

OFFERED BY COUNCILOR KENZIE BOK AND MICHAEL FLAHERTY, EDWARDS,
ARROYO, BREADON, BAKER, CAMPBELL, ESSAIBI-GEORGE, FLYNN, WU, O'MALLEY AND MEJIA



CITY OF BOSTON IN CITY COUNCIL

AN ORDINANCE TO PROVIDE FOR LEGAL
REPRESENTATION OF THE BOSTON GROUNDWATER
TRUST BY THE CITY OF BOSTON LAW DEPARTMENT

WHEREAS, In 1986, the Boston City Council established the Boston Groundwater Trust (“Trust”) to monitor groundwater levels in areas of the city where foundations are threatened by low levels and to make recommendations to solve the problem; *and*

WHEREAS, In 1997, the Mayor of Boston appointed a new Board of Trustees, who are unpaid volunteers, and who discovered existing groundwater observation wells that had been installed on public property for various projects and incorporated them into a comprehensive monitoring network; *and*

WHEREAS, In 2005, the City of Boston and the Commonwealth of Massachusetts came together to sign a Memorandum of Understanding creating a City-State Groundwater Working Group that includes all of the public agencies responsible for the underground infrastructure, who have pledged to work together to understand the causes of the problem and to repair those problems for which they are responsible; *and*

WHEREAS, The City of Boston has established a Groundwater Conservation Overlay District that requires people building or renovating properties in the affected area to make sure that their projects will not cause any reduction in groundwater levels and to incorporate systems that will recharge rainwater into the ground instead of sending it into the streets and storm drains; *and*

WHEREAS, The Corporation Counsel of the City of Boston has opined that the trustees of the Trust, as well as the Trust’s officers, members, employees, and volunteers as well as every other person who shall, on a part time and consultative basis, perform any professional services for the Trust, cannot be deemed to be “officers or employees” of the City of Boston for the purposes of City of Boston Code, Ordinance, § 5-8.1 (the “Opinion”); *and*

WHEREAS, As a result of this Opinion, the City of Boston Law Department will not, on application, advise any trustee, officer or employee of the Trust on any question of law connected with the discharge of their official duties, and will not appear as Counsel in any suits, actions, or prosecutions which may involve the rights or interests of the Trust, and defend the trustees, officers or employees of the Trust in

suits against them for their official actions, or for the performance of their official duties, or when any estate, right, privilege, interest, ordinance, act, or direction of the Trust is brought in question; *and*

WHEREAS, The Board of Trustees are unpaid volunteers who promote the public health, safety, convenience, and welfare of the residents of the City of Boston by monitoring groundwater levels and making recommendations to raise, restore, or protect the water table in areas where it is low to protect wood pile and other types of foundations of buildings with the City of Boston, and without the needed legal representation by the City of Boston Law Department, the Trustees will be unable to continue to freely work on behalf of the residents of City; ***NOW, THEREFORE***

Be it ordained by the City Council of Boston as follows:

Section 1.

The City of Boston Code, Ordinances, Chapter 5, Section 8.1 is hereby amended by adding the following after “and may settle any suit against the City.”:

All trustees, officers, members, employees, and volunteers as well as every other person who shall, on a part time and consultative basis, perform any professional services for the Boston Groundwater Trust, shall be advised, on application, by the City of Boston Law Department on any question of law connected with the discharge of their official duties. The City of Boston Law Department shall appear as Counsel in any suits, actions, or prosecutions which may involve the rights or interests of the Trust, and defend the trustees, officers, employees, or volunteers of the Trust in suits against them for their official actions, or for the performance of their official duties, or when any estate, right, privilege, interest, ordinance, act, or direction of the Trust is brought in question; the City of Boston Law Department may take such steps, and incur such expenses, for the prosecution and defense of suits as the Corporation Counsel deems necessary; and the City of Boston Law Department shall look into the potential settlement of a claim when requested so to do by the co-chairs of the Trust and, if the Corporation Counsel deems such settlement advantageous to the Trust, may settle any claim or suit against the Trust, with the concurrence of the Board of Trustees of the Trust.

Section 2.

The provisions of this ordinance are severable and if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining provisions, which remain in full force and effect.

Section 3.

The provisions of this ordinance shall be effective immediately upon passage.

Filed on: August 13, 2021