

BERDO REVIEW BOARD PUBLIC MEETING

October 23, 2023



This public meeting 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.

BERDO REVIEW BOARD



Rashida Boyd
Board Member



Stephen Ellis
Board Member



Lovette Jacobs
Board Member



Gail Latimore
Board Member



Jack Nelson
Board Member



Matt O'Malley
Board Member



Kai Palmer-Dunning
Board Member

CITY OF BOSTON STAFF



**Diana
Vasquez**

*Environment
Department*



**Claudia
Diezmartinez**

*Environment
Department*



**Aladdine
Joroff**

*Environment
Department*



**Hannah
Payne**

*Environment
Department*

Agenda

Today's Meeting



- 1. Approval of Meeting Minutes**
- 2. Hardship Compliance Plan Policies**
- 3. Fines & Enforcement Preliminary Proposals**
- 4. Regulations Next Steps**
- 5. Administrative Updates**
- 6. Meeting Adjournment**

Approval of Meeting Minutes

Board votes on approving previous meeting's minutes.

The background of the slide is a dark blue aerial wireframe illustration of a city, showing various building footprints and street layouts in a light blue color.

BERDO Phase 3 Regulations Updates

Staff presents regulations and policies development updates



Phase 3 Regulations: Topics to Address



BUILDING PORTFOLIOS

- *Two or more Buildings with the same Owner or that are part of an approved Institutional Master Plan may comply with BERDO through a Building Portfolio. Building Portfolios are approved by the Review Board.*



INDIVIDUAL COMPLIANCE SCHEDULES

- *Alternative emissions standard reduction schedules based on a baseline year. Individual Compliance Schedules are approved by the Review Board.*



HARDSHIP COMPLIANCE PLANS

- *Alternative emissions reduction targets and/or timelines. Available for buildings that experience a hardship in complying with BERDO. Hardship Compliance Plans are approved by the Review Board*



EQUITABLE EMISSIONS INVESTMENT FUND

- *New investment fund that will collect all Alternative Compliance Payments (ACPs) and penalties made to BERDO and invest them in local building carbon abatement projects that prioritize environmental justice communities in Boston.*



FINES AND ENFORCEMENT

- *Fines and penalties for non-compliance.*



COMPLIANCE WITH EMISSIONS STANDARDS

- *Compliance rules for buildings in special circumstances (e.g., vacant buildings, demolitions)*

Updates on Comment Period

Hardship Compliance Plan regulations and draft forms for Building Portfolios and Individual Compliance Schedules

- **21-day comment period** on draft Hardship Compliance Plan regulations closed on **Friday, October 20 at 12 pm.**
 - The City is **collecting this feedback** to inform revisions.
- **Public input period** on draft standard forms for Building Portfolios and Individual Compliance Schedules closed **Monday, October 16 at 12 pm.**
 - **Received one comment** seeking to clarify that a blended emission standard is not required for a portfolio that is also seeking an Individual Compliance Schedule.



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 released 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 basic 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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Next steps

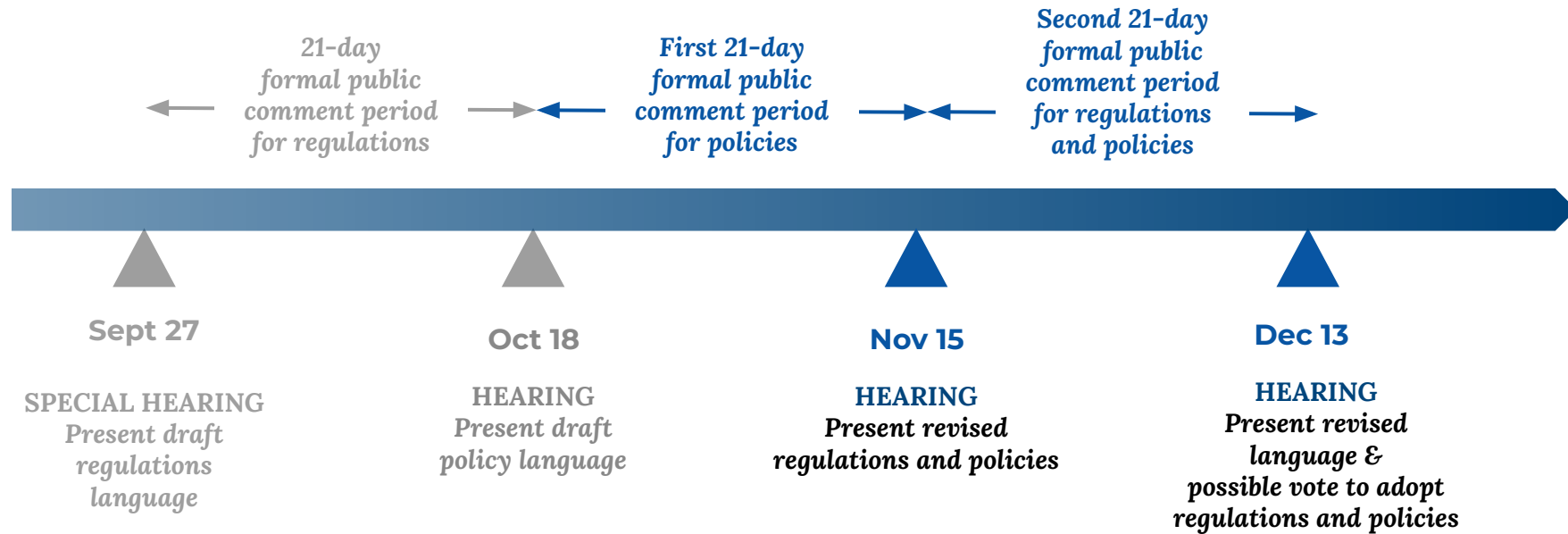
- The Air Pollution Control Commission opened a **21-day comment period** on draft policies for Hardship Compliance Plans starting **October 19**.
 - *The public may submit comments until **Thursday, November 9 at 12 pm**.*
- Based on public feedback received on Hardship Compliance Plan regulations* and policies, the BERDO team will revise the draft regulations and policies and present them to the APCC at their scheduled **November 15** hearing.
 - *The Commission may, at its discretion, open a **second comment period** for both regulations and policies.*

**We continue to accept feedback on regulations if informed by the draft policies and application form.*



Tentative timeline subject to change

Hardship Compliance Plans



The background of the slide is a dark blue aerial wireframe illustration of a city, showing various building footprints, streets, and a grid pattern. The lines are light blue and create a sense of depth and structure.

Board Q&A

Board Members may discuss and ask staff questions.

The background of the slide is a dark blue aerial wireframe map of a city, showing the outlines of buildings, streets, and parks. The lines are white and light blue, creating a technical, architectural feel.

Public Q&A

The public may discuss and ask staff questions.

A night-time photograph of a city street, likely in a downtown area, decorated with festive lights. The scene is dimly lit, with the primary light sources being the warm white string lights draped over trees and buildings, and a street lamp with multiple circular globes. In the background, a church tower with a dome is illuminated. People are visible walking on the sidewalk, and a sign for 'Cafe Pulse' is visible on the left. The overall atmosphere is festive and urban.

Fines & 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

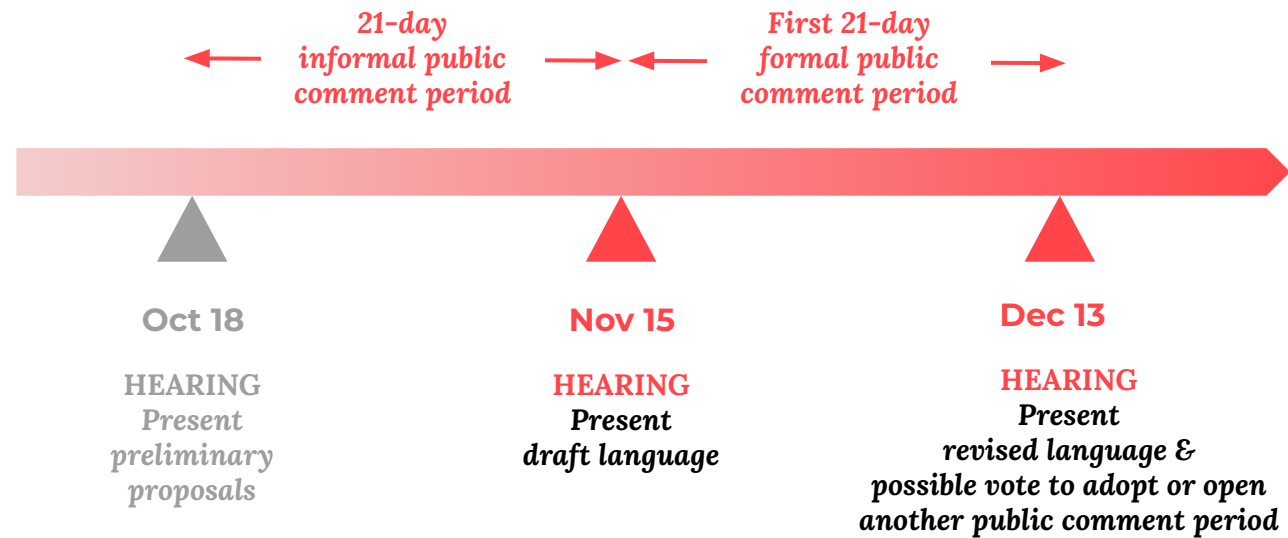
- With respect to violations based on a discrepancy between third-party verification of information reported by a Building Owner and an Owner's self-certified reporting:
 - There shall be at least 90 Days between the Environment Department's notice of probable violation and the Review Board's issuance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

Next steps

- There is a **21-day informal comment period** on preliminary proposals for fines and enforcement **starting October 19**.
 - *The public may submit informal comments until **Thursday, November 9 at 12 pm**.*
- Based on public feedback received on fines and enforcement preliminary proposals, the BERDO team will draft regulation language and present them to the APCC at their scheduled **November 15** hearing.
 - *The Commission may, at its discretion, open **the first formal comment period** on fines and enforcement regulations.*

Tentative timeline subject to change

Fines and enforcement



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Board Q&A

The Board may discuss and ask staff questions.



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Public Q&A

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The background of the slide is a dark blue wireframe illustration of a city skyline, viewed from an elevated perspective. The buildings are represented by white and light blue lines, creating a complex, geometric pattern. A semi-transparent dark blue horizontal band runs across the middle of the image, serving as a backdrop for the text.

Additional Administrative Updates

Staff presents administrative updates

Adjourn

Thank you for your participation!

