



BOSTON CITY COUNCIL

Committee on Government Operations

Gabriela Coletta, Chair

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REPORT OF COMMITTEE CHAIR

March 27, 2024

Dear Councilors,

The Committee on Government Operations was referred ***Docket #0257, Message and order for your approval an Ordinance creating the Planning Department in the City of Boston***, on January 31, 2024. This matter was sponsored by Mayor Michelle Wu.

Summary of Legislation:

Docket #0257 seeks to create a City of Boston Planning Department to serve as the primary land use agency in the City of Boston. The Department will be responsible for planning and designing the City's built environment, as well as evaluating and managing urban development. It will be responsible for developing plans and strategies to address the City's growth and infrastructure needs, providing staff and technical support for planning or zoning efforts, and reviewing large-scale private development proposals within Boston.

The Department would serve as the technical planning lead for the City of Boston and would be empowered to organize and make recommendations to the BPDA Board concerning matters within its purview as necessary. The Department would have several divisions, each assigned specific powers and duties to facilitate effective urban development planning. These divisions include the Planning Division, responsible for creating comprehensive plans and zoning regulations; the Design Division, tasked with setting standards for urban design and evaluating proposed developments; the Development Review Division, responsible for assessing community impact and managing application processes; and the Real Estate Division overseeing property management and public-private partnerships. Additionally, the Department may encompass support services to facilitate an efficient transition.

Under the Ordinance, the Department would be managed by the The Chief of Planning who would be appointed by the Mayor and could serve in a dual capacity as the Director of the BRA and EDIC together doing business as the BPDA. The Chief of Planning would be responsible for coordinating the work of the Department and the BPDA, directing planning efforts, and ensuring alignment with the BPDA's statutory authority.

The Chief and Department employees would be municipal employees of the City of Boston subject to *M.G.L. ch. 268A (Conduct Of Public Officials And Employees)*, and the City of Boston Residency Ordinance (Boston City Code 5-5.3). However, the Ordinance provides exemptions to residency requirements for Former BPDA Personnel transitioning to employment

within the City Department. Exemptions would be granted based on length of service with the BPDA (ten (10) consecutive years) or for those who've already become exempt pursuant to collective bargaining agreements.

The proposed Ordinance also includes provisions permitting the execution of Financial Transfers between the BPDA and the City, without further authorization, to support the Department's operations. The Ordinance stipulates that the City and the BPDA shall execute a Memorandum of Agreement, which could be amended from time to time, to memorialize the process by which financial transfers will be effectuated.

The proposed Ordinance also includes provisions that would constitute any necessary requisite City Council approval, authorizing the City to transfer real property to and acquire from the BPDA.

The Ordinance would take effect upon passage, with provisions for addressing partial invalidity through judicial review.

Information Gathered:

The Committee held a public hearing on ***February 29, 2024***, a working session with public testimony on ***March 8, 2024***, and two additional working sessions where Councilors discussed amendments on ***March 18, 2024***, and ***March 22, 2024***.

During the **February 29th hearing**, Chief Arthur Jemison, Deputy Chief Devin Quirk, CFO Ashley Groffenberger, and Chief People Officer Alex Lawrence testified on behalf of the Administration. The Administration outlined the Ordinance's objectives, and Councilors raised concerns regarding legal and economic implications for employees and planning as a whole.

During the **March 8th working session**, Deputy Chief Devin Quirk, CFO Ashley Groffenberger, and Chief People Officer Alex Lawrence testified on behalf of the Administration. The Administration's testimony emphasized the goal of financial transparency and the City Council's oversight role in the new Department and Councilors suggested amendments to clarify the language, ensure city council approval on the financial transfer MOA, and include provisions for community involvement.

Throughout the hearing and the working session, Councilors posed questions about the future of BPDA employees, financial transfers, property transfers, and the mechanisms for public participation and oversight. On both occasions, the Committee and the Administration engaged in an open discussion with the Administration and provided suggestions for Department operations as well as amendments.

Councilors raised questions regarding benefits for BPDA employees, such as retirement and life insurance. The Administration stressed the City's commitment to protecting BPDA employees' rights and benefits. The Administration explained that while some aspects of transition for certain employees, including retirement and life insurance, will be contingent upon the passage of the Home Rule Petition, the Ordinance will play a crucial role in effectuating a smooth transition regardless of passage.

Regarding financial transfers, the Administration explained that the financial transfers will be payments made to the City by the BPDA for the Planning Department's services. Councilors questioned the mechanisms and process for transferring the funds, and the Administration explained that the transfers would be effectuated through an MOA and further that the funds would be transferred to the City's 'General Funds' and then to the Department. Stressing the importance of and need for transparency, Councilors suggested instead creating a revolving fund and requested oversight and review of the MOA.

Councilors questioned the Administration about what Department contractual funds would be spent on. The Administration explained that funds would be spent on services like property management, consultants, planning studies, and architectural services.

Councilors emphasized the significance of inclusive and resilient planning and raised concerns about relying on real estate revenue and market conditions to fund planning. Councilors questioned whether the Administration could provide an inventory of properties that would be transferred. The Administration stated that they do not have an inventory yet but explained that when the time comes, it will be a deed-by-deed level analysis. The Administration explained that their priorities would first be to move staff over to the City, transfer money, and then transfer land over time.

Councilors questioned the impact the Ordinance would have on the Council's role in approving surplus property transfers. The Administration explained that the intent of the Ordinance was not to divest any of the Council's power over property transfers. It was explained that the section of the Ordinance regarding property transfers regards currently acquired property, not future acquired property. The Administration clarified that transfers of later acquired property will be facilitated by the Public Facilities Commission pursuant to the City Charter.

Regarding community voice, Councilors also raised concerns about ensuring transparent and community-driven planning processes and the integration of existing initiatives. Councilors and the Administration discussed existing community initiatives and discussed future ideas for community advisory boards. Councilors stressed the importance of the Administration being intentional about improving community engagement.

Public testimony included various perspectives, with some supporting the Ordinance for its potential to improve the planning processes and others expressing concerns about the preservation of BPDA's powers, the need for more community engagement, and the risks of repeating past mistakes. Testimony also expressed concerns about financial transparency, oversight, and community involvement in the planning process. Suggestions included requiring city council approval for land takings, appointments of planning chiefs, and financial transactions. Public testimony highlighted a need for a commission, including community members, to oversee the transition to a new Planning Department. Finally, testimony expressed the importance of protecting affordable housing and open space in land disposition agreements.

During the **March 18th** and **March 22nd** working sessions, The Committee convened to discuss amendments with respect to the structure of the new Department, potential oversight

mechanisms, personnel issues, and the community engagement processes. During deliberations suggestions were focused on strengthening language with respect to transparency, accountability, affordability, equity, and environmental resiliency.

With respect to the Department structure, the Committee discussed amending the Ordinance to require City Council approval to modify divisions and duties of the Department and to add language referring to zoning under the "The Planning Division" section. The Committee also discussed the Design Division's powers and duties with respect to setting reasonable conditions on projects and the potential implications of codifying the same.

Regarding accountability, transparency, and oversight, the Committee discussed ideas such as a publicly accessible permit database, annual report requirements, and an annual public hearing to gather feedback. Regarding annual reporting requirements, suggestions were made to include language that would mandate reporting on performance metrics related to affordability, resilience, and equity goals. Suggestions were also made to ensure the Ordinance increases transparency in the Article 80 development review process by requiring the publication of documents like mitigation agreements and project impact reports. Further, potential amendments were suggested to create and strengthen community advisory structures.

With regard to personnel, transition considerations, and effective date, the Committee discussed concerns over potential impacts on current BPDA employees, especially unionized staff, if the Home Rule Petition enabling the transition does not ultimately pass. Language suggestions included amending the effective date and creating a mandated hearing to discuss the next steps for the Department should the HRP not pass.

Summary of Amendments

Based upon public testimony and discussions between Councilors and the Administration, I recommend the following amendments:

SECTION 1.

Language was added to 8-14.1 to reference the zoning code.

8-14.1. Purpose of the Planning Department.

There shall be in the City of Boston a department, known as the Planning Department (the "Department"), which shall be the City's primary land use agency charged with planning and designing the City's built environment, **proposing recommended changes to the zoning code**, and evaluating and managing urban development (the "Purpose"). In achieving its Purpose, the Department shall develop plans and create strategies aimed at addressing the City's growth and infrastructural needs. Included among the Department's duties are to provide staff and technical support for planning or zoning efforts, and to review all large scale private development proposals within Boston.

Language was added to 8-14.3 to reference the zoning, Article 80, the Landmarks Commission and the Public Facilities Commission. Language was also struck and inserted to ensure City Council approval of any changes made to the structure of the Department.

8-14.3. Powers and Duties of the Department.

The Department shall serve as the technical planning lead for the City of Boston and shall organize and make such recommendations to the BPDA Board or any successor entities concerning matters within its responsibility as may be necessary and appropriate.

The Department shall have the following divisions with the respective powers and duties below to further its Purpose which may be amended ~~at the discretion of~~ by the Chief of Planning, **subject to any required approval by City Council as established in the City Charter**, to ensure the effective functioning of the Department:

- a. *The Planning and Zoning Division*: To create comprehensive plans and zoning regulations to guide urban development citywide, including by: maintaining an accurate and updated version of the City's Zoning Code and accompanying zoning maps which shall be available to the public through a publicly accessible database; and providing staff and technical support for citywide planning and zoning efforts, including staffing for Boston Zoning Commission activities.
- b. *The Design Division*: To set standards and guidelines for urban design citywide, and to evaluate architectural, public realm, and site design of proposed developments and policies, including by: ensuring that projects and policies meet aesthetic, functional, and community standards for urban design, with coordination and input from the Boston Civic Design Commission, and other public processes; evaluating aspects such as building appearance, landscape design, signage, lighting, and their integration into the surrounding environment; and enhancing the quality, character, and compatibility of development within neighborhoods across the city to promote and protect the City's cultural heritage and unique sense of place.
- c. *The Development Review Division*: To evaluate proposed development projects to ensure coordination with zoning, land use planning, and other relevant policies related to the built environment, including by: assessing the community impact of projects related to affordability, resilience, equity, and other important factors, in order to shape project details, mitigation, and community benefits; managing application submission, public notifications, public hearings, review by various city departments, and final decision-making and approvals for proposed development projects; and ensuring transparency and predictability in development review processes **pursuant to Article 80 of Boston's zoning code**.
- d. *The Real Estate Division*: To manage the planning process for acquisition and disposition of real estate **in coordination with the Public Facilities Commission and the BPDA board**; to oversee public-private partnerships to create public value on public land; and to direct construction, maintenance, coastal protection, leasing, and licensing of public assets with municipal or non-municipal uses including properties owned by the BPDA or successor entities.
- e. The Department may also include support services to ensure the smooth functioning of human resources, financial, legal, technological, communications, and other functions.

Language was added to 8-14.5 to provide the City Council with oversight of the MOA.

8-14.5. Financial Transfers.

Upon the effective date of this ordinance as defined in Section 5 and consistent with the City Charter and state law, and from time to time thereafter, the BPDA shall transfer funds to the City to fulfill the Purpose of the Department and to fulfill its statutory duties (the “Financial Transfers”). The City and the BPDA shall execute a memorandum of agreement (the “Financial Transfer MOA”), which Financial Transfer MOA may be amended from time to time with with a copy submitted to the City Council annually, to memorialize the process by which the Financial Transfers shall be effectuated for any Financial Transfers completed after the effective date of this ordinance. The City shall expend any funds subject to the Financial Transfers in the manner in which they are required to be expended. The annual budget filed by the Mayor may be based on the amount of the Financial Transfers estimated to be received by the City in the upcoming fiscal year. The Financial Transfer MOA, in conjunction with this Section 3.1 shall permit the execution of the Financial Transfers without further authorization subject to the City Charter.

SECTION 2.

Language was added to 8-14.6 to ensure property transfers are done in accordance with the City Charter and State law.

8-14.6. Property Transfers.

The City may transfer to and acquire from the BPDA real property according to existing statutory processes as they may apply to certain parcels. The City and the BPDA may execute one or more memorandum of agreement to memorialize the process by which certain real property transfers shall be effectuated. ~~To the extent required, this Section shall constitute any requisite City Council approval of real property acquisitions and transfers by the City pursuant to the City Charter or other applicable Massachusetts state law.~~ To facilitate the transfers of already acquired property owned by the BPDA at the date of passage of this ordinance this section shall constitute any requisite City Council approval of real property acquisitions and transfers subject to the City Charter or other applicable Massachusetts state law.

The section below (8-14.7) was added to include annual Department performance reporting standards.

8-14.7 Planning Department Performance Reporting

To ensure adequate transparency and oversight throughout a transition period, the Department, in consultation with the BPDA, or its successor entity, shall be required to write and publish an Annual Report assessing success in advancing the express goals of newly repurposed land use and planning tools including affordability, resilience, and equity. This requirement for an annual report and hearing shall sunset after 5 years.

- a. Annual Report: The Department shall submit an Annual Report. The annual report shall include an assessment of the Department’s performance in achieving affordability, resilience, and equity during citywide planning and zoning initiatives. The Annual Report submitted under this section shall be made publicly available on the City’s website upon submission to the council. The Annual

Planning Report submitted pursuant to this section shall include all of, but are not limited to, the following: Documentation of the Department's progress and initiatives in furthering its purpose and stated goals over the last year, including ongoing and new planning and zoning initiatives related to increasing affordability and equity, criteria guiding resiliency, and trends summarizing development review outcomes and operations; Goals, Ongoing and New Initiatives for the following fiscal year; Hiring and employment trends including demographics regarding Department personnel with metrics for increasing diversity;

- b. Financial Reporting: The BPDA, or successor agency, shall submit annually to the Mayor and City Council an audited annual financial statement, which shall include summaries of revenue and expenses in millions with complete list of assets and ground leases, capital expenses, and developer mitigation funds. The audited annual financial statement shall be made publicly available on the City's website upon submission to the City Council. In addition, the City shall provide copies to the Council, on an annual basis, of any amended financial MOA between the BPDA and the City.
- c. Annual City Council Hearing: No later than March 31st of each year, the City Council shall hold a hearing to discuss the Annual Report, which may include an additional independent evaluation of the performance and effectiveness of the Department. The annual hearing shall allow public testimony regarding findings in both the annual report and annual evaluation of the Department.

SECTION 3.

Language was struck and added to make the Ordinance effective at the commencement of fiscal year.

8-14.9 Effective Date.

The provisions of this Ordinance shall take effect **at the commencement of fiscal year 2025.**

Recommended Action:

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

Docket #0257, Message and order for your approval an Ordinance creating the Planning Department in the City of Boston,

submits a report recommending that this docket **ought to pass in an amended draft.**

For the Chair:



Gabriela Coletta, Chair
Committee on Government Operations