

City of Boston Tackles Climate Change in Local Wetlands Ordinance

January 6, 2020

In December, the Boston City Council adopted, and Mayor Walsh signed, an *Ordinance Protecting Local Wetlands and Promoting Climate Change Adaptation in the City of Boston*. The Ordinance, which took effect upon its passage, alters the Boston permitting landscape by expanding the authority of the Boston Conservation Commission (the "Commission") to address future climate change impacts through the creation of new areas subject to jurisdiction, activities subject to jurisdiction, standards of review and procedural requirements.

Background

Climate change planning and preparedness are here to stay. In 2016, the Mayor's Office published the *Climate Ready Boston* report, generated by an advisory group of scientists and experts, which outlines climate change planning and preparedness strategies. The Ordinance is only the most recent in a series of City of Boston efforts to address this top policy priority.

Going Further than the State Wetlands Protection Act

The Ordinance does not replace state Wetlands Protection Act and implementing regulations (the "Act and Regulations") regarding impacts to *existing* resource areas, but rather adds a layer of permitting consideration for the anticipated effects of *future* climate change. Key provisions are highlighted below.

NEW AREAS SUBJECT TO JURISDICTION

- **Riverfront Area:** Like the Act and Regulations, the Ordinance protects lands adjoining rivers, streams, brooks and creeks for 25' from the mean annual water line. The Ordinance also allows the Commission to designate an "**Extended Riverfront Area**" to a distance of as much as 200'.
- **Waterfront Area:** The Ordinance creates a "Waterfront Area" within the first 25' of the applicable Buffer Zone for certain resource areas, including any coastal beach or any brook, creek or Riverfront Area. The Commission may require the restoration or creation of a strip of continuous, undisturbed vegetative cover **or waterfront public access** throughout this Waterfront Area.
- **Land Subject to Coastal Flooding:** The Ordinance charges the Commission with mapping and promulgating regulations for two new resource areas: the "**Coastal Flood Resilience Zone**" and the "**Inland Flood Resilience Zone**". Based on predictions of future sea level rise, these zones will extend beyond existing flood hazard zones and will likely impose

additional dimensional, design, and regulatory requirements. No Buffer Zone applies to these new Resilience Zone resource areas.

- **Vernal Pool:** The Ordinance allows the Commission to regulate any area that meets the definition of “Vernal Pool” in the Ordinance, whether or not certified by the Massachusetts Division of Fisheries and Wildlife. An applicant may provide evidence to rebut the presumption that an area meets the definition of Vernal Pool.

NEW ACTIVITIES SUBJECT TO JURISDICTION

- **Expanding “Activity:”** The Ordinance defines regulated activities more broadly to include not only specified activities that will alter resource areas but also those which “**pose a significant threat to alter**” such areas or which the Commission find will alter them, even if not specified in the Ordinance

NEW STANDARDS OF REVIEW

- **Future Climate Change Impacts:** In reviewing a permit application, the Commission is explicitly directed to consider and mitigate the anticipated effects of future climate change, using the “best available data”.
- **Areas of Critical Environmental Concern:** The Ordinance authorizes the City Council and Mayor to designate Areas of Critical Environmental Concern apart from those designated by the state Secretary of Energy and Environmental Affairs, and sets “the highest standards of scrutiny” in all such areas.

NEW PROCEDURAL REQUIREMENTS

- **New Process:** The Ordinance creates a similar, though parallel, process as the Act and Regulations for obtaining a permit. The Commission can combine public hearings for both processes in appropriate cases. A permit under the Ordinance is valid for a maximum of six (6) years, after which an applicant must re-apply.
- **Notice Requirements:** The Act and Regulations require notice to direct abutters and others within 100’ of the project property line. The Ordinance extends this to 300’. Given Boston’s density, this could significantly increase the number of noticed parties.
- **Security Requirements:** The Commission may require the work, including required conditions, to be secured by a bond, monetary deposit, or other negotiable security held in escrow. The security requirement may also be fulfilled by **accepting a conservation restriction** or by any other method the Commission determines will help achieve the purpose of the Ordinance.

More to Come

The Commission is charged with promulgating regulations for the Ordinance. Goulston & Storrs is continuing to monitor this process and will provide updates as they become available. **The Ordinance is effective upon its date of passage (December 11, 2019), and therefore could affect current projects.** If you have questions about how the Ordinance affects your project please contact [Matthew Kiefer](#), [Christian Regnier](#), or [Connor O'Dwyer](#).

Disclaimer: This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.