



BOSTON CITY COUNCIL

Committee on Government Operations

Lydia Edwards, Chair

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REPORT OF COMMITTEE CHAIR

November 17, 2021

Dear Councilors:

Docket #0900, ordinance to provide for legal representation of the Boston Groundwater Trust by the City of Boston Law Department, was sponsored by Councilors Kenzie Bok, Michael Flaherty, and Lydia Edwards, and referred to the Committee on August 18, 2021. The Committee held a public hearing on November 15, 2021.

Summary of Legislation:

This legislation amends the City of Boston Code Section 5-8.1 to specifically allow for the Boston Groundwater Trust (BGwT) to be provided with legal representation by the City of Boston Law Department.

Information Gathered at the Hearing:

The BGwT was established by the City Council in 1986 and charged with monitoring groundwater levels in the many areas of the City where the historic wooden pilings that form the foundations of buildings are threatened by low groundwater levels, and with making recommendations to raise, restore, and protect the water table in those areas. The Board of Trustees is composed of unpaid volunteers - nine members appointed by the Mayor upon recommendation of the designated residential, commercial, and preservation groups, three appointed ex-officio by the Mayor, and one appointed ex-officio by the President of the City Council.

After a period of dormant activity following its inception, the Trust was reactivated in 1997 by Mayor Menino. Since 1997 the Trust has made immense progress in its mission, including the installation of a comprehensive groundwater observation well network, the establishment of the City-State Groundwater Working Group, updates to the Groundwater Conservation Overlay District (GCOD) and Article 32 of the Zoning Code, and the securing of funding from the Department of Environment, Energy and Open Space and the Boston Water and Sewer Commission. The BGwT works closely with Boston Water and Sewer Commission, Zoning Board of Appeals, Inspectional Services, and the Boston Planning and Development Agency to ensure compliance for projects sited for GCOD.

Despite their work on behalf of the City, Corporation Counsel has previously issued an opinion that the Trustees of the BGwT, as well as its officers, members, employees, and volunteers are not deemed to be officers and employees of the City, under the current language of CBC 5-8.1, to

whom Corporation Counsel provides legal representation. As a result, Corporation Counsel cannot, in their opinion, represent or give legal advice to 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 that may involve the rights or interests of the Trust or trustees, officers, or employees of the Trust as a result of their official actions. In the event a suit is brought against the trustees, as a result of actions carried out in the work of the Trust, they would be required to retain their own counsel. For this reason the Trust has also been required to purchase insurance that specifically addresses the need to pay for legal counsel should the Trust or trustees have legal action brought against them - a significant, but necessary expense, in light of Corporation Counsel's opinion.

Rationale and Recommended Action:

Docket #0900 proposes a minor fix to a potentially significant loophole in the City Code. The lowering of the water table can potentially lead to decay of buildings that would need extensive and expensive repairs - at the cost of the homeowner and not covered by insurance - and in the worst cases could lead to the total loss of a building. The BGwT works to protect the City's historical and financial interest in many neighborhoods, and has made great strides in the past few decades towards this public good. Extending City resources is not to be considered lightly, but given the BGwT's function within the City, extending the City's legal protection to this work is in the City's best interest.

The Chair of the Committee on Government Operations, to which the following was referred:

Docket #0900, ordinance to provide for legal representation of the Boston Groundwater Trust by the City of Boston Law Department,

submits a report recommending that this docket **ought to pass**.

For the Chair:



Lydia Edwards, Chair
Committee on Government Operations