



# CITY OF BOSTON

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IN THE YEAR TWO THOUSAND SEVENTEEN

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## AN ORDINANCE CREATING THE COMMUNITY PRESERVATION COMMITTEE

WHEREAS, The City Council of the City of Boston voted on May 11, 2016 to adopt the Community Preservation Act ("CPA") by accepting the provisions of MGL, Chapter 44B, Sections 3 through 7; and,

WHEREAS, The voters of the City of Boston approved the adoption of the Community Preservation Act on November 8, 2016; and,

WHEREAS, The CPA allows the City to use the funds generated under its provisions for affordable housing, historic preservation, community preservation, open space, and recreation; and,

WHEREAS, State law requires the establishment of a Community Preservation Committee to make recommendations regarding the use of the funds.

NOW THEREFORE,

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

### Section 1.

The City of Boston Code, Ordinances, Chapter VIII shall be amended by adding at the end thereof, the following new section and subsections:

### **8-12 Community Preservation Committee.**

#### **8-12.1 Establishment.**

Pursuant to M.G.L. c. 44B, §5, there is hereby established in Boston the Community Preservation Committee, hereinafter referred to as the Committee.

#### **8-12.2 Definitions.**

"Open space" shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes, and other wetlands, ocean, river, stream, lake, and pond frontage,

beaches, dunes, and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve, and land for recreational use.

"Historic resources" shall include a building, structure, vessel, or real property that is listed on the state register of historic places or determined by the Boston Landmarks Commission to be significant in the history, archeology, architecture, or culture of the City of Boston, including through designation as a Boston landmark or pending landmark.

"Recreational use" shall include active or passive recreational use including but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground, or athletic field. The term "recreational use" shall not include horse or dog racing or the use of land for a stadium, gymnasium, or similar structure.

"Affordable housing" shall include low and moderate income housing for individuals and families, including low and moderate income senior housing.

"Low income housing" shall mean housing for those persons and families whose annual income is less than 80 percent of the areawide median income.

"Moderate income housing" shall mean housing for those persons and families whose annual income is less than 100 percent of the areawide median income.

"Low or moderate income housing for seniors" shall mean housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

"Areawide median income" shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

### **8-12.3 Purpose.**

The Committee is responsible for evaluating the community preservation needs of the City, and making recommendations for expenditures from the Community Preservation Fund created by acceptance of the Community Preservation Act, M.G.L. c. 44B. Community preservation needs shall include the acquisition, creation, and preservation of open space; the acquisition, preservation, rehabilitation and restoration of historic resources; the acquisition, creation, preservation and support of affordable housing; the acquisition, creation, preservation and rehabilitation of land for recreational use; and, the rehabilitation of open space and community housing that is acquired or created under Chapter 44B.

### **8-12.4 Membership, Appointment, Term.**

- A. The Committee shall consist of nine members. Five of the members shall be appointed as required by the Community Preservation Act, M.G.L. c. 44B, [§5](#), as follows:
  - a. One member of the Boston Conservation Commission shall be designated by said commission;

b. One member of the Boston Landmarks Commission shall be designated by said commission;

c. One member of the Parks and Recreation Commission shall be designated by said commission;

d. As Boston possesses no planning board established under M.G.L. c. 41, §81A, one representative of the Boston Redevelopment Authority, d.b.a. the Boston Planning & Development Agency, shall be designated by said agency.

e. The Boston Housing Authority being constituted without a board, one representative of the Boston Housing Authority to be designated by said Authority.

B. Four additional members shall be appointed by the City Council as follows:

a. The City Council shall establish by order a special committee which shall concern itself with nominating persons for consideration by the full City Council for appointment to the Committee. When making its recommendations and to ensure that all interests are represented, the special committee shall nominate one person that has experience in development, business, finance, or any combination thereof and one person that has expertise in open space, affordable housing, historic preservation, or any combination thereof. In addition to the aforementioned members, the special committee shall also nominate two persons that have a history of involvement in their local communities. The special committee shall receive applications from interested persons which shall include a brief statement of the reasons for their interest and suitability.

b. The nominees submitted by the special committee to the City Council for appointment shall reflect the ethnic, racial, socioeconomic, and geographic diversity of the City of Boston. When nominating individuals for appointment, the special committee shall also take into account the backgrounds of the five members appointed under chapter 44B, section five of the General Laws.

c. All members of the Committee must be residents of Boston at appointment and for the duration of their term.

d. No nominee for the four City Council appointments shall be an employee or elected official of the City of Boston.

e. All members shall be appointed for terms of three (3) years. No member shall serve more than two consecutive terms. If a vacancy should arise and a new member is appointed to serve a partial term of less than two years, that partial term shall not count against the limit of two consecutive terms.

- f. In order to stagger the terms of the members, the initial appointments of the Conservation Commission member, the Housing authority member, and one of the members appointed by City Council shall be for one (1) year; and the initial appointments of the Landmarks Commission member, the Boston Redevelopment Authority, d.b.a the Boston Planning & Development Agency member, and another of the members appointed by City Council shall be for two (2) years. After the initial appointments, all subsequent terms shall be for three (3) years.

#### **8-12.5 Powers and Duties.**

- A. The Committee shall study the needs, possibilities, and resources of Boston regarding community preservation and shall produce a Community Preservation Plan. In conducting such a study, the Committee shall consult with existing municipal boards and departments, including the Boston Conservation Commission, the Boston Landmarks Commission, the Parks & Recreation Commission, the Boston Planning & Development Agency, the Department of Neighborhood Development, the Parks and Recreation Department, and the Boston Housing Authority, or persons acting in those capacities or performing like duties. Before voting to approve its initial Plan, the Committee shall hold at least one public informational hearing on local needs, possibilities and resources. Thereafter, it shall hold at least one public hearing before updating the Plan each year.
- B. Public hearings of the Committee shall be planned so as to maximize citizen attendance including a preference to hold hearings in the evenings or off-site from City Hall. Notice of all public hearings of the Committee shall be posted publicly on the City website and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the City.
- C. The Committee shall make recommendations to the Mayor for transmittal to the City Council for the acquisition, creation and preservation of open space, for the acquisition, preservation, rehabilitation and restoration of historic resources, for the acquisition, creation, preservation and rehabilitation of land for recreational use, for the acquisition, creation, preservation and support of affordable housing, and for rehabilitation or restoration of such open space, and affordable housing that is acquired or created in accordance with the provisions of the Community Preservation Act; provided, however, that funds expended pursuant to that Act shall not be used for maintenance. With respect to affordable housing, the Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
- D. The Committee may include in its recommendations a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community

Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

- E. Committee recommendations shall include their anticipated costs.
- F. In addition to state reporting mandated by the Community Preservation Act, the Committee shall regularly report on the uses of the funds, map the geographic distribution of funded projects, and study the economic and racial breakdown of benefiting areas. It shall make such analysis and the underlying data available on a City website on at least an annual basis.

#### **8-12.6 Rules and Regulations.**

- A. The Committee shall elect one of its members as Chair. In the event a Chair is unavailable, the most senior member of the Committee shall chair the Committee.
- B. Five members shall constitute a quorum for the purpose of convening a meeting and of conducting the business of the Committee. The Committee shall approve its actions by majority vote of the quorum.
- C. All records of the Committee shall be public unless an exemption applies under the state's public records law.
- D. Committee members shall serve without compensation.
- E. Committee members who are not otherwise employed by the City shall be classified as special municipal employees for the purpose of Chapter 268A of the Massachusetts General Laws.
- F. The Commissions, Committee, Agency and Council who have appointment authority under this Section shall appoint such representatives within 90 days of the effective date of this ordinance. Should there be a vacancy or resignation in any of the Community Preservation Committee positions, the Commissions, Authority, Agency and Council who have appointment authority under this Section shall appoint a new representative within 90 days of the first date of a known vacancy or resignation..

#### **8-12.7 Fiscal Accountability.**

Pursuant to M.G.L. c. 44B, §6, the community preservation funds shall not replace existing operating funds, only augment them. The Mayor's Budget Office shall provide the Committee with operating and capital expenses for open space, historic preservation, and housing made in FY17, the last year prior to the City of Boston's adoption of the Community Preservation Act.

#### **8-12.8 Applicability.**

The provisions of this Chapter shall be interpreted and applied at all times consistently with the provisions of Chapter 44B of the General Laws and all provisions of any relevant general or special act.

Section 2.

**Effective Date.**

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

Filed in Council: August 2, 2017



# Boston City Council

## Committee on Government Operations

Michael F. Flaherty, *Chair*

### Report of Committee Chair

August 2, 2017

Dear Councillors:

**Docket #0123, an ordinance creating the Community Preservation Committee**, was sponsored by Councilor Michael F. Flaherty and Andrea J. Campbell and referred to the Committee on Government Operations on January 11, 2017. The Committee on Government Operations held a hearing on March 23, 2017, where public comment was taken. The Committee also held a working session on May 15, 2017, in order to address issues that arose from the public hearing and to discuss proposed language changes to the proposal as initially filed.

**Docket #0123** is an ordinance that would establish the Community Preservation Committee ("CPC"), as required by state law MGL c.44B, §5, to make recommendations regarding the use of the funds generated by the 1% surcharge on real property. The proposal establishes the CPC's function; membership, appointment, term; powers; and, duties. **Docket #0123** requires that the CPC study the needs of Boston regarding community preservation, evaluate community preservation needs of the City, and make recommendations for expenditures from the Community Preservation Fund. Under the terms of the proposal, the CPC would consist of nine members, five of which would be appointed as required under MGL c.44B, §5 and four members appointed by the City Council.

At the hearing, Councilors discussed the composition of the CPC. Councilors emphasized that the following factors should be considered when appointing the CPC members: community representation; racial, economic, and neighborhood diversity; and, experience in finance, business, or construction. Councilors discussed the process for the allocation of funds, the purposes for which the funds may be used, and the process for appointing the members of the CPC. Councilors emphasized that the process should be transparent and involve community input. Councilors discussed the definition of "open space" to include parks, athletic fields, and playgrounds, as well as the acquisition of new open space. Councilors discussed using the funds to protect existing landmarks, to preserve affordable housing, and to develop new affordable housing. Councilors also discussed using the funds for programs as well as projects.

The Administration offered comments discussing the use of community preservation funds in the areas of historic preservation, open space, recreational use, and housing. Panels representing community organizations and businesses offered comments concerning the composition of the CPC. Yes for a Better Boston and the Greater Boston Interfaith Organization emphasized community involvement and a public process including having meetings in the evenings in accessible neighborhood venues. These organizations also supported hiring an administrator and having a CPC that is autonomous and reflective of the community. Sam Tyler from the Boston Municipal Research Bureau offered comments stating that at least one member of the CPC should be a representative from the business community. Mr. Tyler explained that businesses pay property taxes, contribute to the quality of life in

the city, recognize the importance of housing in Boston, and would be impartial in allocating funds. Public testimony emphasized transparency and community involvement. Public testimony suggested that CPC meetings be held in the evening. Public comments also discussed the use of CPA funds for programs in addition to projects.

The Committee held a working session on May 15, 2017 in order to address concerns from the hearing and to discuss amendments to Docket #0123. The Committee reviewed proposed amendments to the initial proposal relating to clarification of the appointment process by the City Council; the composition and representation of members on the CPC; and, the inclusion of language requiring ethnic, racial, socioeconomic, and geographic diversity in relation to the CPC. Councilors discussed having an open and transparent application process through the creation of a special committee of the City Council. Councilors discussed the importance of having members on the CPC with experience in business and other areas of expertise including housing, historic preservation, development, and finance. Councilors expressed concerns with naming specific organizations in an ordinance and with having one organization as the sole entity for recommending appointments.

The following representatives from the Administration attended the working session: Chief Sheila Dillon; Commissioner Carl Spector; and, Commissioner Chris Cook. The Administration discussed the appropriation process for CPA funds. Representatives from Yes for a Better Boston attended the working session and supported having their organization submit names to the City Council for appointment and having the CPC meetings in the evenings. Representatives from the business community including Sam Tyler from the Boston Municipal Research Bureau attended the working session. The business representatives explained that the business community should have representation on the CPC and that some members of the CPC should have experience with real estate, housing, finance, development, or construction.

### **Summary of Amendments**

Based upon information obtained at the hearing and the working session, I am recommending amendments to Docket #0123. Changes to Docket #0123 include the following: the addition of a separate definition section in 8-12.2; a purpose clause that explains the responsibilities of the CPC in 8-12.3; Section 8-12.4 A, concerning the membership, appointment and term of the CPC, expressly lists the City's entities that will have representation on the CPC to the Boston Conservation Commission, the Boston Landmarks Commission, the Parks and Recreation Commission, the Boston Redevelopment Authority, d.b.a. the Boston Planning and Development Agency; and, the Boston Housing Authority; Section 8-12.4 B(a) provides the methodology for the City Council's appointment of the four additional members through the creation of a Special City Council Committee which shall take applications and consider certain areas of expertise and community ties; Section 8-12.4 (b) includes language requiring ethnic, racial, socioeconomic, and geographic diversity in relation to CPC membership; (c) requires that CPC members be residents of Boston at time of and for the duration of appointment; (d) provides express language that prohibits city employees or elected officials as the four City Council appointments; Section 8-12.4 (e) also adds new language providing for staggered terms and language that states that no member shall serve more than two consecutive terms; Section 8-12.5 provides for a more expansive powers and duties section which includes language about citizen participation and CPC reporting requirements; Section 8-12.6 contains provisions that provide for the rules and regulations of the CPC and includes conflict of interest language; and, Section 8-12.7 is a new section that provides for fiscal responsibility to ensure that CPA funds are not meant to replace existing operating funds but to augment such funds. The amended draft contains an applicability clause that provides that the provisions of the City of Boston Code, Chapter 8-12 be interpreted and



applied consistently with the provisions of Chapter 44B, the Community Preservation Act, and all other relevant general or special acts.

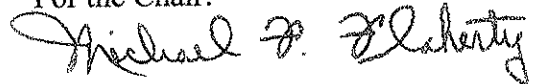
Docket #0123 in its amended version ensures an open and transparent process through the establishment of a City Council special committee for appointment purposes and a CPC that is reflective of community involvement and participation. The rules and regulations section encourages community engagement while the fiscal responsibility provision provides accountability. Requiring ethnic, racial, socioeconomic, and geographic diversity in relation to CPC membership will ensure that the CPC represents all interests. Having a representative that has experience in finance and development as well as individuals that exhibit an expertise in certain areas such as open space, housing, and historical preservation will ensure viable projects and efficient use of CPA funds consistent with the spirit and intent of the CPA.

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

***Docket #0123, an ordinance creating the Community Preservation Committee,***

submits a report recommending that this docket ought to pass in a new draft.

For the Chair:

A handwritten signature in black ink, appearing to read "Michael F. Flaherty". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael F. Flaherty, *Chair*  
Committee on Government Operations