponding Energy outputs shall be used.
- v. Emissions from electricity produced by Co-generation System located within Newton will not be subject to the emissions standards in Section 20-179.
- vi. Emissions for thermal Energy generated from electricity will not be subject to the emissions standards in Section 20-179.
- b. The BERDO Administrator may adopt Emissions Factors to be applied to fuels not referenced in the Regulations and publish them in Policies and Procedures.
 - i. Any Owner or entity that generates or delivers Energy with fuels or Energy sources without Emissions Factors covered by Regulations, Policies, or Procedures may petition the BERDO Administrator to adopt custom Emissions Factors to be applied to Buildings. Such custom Emissions Factors may include, but are not limited to, biogenic fuels, hydrogen, and fuel cells.
 - ii. The BERDO Administrator shall develop guidance for reviewing petitions for custom Emissions Factors.

IX. Emissions Standards

a. Emissions Standards

- i. When calculating square footage to determine compliance

with Section 20-179, Gross Floor Area as published by the BERDO Administrator based on records from the City of Newton Assessor's office shall be used.

- ii. In any year that Owners identify or change an Emissions standard for a Building due to a change of the largest primary Building Use, the annual report required by Section 20-173 shall include third-party verification of the new primary Building Use, regardless of whether it is a Verification Year.

b. Blended Emissions Standards

- i. Blended Emissions standards shall be calculated following the formulas specified in Policies and Procedures issued by the BERDO Administrator. The standard will be determined by blending the emission standards of each Building Use based on its proportion of the total Gross Floor Area.
- ii. Owners seeking to use a blended CO₂e Emissions standard for their Building(s) or Building Portfolio(s) shall submit the proposed blended CO₂e Emissions standard and documentation verifying the qualification of each primary Building Use following Procedures issued by the BERDO Administrator.
- iii. If a blended Emissions standard is updated due to a change of primary Building Use(s) before a Verification Year, Owners must submit the updated blended CO₂e Emissions standard and new documentation verifying the qualification of each primary Building Use following Procedures issued by the BERDO Administrator.

X. Alternative Compliance Mechanisms

- a. **Alternative Compliance Payments.** Owners may make alternative compliance payments in accordance with the Ordinance.
 - i. The Alternative Compliance Payment rate will be assessed as the price per metric ton of CO₂e listed in the Ordinance and subject to any future amendments.
 - ii. Alternative Compliance Payments will be calculated as the Alternative Compliance Payment rate multiplied by the Building's emissions in excess of the applicable emissions standard.
 - iii. Alternative Compliance Payments will be determined for a given year at the time of building energy use disclosure. Building owners will have 30 days from the date of Disclosure to make an Alternative Compliance Payment.

XI. Building Portfolios

- a. **Eligibility for Building Portfolios.** To confirm eligibility for a Building Portfolio, Owners must attest that the Building(s) meet all applicable eligibility criteria below. The Owner must provide supporting documentation upon request by the BERDO Administrator. Upon

submission of a request by a Building Owner with an accompanying explanation of circumstances, the BERDO Administrator may then choose to waive one or more of the following eligibility criteria for up to one year.

- i. All Buildings in the proposed Building Portfolio have the same Owner as listed in the records of the City of Newton Assessors' office or at least one of the following is true:
 - (a) The same majority owner or beneficial owner of two or more special purpose entities or charitable organizations may be considered the Owner of record for purposes of creating a Building Portfolio; provided that the beneficial owner is the entity legally responsible for BERDO compliance and that a Building may not be in more than one Building Portfolio.
 - (b) An 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 may be considered the Owner of record for purposes of creating a Building Portfolio; provided that the entity, directly or indirectly through its subsidiaries, (i) has ownership interest, is the entity legally responsible for BERDO compliance, and (ii) in the case of a limited partnership, is a general partner, and that a Building may not be in more than one Building Portfolio.
 - (c) Charitable organizations under common ownership and control of an entity that is legally responsible for BERDO compliance may be considered the Owner of record for purposes of creating a Building Portfolio; provided that a Building may not be in more than one Building Portfolio.
- i. The Building Uses, Energy Use, and Emissions data of all Buildings in the proposed Building Portfolio were third-party verified during the most recent applicable Verification Year.
- ii. The Gross Floor Area for any condominium Buildings in the proposed Building Portfolio was third-party verified during the most recent applicable Verification Year.
- iii. All Buildings in the proposed Building Portfolio are in compliance with the Ordinance and Regulations, including, as applicable, requirements for Individual Compliance Schedules or Hardship Compliance Plans, and (i) the payment of any applicable fines for any failure to comply with reporting requirements, accurately report information, or comply with an Emissions standard, (ii) where feasible, the submission of any missing required reporting data, and (iii) the submission of compliance mechanisms in the amount required to correct any failure to meet an Emissions standard in any calendar year.
- iv. None of the Buildings in the proposed Building Portfolio are vacant, as

defined in Section VI.e.ii.;

- b. **Requirements for Building Portfolios.** Owners must maintain compliance with (i) any conditions attached to the approval of a Building Portfolio and (ii) the following requirements; failure to do so may result in revocation of the Building Portfolio.
- i. Any Building Portfolio that contains Buildings with different Building Uses shall comply with a blended Emissions standard, except when subject to an Individual Compliance Schedule. Blended Emission standards shall be calculated in accordance with Section IX.b.
 - ii. For any Building Portfolio that combines Buildings subject to Emissions standard requirements beginning in different years, the compliance obligation shall begin in the earliest compliance year among the Buildings in the Portfolio.
 - iii. Any Building in the proposed Building Portfolio that is required to meet a more stringent standard prior to 2050 set by special permit or other municipal requirements must meet its Building-specific Emissions standard every year.
 - iv. For any Building Portfolio that includes a) buildings using energy generated by one or more Co-generation Systems, or b) 100,000 square feet or more of total GFA across multiple covered buildings using energy generated by District Thermal Systems, or c) industrial or manufacturing Buildings, or d) 200,000 square feet or more of total GFA across multiple buildings Owners must
 - (a) Submit an Emissions standard compliance plan within two (2) years of the BERDO Administrator's initial approval of the Building Portfolio. Such plan must comply with any requirements in Policies and Procedures, and any guidance or standard form adopted by the BERDO Administrator.
 - (b) Submit annual progress reports that identify any progress made on the Emissions standard compliance plan. Such reports must comply with any requirements in Policies and Procedures, and any guidance or standard form adopted by the BERDO Administrator.
 - (c) Submit an updated Emissions standard compliance plan every Verification Year.
 - v. Owners must notify the BERDO Administrator within thirty (30) days of a change in occupancy status to a Building that is part of a Building Portfolio. If a Building Portfolio includes a vacant Building, as defined in Section VI.e.ii, or an existing Building in a Building Portfolio becomes vacant, the vacant building shall not be included in determining the Emissions standard for said Building Portfolio or used to achieve compliance with the Building Portfolio's Emissions standard.

- (a) In the event that an Owner fails to provide timely notification regarding a change in occupancy status and the BERDO Administrator independently determines, based on available information or inspection, that a Building is vacant, the BERDO Administrator shall have the authority to remove such Building from the Building Portfolio until the building is no longer determined to be vacant.
 - vi. When a Building is no longer determined to be vacant by the BERDO Administrator or when it receives a Certificate of Occupancy, it shall be included in the Emissions standard compliance obligations of the Building Portfolio.
 - vii. Any portfolio that includes one building that shares (without sub-metering) one or more non-electric energy systems must also include all other covered buildings sharing one or more of those systems.
- c. **Building Portfolios Application Process** . Owners may submit applications for Building Portfolios on a rolling basis. Owners must submit applications by the deadline imposed by the BERDO Administrator in Policies and Procedures for Building Portfolios to be used that same year, unless the BERDO Administrator extends this deadline for a given year at their discretion. Owners shall apply in accordance with any guidance or standard form issued by the BERDO Administrator. A pending application for a new or modified Building Portfolio shall not stay an Owner's compliance obligations under the Ordinance or Regulations. Owners shall utilize one of the following application pathways.
- (i) **Pathway One.** For proposed Building Portfolios that do not include a) buildings using energy generated by one or more Co-generation Systems, or b) 100,000 square feet or more of total GFA across multiple covered buildings using energy generated by District Thermal Systems, or c) industrial or manufacturing Buildings, or d) 200,000 square feet or more of total GFA across multiple buildings.
 - (a) Applications must include:
 - 1. Confirmation of compliance with the eligibility criteria listed in Section XI.a.
 - 2. A list of all Buildings included in the Building Portfolio.
 - (b) The BERDO Administrator shall review each application for completeness, shall inform the Owner whether the application is complete, and shall approve with standard conditions or deny an application in accordance with the timeline set in the Policies and Procedures document. A decision shall be based on whether the applicant meets the eligibility criteria set forth in Section XI.a.
 - (c) The BERDO Administrator may, at their discretion, provide guidance to correct issues in a submitted application within a time frame specified in Policies and Procedures before making a decision.
 - (d) The BERDO Administrator shall provide a written decision to the

Owner.

- (ii) **Pathway Two.** For proposed Building Portfolios that include a) buildings using energy generated by one or more Co-generation Systems, or b) 100,000 square feet or more of total GFA across multiple covered buildings using energy generated by District Thermal Systems, or c) industrial or manufacturing Buildings, or d) 200,000 square feet or more of total GFA across multiple buildings.
 - (a) Applications must include:
 - 1. Confirmation of compliance with the eligibility criteria listed in Section XI.a.
 - 2. A list of all Buildings included in the Building Portfolio.
 - 3. A brief narrative description of existing plans to achieve compliance across the proposed Building Portfolio. This should include, but need not be limited to, (i) any anticipated building audits, retrofits, capital improvements, or any other Emissions reduction efforts that may be implemented in the Building Portfolio in the near term, (ii) any anticipated strategies for developing the Emissions standard compliance plan, and (iii) if applicable, any expected efforts to inform and engage tenants in the development of the Emissions standard compliance plan.
 - (b) The BERDO Administrator shall review each application for completeness, shall inform the Owner whether the application is complete, and shall approve with standard conditions, approve with special conditions, or deny an application. A decision shall be based on whether the Owner meets the eligibility criteria set forth in Section XI.a and on consideration of the Owner's narrative. The BERDO Administrator shall provide a written decision to the Owner.

d. Building Portfolios Conditions of Approval .

- i. The BERDO Administrator shall include the following standard conditions on the approval of any Building Portfolio:
 - (a) Timely compliance with reporting and third-party verification requirements in the Ordinance.
 - (b) Timely compliance with the requirements in Section XI.b, including, when applicable, the submission of a satisfactory Emissions standard compliance plan.
 - (c) The BERDO Administrator or their designee may inspect any Building that is part of an approved Building Portfolio, at reasonable times and with reasonable notice, in order to assess compliance with the terms and conditions of said Building Portfolio.

- ii. The BERDO Administrator may approve Building Portfolios with special conditions. Conditions must reasonably serve a purpose in advancing transparency, accountability, relevant community interests, decarbonization or resilience. The rationale for each condition shall be documented and made available to the applicant.
- e. **Modifications to Approved Building Portfolios.** Owners must submit notices and requests to modify an approved Building Portfolio by the deadline imposed by the BERDO Administrator in Policies and Procedures for the modification to be used the same year, provided that the BERDO Administrator may extend this deadline for a given year at their discretion. For Building Portfolios using a blended Emissions standard, the Owner must update the blended Emissions standard to reflect any modification to the Building Portfolio according to the requirements in Section IX.b.
- i. Notice to the BERDO Administrator is required to remove a Building from an approved Building Portfolio due to (a) change of Owner of an existing Building or (b) vacancy of an existing Building.
 - (a) If Building(s) are removed from an approved Building Portfolio for these reasons after the deadline imposed by the BERDO Administrator in Procedures or the applicable deadline of a given year, Owners must calculate and comply with an adjusted blended Emissions standard for the Building Portfolio.
 - (b) The original and new Owners are jointly and separately responsible for notifying the BERDO Administrator within thirty (30) Days of the change of ownership.
 - ii. Approval from the BERDO Administrator is required to remove any Building from an approved Building Portfolio for any reason other than in (e)(i) or to add any Building. Any Building added to an approved Building Portfolio must meet the eligibility criteria and requirements for Building Portfolios in Section XI.
 - iii. For Building Portfolios that are required to complete an Emissions standard compliance plan, Owners must submit a short update to reflect any modification to the Building Portfolio as part of the next required annual progress report in accordance with Policies and Procedures and any guidance adopted by the BERDO Administrator. Any modifications to the Building Portfolio must also be reflected in any subsequent progress reports and updates to the Emissions standard compliance plan.
 - (a) If adding a Building to a Building Portfolio would trigger the need to complete an Emissions standard compliance plan, when one was not required before, Owners shall submit an initial Emissions standard compliance plan within two (2) years of the BERDO Administrator's approval of the modification.
 - iv. The BERDO Administrator shall approve or deny a requested modification in accordance with the timeline set in Policies and

Procedures , or at a later date upon request of the Owner. A decision shall be based on whether the Building Portfolio is, at the time of the request, in material compliance with the Ordinance and any requirements in Section XI, including any standard or special conditions set by guidance documents issued by the BERDO Administrator.

f. **Transfer of Building Portfolios.** Approved Building Portfolios are transferable upon change of ownership of the entire Building Portfolio. The original and new Owners are jointly and separately responsible for notifying the BERDO Administrator within thirty (30) days of the change of ownership.

g. **Termination of Building Portfolios.**

- i. An Owner may terminate an approved Building Portfolio with notice to the BERDO Administrator by the deadline imposed by the BERDO Administrator in Policies and Procedures for the termination to be effective in the same year, provided that the BERDO Administrator may extend this deadline for a given year at its discretion.
- ii. The BERDO Administrator may revoke an approved Building Portfolio or amend the special conditions of an approved Building Portfolio if they determine that an Owner does not materially comply with the requirements in Section XI or the conditions of a Building Portfolio.

XII. *Individual Compliance Schedules*

- a. **Eligibility for Individual Compliance Schedules.** To confirm eligibility for an Individual Compliance Schedule, an Owner of a Building or approved Building Portfolio must attest to the following and provide supporting documentation upon request. Upon submission of a request by a Building Owner with an accompanying explanation of circumstances, the BERDO Administrator may choose to waive one or more of the following eligibility criteria for up to one year:
 - (i) For all Buildings, the annual Energy use, Gross Floor Area, Building Use(s), and Emissions Factors data for the year selected as the baseline have been third-party verified.
 - (a) Energy use data shall be based on utility data, utility bills, or other factors outlined in Policies and Procedures.
 - (b) Emissions Factors shall be based on factors outlined in Policies and Procedures.
 - (ii) For an individual building or for each building in a Building Portfolio, the total Gross Floor Area has not been reduced from the baseline year by more than ten (10) percent and the largest primary Building Use remains the same.
 - (iii) All Buildings are currently in compliance with the Ordinance and Regulations, including, as applicable, requirements for Building Portfolios and the payment of (i) fines for any failure to comply with reporting requirements, accurately report information, or comply with an Emissions

standard and (ii) the submission of relevant compliance mechanisms in the amount required to correct any failure to meet an Emissions standard in any calendar year.

- b. **Applications for Individual Compliance Schedules for Individual Buildings.** Owners may submit applications for Individual Compliance Schedules on a rolling basis. To use the Individual Compliance Schedule in the same year, applications must be submitted by the deadline imposed by the BERDO Administrator in Policies and Procedures, provided that the BERDO Administrator may extend this deadline for a given year at its discretion. Applications shall be made in accordance with any guidance or standard form issued by the BERDO Administrator. A pending application for a new or modified Individual Compliance Schedule shall not stay an Owner's compliance obligations under the Ordinance or Regulations. An application for an Individual Compliance Schedule for a Building shall include the following information and any other material required by standards issued by the BERDO Administrator:
- (i) The baseline year for Emissions.
 - (ii) An alternative CO₂e Emissions standard reduction schedule that meets the requirements set in the Ordinance.
 - (iii) A brief narrative explaining the reasons for requesting an individual compliance schedule.
 - (iv) A brief description of (a) any significant Emissions reduction efforts completed in the Building from the baseline year to date and any cumulative increase of Gross Floor Area of ten (10) percent or more from the baseline year to date that did not significantly increase Energy use or Emissions.
 - (v) A brief description of proposed methods to meet the alternative CO₂e Emissions standard reduction schedule. This may include, but need not be limited to, any anticipated building audits, retrofits, capital improvements, or any other Emissions reduction efforts that may be implemented in the Building in the near term.
 - (vi) If relevant, an explanation for any inability to meet the eligibility criteria in Section XII.a.
- c. **Applications for Individual Compliance Schedules for Building Portfolios.** Owners may submit applications to approve an Individual Compliance Schedule for Building Portfolios on a rolling basis. To use the Individual Compliance Schedule in the same year, applications must be submitted by the deadline imposed by the BERDO Administrator in Policies and Procedures, provided that the BERDO Administrator may extend this deadline for a given year at its discretion. Owners applying for a Building Portfolio and an Individual Compliance Schedule concurrently must follow the application requirements in Section XI. Applications shall be made in accordance with any guidance or standard form issued by the BERDO Administrator. A pending application for a new or modified Individual Compliance Schedule shall not stay an Owner's compliance obligations under the Ordinance or Regulations. Applications pursuant to this section shall include the following

information and any other material required by standards issued by the BERDO Administrator:

- (i) The baseline year for Emissions. Buildings in a Building Portfolio may have different baseline years, provided, however, that there will be one declining Emissions standard for the whole Building Portfolio.
- (ii) An alternative CO₂e Emissions standard reduction schedule for the Building Portfolio that meets the requirements set in the Ordinance. For Building Portfolios with multiple baseline years, the alternative CO₂e Emissions standard reduction schedule proposed in an application for, or modification to, an Individual Compliance Schedule must be verified by a third party. Third party verification of the alternative CO₂e Emissions standard reduction schedule is not required for Building Portfolios with a single baseline year. In the event an Owner had an approved Building Portfolio before applying for an Individual Compliance Schedule, the alternative CO₂e Emissions standard reduction schedule shall supersede the Building Portfolio's blended Emissions standard. The Individual Compliance Schedule must cover all Buildings in the Building Portfolio.
- (iii) A brief explanation of the reasons for requesting an individual compliance schedule.
- (iv) A brief description of (a) any significant Emissions reduction efforts completed across the Building Portfolio from the baseline year to date, and (b) any cumulative increase of Gross Floor Area of ten (10) percent or more from the baseline year to date that did not significantly increase Energy use or Emissions.
- (v) For Building Portfolios that are required to complete an Emissions standard compliance plan, a copy of such plan. If the Emissions standard compliance plan is not completed at the time of application, submission upon completion shall be a required condition of the Individual Compliance Schedule.
- (iv) For Building Portfolios that are not required to complete an Emissions standard compliance plan, a brief description of proposed measures to meet the alternative CO₂e Emissions standard reduction schedule. This may include, but need not be limited to, any anticipated buildings audits, retrofits, capital improvements, or any other Emissions reduction efforts that may be implemented in the Building Portfolio in the near term.

d. Review of Applications for Individual Compliance Schedules.

- (i) The BERDO Administrator shall review each application for completeness and technical accuracy in accordance with the timeline set in Policies and Procedures.
- (ii) The BERDO Administrator will evaluate applications for approved Building Portfolios seeking an Individual Compliance Schedule and for

individual Buildings seeking an Individual Compliance Schedule. The BERDO Administrator shall consider the following while reviewing an application: (a) a Building or Building Portfolio should have an Emissions standard different than the one applicable under Section 20-179 of the ordinance, (b) there have been significant Emission reductions at the Building or Building Portfolio since the baseline year, and (c) there are extenuating circumstances that support the need for an Individual Compliance Schedule, and (d) if relevant, the reason for and impact of any inability to meet the eligibility criteria in Section XII.a.

- (iii) The BERDO Administrator may deny or approve applications with standard conditions regarding (a) timely compliance with reporting and third-party verification requirements in the Ordinance, and (b) timely compliance with the requirements in Section XII. A written copy of the BERDO Administrator's decision shall be provided to the Owner. The BERDO Administrator may include special conditions for Individual Compliance Schedules that do not meet the eligibility criteria in Section XII.a. Conditions imposed must reasonably serve a purpose in advancing transparency, accountability, relevant community interests, decarbonization or resilience. The rationale for each condition shall be documented and made available to the applicant.

e. **Modifications of Approved Individual Compliance Schedules.** BERDO Administrator approval is required to make any modifications to an Individual Compliance Schedule. Owners must submit requests to modify an approved Individual Compliance Schedule by the deadline imposed in Policies and Procedures for the modifications to be effective in the same year, provided that the BERDO Administrator may extend this deadline for a given year at its discretion. Situations for which modifications are required include:

- (i) Individual Compliance Schedules for individual Buildings if the Building's total Gross Floor Area is reduced by more than ten (10) percent or the largest primary Building Use changes.
- (ii) Individual Compliance Schedules for Building Portfolios if the Building Portfolio's total Gross Floor Area is reduced by more than ten (10) percent or the three largest primary Building Use(s) across the Building Portfolio change.
- (iii) Changes to an approved alternative CO₂e Emissions standard reduction schedule because of the addition of a Building to a Building Portfolio that has an Individual Compliance Schedule.

The BERDO Administrator shall approve requests for modifications that adjust approved alternative CO₂e Emissions standard reduction schedules using the standard methodology adopted in Policies and Procedures provided by the BERDO Administrator.

f. **Transfer of Individual Compliance Schedules.** Approved Individual Compliance Schedules for individual Buildings or whole Building Portfolios are transferable upon change of ownership. The original and new Owners are jointly and separately responsible for notifying the BERDO Administrator within thirty (30) Days of the change of ownership. Upon notice, the Individual Compliance Schedule

will be transferred.

- g. **Termination of Individual Compliance Schedules.** Upon termination of an Individual Compliance Schedule, the Building or Building Portfolios will be subject to the Emissions standards in Section 20-179 of the ordinance.
- (i) An Owner may terminate an approved Individual Compliance Schedule. Notice must be provided to the BERDO Administrator by the deadline imposed in Policies and Procedures for the termination to be effective for the same year, provided that the BERDO Administrator may extend this deadline for a given year at its discretion.
 - (ii) An Individual Compliance Schedule for a Building Portfolio shall be automatically terminated if the associated Building Portfolio is terminated in accordance with Section XI.
 - (iii) The BERDO Administrator may revoke an approved Individual Compliance Schedule if the BERDO Administrator determines that an Owner does not materially comply with the requirements in Section XII or the conditions of an Individual Compliance Schedule.
 - (a) If an Owner demonstrates that material noncompliance was due to unique circumstances beyond the Owner's control, the BERDO Administrator may, at its discretion, amend an approved Individual Compliance Schedule rather than terminate it.
 - (iv) A written copy of the BERDO Administrator's decision shall be provided to an Owner by electronic means.

XIII. Hardship Compliance Plans

Hardship Compliance plans grant relief from compliance with applicable emissions standards for a period of time specified through the application process. Hardship Compliance Plans cannot exempt a building from the emissions standards.

- a. **Types of Hardship Compliance Plans.** Owners may apply for either a:
- (i) Comprehensive Hardship Compliance Plan, which may grant relief from compliance with applicable Emissions standards for extended periods of time (multiple years), and which involves a proposal of relief from the applicant; or
 - (ii) Prescriptive Hardship Compliance Plan, which may grant relief from compliance with applicable Emissions standards for up to six (6) months, and can allow for limited relief.
- b. **Eligibility for Comprehensive Hardship Compliance Plans.** The presence of one or more of the following circumstances of an Owner, Building, or Building Portfolio may constitute a hardship in complying with the Emissions standards in the Ordinance. The existence of such circumstances must be demonstrated in accordance with Policies and Procedures and any guidance or standard forms issued by the BERDO Administrator. Where a Comprehensive Hardship Compliance Plan is submitted for a Building Portfolio, Owners must demonstrate that the hardship exists at the Building Portfolio level. To establish eligibility for a Comprehensive Hardship Compliance Plan, an Owner of a Building or an approved Building Portfolio must demonstrate that one or more of the following conditions apply and

that such condition(s) prevent compliance with the Ordinance:

- (i) Financial hardship, such as:
 - (a) Owner bankruptcy for all or part of a year in which an Emissions standard must be met.
 - (b) A lender with contractual authority over the Owner denies or withholds consent for the owner to incur additional debt for compliance-related capital expenses.
 - (c) Emergency capital expenses within the last four years to address unforeseeable building system failure or structural failure have materially limited the Owner's ability to reasonably finance compliance-related costs, where such failure could not reasonably have been prevented or addressed in a manner that would have enabled the building's compliance with BERDO.
- (ii) Regulatory or contractual circumstances, such as:
 - (a) Long-term leases without reopeners signed prior to January 2025 that categorically prohibit any significant compliance-related work at a Building.
 - (b) Delays in electric system interconnections or adequate delivery of electricity for reasons outside of an Owner's control, provided that the Owner's requests for interconnections and notification of anticipated electricity demands were substantially complete and made in a timely manner in light of planned work and Emissions standard compliance deadlines.
 - (c) Denial of, or significant delays in, government permits or approvals for significant compliance-related work, provided that applications for such permits or approvals were substantially complete and made in a timely manner in light of planned work and Emissions standard compliance deadlines.
 - (d) Adverse impacts on historic integrity or character-defining features of a property listed in the State Register of Historic Places or designated as a local landmark under M.G.L. c. 40C would result from compliance measures, provided that the Owner demonstrates, and receives written concurrence from the Newton Historical Commission or its designee, that qualified preservation professionals have determined that no reasonable alternative exists for achieving compliance without compromising historic features.

- (iii) Technical or operational circumstances, such as:
 - (a) Building and/or site space constraints that prevent significant compliance-related work provided that there is no reasonable alternative approach to compliance using current available technology.
 - (b) Equipment needed for significant compliance-related work is not available in the United States, or can be shown to be inadequate for use in Massachusetts, including due to supply chain constraints, provided that there is no reasonable alternative approach to compliance using current available technology.
 - (c) Compliance-related capital planning with long-term schedules for capital expenditures that cannot be changed, provided that there is no reasonable alternative approach to compliance.
 - (d) Compliance-related work cannot reasonably be completed while the building is occupied and therefore necessitates temporary relocation of one or more tenants. Owners must show that no reasonable alternative approach would achieve required emissions reductions without such relocation and the need to coordinate tenant relocation materially affects the Owner's ability to complete such upgrades within the applicable compliance timeline.
- (iv) Other unusual circumstances, such as:
 - (a) A natural disaster or declared state of emergency causing delays in significant compliance-related work.
 - (b) Compliance significantly interferes with the ability to provide services critical to community health and safety, such as lifesaving services, or affordable housing.
- (v) The Building or Building Portfolio does not have an Individual Compliance Schedule or is requesting to replace an Individual Compliance Schedule with a Comprehensive Hardship Compliance Plan.
- (vi) For a Building Portfolio, the requested Comprehensive Hardship Compliance Plan would apply to all Buildings in the Building Portfolio.
- (vii) The Building or Building Portfolio is in compliance with the Ordinance and Regulations, including, as applicable, (i) requirements for Building Portfolios, (ii) payment of fines for any failure to comply with reporting requirements or Emissions standards, (iii) where feasible, the submission of any missing required reporting data, and (iv) the correction of any failure to meet an Emissions standard by using any compliance mechanism(s) authorized in the ordinance.

- (a) The BERDO Administrator may waive this clause at its discretion given extenuating circumstances.
- (viii) The Owner has not previously been denied a Comprehensive Hardship Compliance Plan for the same Building or Building Portfolio, provided, however, that Owners may submit a new application if there are material changes to the circumstances or characteristics of an Owner, Building, Building Portfolio, or the hardship they create.
- c. **Applications for Comprehensive Hardship Compliance Plans.** Unless otherwise noted in this section, all submissions seeking Comprehensive Hardship Compliance Plans must include the following information and supporting documentation in accordance with any application instructions issued by the BERDO Administrator.
 - (i) An Energy Audit conducted by a qualified person that complies with the requirements listed in Policies and Procedures and any other guidance issued by the BERDO Administrator, such as requirements to assess the cost, savings, and timeline for emissions reductions measures. The audit must be completed no earlier than four years prior to the submission of the Hardship Compliance Plan. This requirement can be replaced by similar energy audit work if approved by the BERDO Administrator.
 - (ii) A brief written description of how the Owner has used, plans to use, and/or considered the use of all the compliance mechanisms and flexibility measures authorized by the Ordinance other than direct Emission reductions, including: Building Portfolios and Individual Compliance Schedules.
 - (iii) A description, with supporting documentation, of the existence and scope of the circumstance(s) or characteristic(s) in Section XIII.b. that apply to the Owner, Building, or Building Portfolio.
 - (iv) A description, with supporting documentation, of the hardship resulting from the combination of:
 - (a) The compliance actions described in (c)(ii); and
 - (b) The circumstances and characteristics described in (c)(iii).
 - (v) An evaluation of opportunities, feasibility, costs and financial support for direct compliance-related work in the Building or Building Portfolio, including, where applicable, opportunities for conducting compliance-related work in phases to reduce or avoid hardships.
 - (vi) A brief description of significant Emissions reduction efforts and work on heating/cooling systems and energy-intensive systems/process loads in the Building or Building Portfolio prior to the time of application.
 - (vii) An outline of the Building or Building Portfolio's proposed measures to achieve the BERDO 2050 emissions standard.
 - (viii) The alternative Emissions standards and timeline for compliance the Owner is requesting for a Building or Building Portfolio, and any requested relief from BERDO penalties.

- (ix) For applications for Comprehensive Hardship Compliance Plans for Building Portfolios with an Emissions standard compliance plan, a description of how a Hardship Compliance Plan will impact the development and implementation of such Emissions standard compliance plan.
- (x) Any other requested relief from BERDO requirements.

d. Eligibility for Prescriptive Hardship Compliance Plans.

- (i) A Building or Owner can be considered eligible for a Prescriptive Hardship Compliance Plan if they:
 - a) have not reported their energy data to the City in any previous Compliance Years, and
 - b) have accrued fines due to non-compliance with the BERDO ordinance.

The existence of qualifying circumstances and characteristics must be demonstrated in accordance with Policies and Procedures and any guidance or standard forms issued by the BERDO Administrator.

The following criteria must also be met in order for a Building or Building Portfolio to be eligible to apply for a Prescriptive Hardship Compliance Plan:

- (ii) For a Building Portfolio, all buildings in the Building Portfolio meet the eligibility requirements outlined in section XI(a).
- (iii) The Owner has not previously been denied a Prescriptive Hardship Compliance Plan for the same Building or Building Portfolio, provided, however, that Owners may submit a new application if there are material changes to the circumstances or characteristics of an Owner, Building, Building Portfolio, or the hardship they create.

e. Applications for Prescriptive Hardship Compliance Plans. Unless otherwise noted in this section, all submissions of Prescriptive Hardship Compliance Plans must include the following information and supporting documentation in accordance with any application instructions issued by the BERDO Administrator.

- (i) A description, accompanied with supporting documentation, of the existence and scope of the circumstance(s) or characteristic(s) in Section XIII.d. that apply to the Owner, Building, or Building Portfolio.
- (ii) An evaluation of opportunities, feasibility, costs and financial support for direct compliance-related work in the Building or Building Portfolio.
- (iii) A brief narrative description of significant Emissions reduction efforts and work on heating/cooling systems and energy-intensive systems/process loads in the Building or Building Portfolio prior to the time of application.
- (iv) An outline of the Building or Building Portfolio's proposed actions to achieve the BERDO 2050 emissions standard.

- (v) For applications for Prescriptive Hardship Compliance Plans for Building Portfolios with an Emissions standard compliance plan, a description of how a Prescriptive Hardship Compliance Plan will impact the development and implementation of such Emissions standard compliance plan.
- f. **Submitting Hardship Compliance Plan Applications.** Applications can be submitted on a rolling basis in accordance with the following schedule:
 - (i) Applications must be submitted by the deadline imposed by the BERDO Administrator in Policies and Procedures for the Hardship Compliance Plan to be used that same year, provided that the BERDO Administrator may extend this deadline for a given year at its discretion.
 - (ii) Within thirty (30) Days of receiving an application to create or modify a Hardship Compliance Plan, the BERDO Administrator shall inform the Owner whether the application is complete.
 - (iii) The BERDO Administrator shall approve with standard conditions, approve with special conditions, or deny an application for or modification to an approved Hardship Compliance Plan. A copy of the decision shall be provided to an Owner within thirty (30) Days after the BERDO Administrator's finding of completeness.
- g. **Conditions of Approval for Hardship Compliance Plans.** At their discretion, the BERDO Administrator may approve Hardship Compliance Plans.
 - (i) The BERDO Administrator shall include the following standard conditions on the approval or modification of any Hardship Compliance Plan:
 - (a) For Comprehensive Hardship Compliance Plans with a requested timeline longer than five (5) years, the BERDO Administrator shall reassess approved plans every five (5) years. As part of this review, Owners shall update the information provided in their initial applications for Hardship Compliance Plans, including any changes to (i) circumstances and characteristics contributing to a hardship for an Owner, (ii) relevant technology, (iii) applicable regulatory requirements, and (iv) other relevant factors.
 - (b) For Prescriptive Hardship Compliance Plans, the accrual of fines and/or penalties related to BERDO non-compliance will be paused while the plan is in effect. This does not exempt owners from fines incurred prior to the approval of the plan.
 - (c) The BERDO Administrator or its designee may inspect any Building that is subject to a Hardship Compliance Plan, at reasonable times and with reasonable notice, in order to assess compliance with the terms and conditions of said Hardship Compliance Plan. Any proposal to add special conditions to any type of Hardship Compliance Plan shall be considered within the context of the individual application,

including any waiver for outstanding fines or penalties related to BERDO noncompliance.

- (ii) The BERDO Administrator may approve Hardship Compliance Plans with special conditions. Conditions imposed must reasonably serve a purpose in advancing transparency, accountability, relevant community interests, decarbonization or resilience. The rationale for each condition shall be documented and made available to the applicant.

h. Modifications of Approved Hardship Compliance Plans. BERDO Administrator approval is required to make any modification to a Hardship Compliance Plan or to extend the relief granted in such plan to any additional Building. For Building Portfolios with Hardship Compliance Plans, a Building added to the Building Portfolio must meet the Emissions standard required by the Ordinance every year unless the BERDO Administrator approves a modification of the Hardship Compliance Plan for the Building Portfolio. Requests to modify an approved Hardship Compliance Plan must be submitted by the deadline imposed by the BERDO Administrator in Policies and Procedures for the modifications to be effective in the same year, provided that the BERDO Administrator may extend this deadline for a given year at its discretion. The BERDO Administrator shall review and approve with standard conditions, approve with special conditions, or deny a requested modification in accordance with the schedule in XIII.h. Decisions on modifications shall be made in accordance with the following requirements and other conditions the BERDO Administrator deems appropriate:

- (i) Any Building removed from a Hardship Compliance Plan will be subject to the Emissions standards set in Section 20-179 of the ordinance or, if applicable, a Building Portfolio blended Emissions standard.
- (ii) If a Building is removed from a Building Portfolio with a Hardship Compliance Plan, the BERDO Administrator will reassess the Hardship Compliance Plan and may modify the relief and conditions provided, however, that:
 - (a) For Buildings that are removed from a Building Portfolio due to change of ownership of an existing Building or vacancy of an existing Building, the Owner of the remaining Building Portfolio may continue to rely on the terms of the Building Portfolio's Hardship Compliance Plan, and must continue to comply with all conditions, until the BERDO Administrator makes a decision on need for modification.
 - (b) Reassessment is not required if the term of the relief in the Hardship Compliance Plan will end in less than eighteen (18) months.
- (iii) Existing Buildings added to a Building Portfolio with a Hardship Compliance Plan may be subject to the Hardship Compliance Plan only if the BERDO Administrator approves the modification to the Hardship Compliance Plan. Such modification may include changes to the relief and conditions of the Hardship Compliance Plan as the BERDO Administrator deems appropriate.

- (iv) An Owner seeking to modify both a Building Portfolio with a Hardship Compliance Plan and its associated Hardship Compliance Plan may submit a combined application to the BERDO Administrator. Such application shall be reviewed in accordance with the schedule in XIII.f.

i. Periodic Review of Comprehensive Hardship Compliance Plans.

- (i) In accordance with the schedule for reassessments of an approved Comprehensive Hardship Compliance Plan, Owners shall provide the BERDO Administrator with an update of the information provided in the application for the Comprehensive Hardship Compliance Plan every five (5) years. Such update shall include a narrative description of any efforts to resolve or mitigate any circumstance, characteristic or hardship that contributed to the original Comprehensive Hardship Compliance Plan. Updates shall be provided in accordance with any forms or guidance issued by the BERDO Administrator.
- (ii) If the BERDO Administrator determines that there has been a material change in (a) the circumstances, characteristics or hardship that were the basis for the Comprehensive Hardship Compliance Plan, (b) relevant technology, (c) applicable regulatory requirements, or (d) other relevant factors, the BERDO Administrator may amend the relief and conditions of a Comprehensive Hardship Compliance Plan, or terminate a Comprehensive Hardship Compliance Plan.
- (iii) The BERDO Administrator shall review updates and make determinations regarding modifications in accordance with the timeline in Section XIII.f.

j. Termination of Hardship Compliance Plans. Upon termination of a Hardship Compliance Plan, the Building or Building Portfolios will be subject to the Emissions standards in Section 20-179 of the ordinance or, if applicable, a Building Portfolio blended Emissions standard.

- (i) An Owner may terminate an approved Hardship Compliance Plan. Notice must be provided to the BERDO Administrator by the deadline imposed by the BERDO Administrator in Policies and Procedures for the termination to be effective for the same year, provided that the BERDO Administrator may extend this deadline for a given year at its discretion.
- (ii) A Hardship Compliance Plan for a Building Portfolio shall be automatically terminated if the associated Building Portfolio is terminated in accordance with Section XI of the Regulations.
- (iii) The BERDO Administrator may revoke an approved Hardship Compliance Plan if the BERDO Administrator determines that an Owner does not materially comply with the requirements in Section XIII, including requirements to report modifications to Building Portfolios subject to Hardship Compliance Plans, or the conditions of a Hardship Compliance Plan.

- (a) If an Owner demonstrates that material noncompliance was due to unique circumstances beyond the Owner's

control, the BERDO Administrator may, at its discretion, amend an approved Hardship Compliance Plan rather than terminate it.

- (iv) The BERDO Administrator shall provide the Owner with reasonable notice of any proposed revocation.

XIV. *Preservation of Records*

- a. Building Owners shall retain, in printed or electronic format, the following records for a period of five (5) years:
 - i. All records and information submitted pursuant to the Ordinance or the Regulations, including records and information that is optional to report, whether submitted via ENERGY STAR Portfolio Manager, an equivalent approved reporting platform , or otherwise;
 - ii. All records and information necessary to demonstrate compliance with the Ordinance and the Regulations, including, but not limited to, any back-up information substantiating a Building's Energy data, Energy use exempt from Emissions requirements, Building Use, Emissions, and qualifications for Building Portfolios, blended Emission standards, Individual Compliance Schedules, or Hardship Compliance Plans, if applicable;
 - iii. Confirmation of submissions from ENERGY STAR Portfolio Manager or other approved systems designated for reporting;
 - iv. Requests to Tenants for information pursuant to Section 20-186 or as otherwise needed to comply with the Ordinance;
 - v. Third-party verifications and a copy of the credentials and the contact information for the qualified energy professional that were uploaded to ENERGY STAR Portfolio Manager or other approved systems designated for reporting ; and
 - vi. Requests for extensions of reporting deadlines.

- b. Building Owners shall make such records and information available for inspection or audit upon request by the BERDO Administrator or their designee.

- c. The City shall retain in electronic format, the following records for a period of five (5) years:
 - i. All records and information received relating to Building Portfolios, Individual Compliance Schedules, Prescriptive Hardship Compliance Plans, and Comprehensive Hardship Compliance Plans, such as applications, modification requests, and reports.

XV. *Disclosure of Records and Information*

- a. All records and information submitted pursuant to the Ordinance, including records and information that is optional to report, whether submitted via ENERGY STAR Portfolio Manager, an equivalent reporting platform designated by the BERDO Administrator, or otherwise, may be disclosed as determined appropriate by the BERDO Administrator.

- i. Records disclosed by the BERDO Administrator as a means of fulfilling requirements in Sec. 20-187 of the ordinance shall, at a minimum, include: BERDO ID, gross floor area, whole building energy usage broken out by energy type, and estimated emissions. Further disclosed information is specified in Policies and Procedures.
- b. The BERDO Administrator’s public disclosure of any Building’s compliance with the Emission standards in the Ordinance may include information regarding a Building Owner’s use of “Estimated” data and the amount of Additional Compliance Payments paid in a compliance year.

XVI. *Equitable Emissions Investment Fund*

a. Eligibility

- i. Any Building Owner or resident located in the City of Newton, or entity acting on behalf of Newton buildings, is eligible to receive funding from the Fund to evaluate, design, implement, support and/or administer projects that benefit Environmental Justice Populations or produce direct Emissions reductions from Energy use in buildings located in the City of Newton.
- ii. Any non-profit entity that operates in the City of Newton, including but not limited to entities that operate affordable housing, is eligible to receive funding from the Fund to cover costs incurred in complying with the requirements of the Ordinance.
- iii. Any Building Owner located in the City of Newton is eligible to receive funding from the Fund for technical assistance related to implementation of the requirements of the Ordinance.
- iv. The City is eligible to receive funding from the Fund to cover costs incurred by the city in administering or complying with the Ordinance. The City shall also be required to follow the application process.

- b. Application Process.** Provided that funds are available, the BERDO Administrator shall hold at least one application cycle per calendar year and shall provide at least a ninety (90) Day period for interested parties to submit applications. If there is no money in the Fund in any given year, the BERDO Administrator shall not hold an application cycle for that calendar year. An application shall include the information required by the BERDO Administrator as published in Policies and Procedures, and shall utilize any standard form issued by the BERDO Administrator:

The BERDO Administrator shall review each application for completeness and compliance with the eligibility criteria in the Ordinance and Section XVI.a.

c. Funding Decisions.

- i. For all funding decisions related to applications from interested parties, the BERDO Administrator must evaluate project proposals based on their expected impacts and benefits, according to the criteria publicly promulgated in Policies and Procedures.
 - 1. Funding criteria is subject to approval by the mayor and shall be reevaluated every five years.
 - 2. Funding criteria shall include, but is not limited to:
 - a. Financial need

