



February 25, 2022

Commissioner Martin Suuberg
Daniel Padien, Waterways Program Chief
MA Department of Environmental Protection
1 Winter Street
Boston, MA 02108

OFFICERS

James M. Tierney
CHAIR

Kimberly Sherman Stamler
VICE CHAIR

Edward H. Ladd
TREASURER

Jeanne Pinado
CLERK

EXECUTIVE COMMITTEE

- Kara Buckley
- Joseph Carroll
- Donald Chiofaro
- Andrew J. Dankwerth
- Lawrence S. DiCara, Esq.*
- John E. Drew*
- Ronald M. Druker
- Elizabeth Grob
- Thomas J. Hynes, Jr.
- Mark R. Johnson
- William F.X. Kane
- James G. Keefe
- Rachel Kelly
- Kevin M. Lemire
- Alan M. Leventhal
- Christopher W. Maher
- Douglas M. McGarrah, Esq.*
- Michael E. Mooney, Esq.*
- Young K. Park
- David G. Perry
- Valerie Roberson
- Yanni Tsipis
- Dana E. Warren
- John Wolff

Richard A. Dimino
PRESIDENT & CEO

* Former Chair

RE: A Better City’s Formal Comments on Chapter 91/Resiliency

Dear Commissioner Suuberg and Chief Padien:

On behalf of A Better City’s membership representing 130 of Boston’s business leaders across multiple sectors of the economy, thank you for the opportunity to provide feedback on the proposed updates to Chapter 91 regulations (310 CMR 9.00) in response to the effects of a changing climate, including sea level rise, increased precipitation, and intensifying storms.

Thank you also for the opportunity to participate in the February 9th stakeholder advisory panel. We are grateful for the Commonwealth’s continued climate leadership and for your proactive engagement with the business community. We are committed to working with you and the DEP team to ensure the successful implementation of the Chapter 91 regulations statewide and on Boston’s waterfront.

We understand the need for resilience-focused regulatory updates to Chapter 91, however A Better City’s members continue to have comments and concerns around: 1) defining climate resiliency in Ch. 91 regulations; 2) promoting district-wide and regional approaches to resiliency; 3) clarifying technical and timing aspects of implementation; 4) ensuring consistency, predictability, and policy alignment; and 5) defining waterfront accessibility for all. Comments, based on this feedback, are enclosed below.

We look forward to continued dialogue and collaboration in the months ahead and thank the Commonwealth for their leadership.

Sincerely,

Rick Dimino
President & CEO, A Better City

Enclosures: 1



ATTACHMENT A: DETAILED FORMAL COMMENTS ON ANTICIPATED UPDATES TO CHAPTER 91 CONCERNING CLIMATE RESILIENCY

A Better City strongly supports the Commonwealth’s leadership in promoting science-based policies that help to keep our waterfronts and their communities resilient and safe in the face of climate change. As the Commonwealth continues to develop and implement the policies needed to achieve this goal, we recognize and appreciate its continued engagement with the business community.

Many of A Better City’s members are property owners or developers on the Boston waterfront and are familiar with the current implications of Chapter 91 regulations. We look forward to ongoing collaboration with the DEP team on Chapter 91 (Ch. 91) updates and include a series of comments and recommendations for your consideration below.

1. DEFINING CLIMATE RESILIENCY IN CH. 91 REGULATIONS

A Better City recommends including a comprehensive definition of climate resiliency in Ch. 91 regulations that incorporates the impacts of extreme heat and extreme precipitation as well as sea level rise and coastal flooding, which will all be detrimental to the waterfront and watershed. Including a more comprehensive definition of climate resiliency in the Ch. 91 process would also be consistent with other definitions of climate resiliency in existing city- and state-level climate policy and regulatory processes.

Recommendation: A Better City recommends including a comprehensive definition of climate resiliency in Ch. 91 regulations that incorporates extreme heat and extreme precipitation.

2. PROMOTING DISTRICT-WIDE AND REGIONAL APPROACHES TO RESILIENCY

A. District-Wide Vulnerability Analyses

When considering how to incorporate climate resiliency into Ch. 91, ABC supports district-wide vulnerability analyses and approaches to resiliency. This will help to enable climate resilient infrastructure implementation and financing, like the suggestions made in Climate Ready Boston.

B. Leveraging Existing License Fees at a District-Scale

A Better City members suggest exploring opportunities for leveraging existing license fees to fund resiliency measures at a district-scale that would help to protect the Commonwealth’s waterfront and its surrounding communities. While we do not recommend increasing license fees, ABC suggests looking into existing license fees as a possible financing mechanism for district-scale and regional resilient climate infrastructure solutions, if possible.

C. Regional Approaches to Resiliency Governance and Implementation

A Better City recommends DEP consider district-wide and regional approaches to resiliency as they relate to the Commonwealth’s waterfront, and to coordinate resilient infrastructure needs across local, state, and federal regulatory agencies with jurisdiction in land subject to Ch. 91 regulations. Pursuing a district-scale and regional approach to resiliency could also help DEP consider how to better enforce standards required by the regulations.



Recommendation: A Better City recommends promoting district-wide approaches to vulnerability analyses, and suggests considering the regional governance, financing, and implementation of climate resilient infrastructure solutions along the waterfront.

3. CLARIFYING TECHNICAL AND TIMING ASPECTS OF IMPLEMENTATION

A. Long-term Licenses, License Renewals and Terms, and Operations Management Organizations

A Better City understands and supports the need to incorporate sea level rise projections and best-available science into long-term licenses of 30 or more years. While we agree with the need for flexible implementation to respond to updates in sea level rise projections over time, it was reassuring that DEP shared in a recent stakeholder advisory panel on February 9th that there is no intent to overturn the issuance of extended term licenses within Ch. 91. A Better City believes that long-term license options are vital for the financing of private development and economic investment in the Commonwealth's waterfront.

As DEP considers updates to Ch. 91 regulations, we recommend providing enough regulatory flexibility to adapt to changing environmental and development market conditions that can lead to innovative resilient waterfront outcomes. We also recommend matching the length of license terms to the reasonable lifespan of built assets to provide more certainty for license holders and their investors, banks, insurance companies, and other stakeholders.

To help facilitate the flexible implementation of long-term licenses over time, we recommend exploring the role of operations management organizations to help address updates to sea level rise projections and their implications on projects with long-term licenses, as an alternative to full license renewal. We also recommend DEP consider how maintenance and operations issues should be addressed in licenses and/or license renewals.

B. Building Height and Elevation

A Better City supports the effort to continue to allow for additional building height and elevation to help accommodate rentable square footage lost due to the climate resilient re-location of building equipment that is susceptible to flooding. This action may be appropriately considered under minor modifications within Ch. 91 regulations.

C. Implementing Resilient Infrastructure Solutions

As DEP implements resilient infrastructure solutions along the waterfront, A Better City suggests that DEP and EEA be more proactive to help expedite localized and district-scale resilient infrastructure solutions, and to explore opportunities that relate to a resilient water's edge within Ch. 91's regulatory purview. We support the consideration of resilient infrastructure solutions that extend land or sea walls into the watershed as needed, if other solutions are not determined to be effective, in coordination with the regulatory processes and standards of other city, state, and federal agencies impacting the waterfront. A Better City recommends that the regulatory framework for Ch. 91 consider how to expedite localized and district-scale resiliency intervention done by both the private and public sector, given that many of the suggestions for resilient waterfront solutions require fill, sea walls, and other resilient physical infrastructure components in the watershed that are currently not allowed under existing regulations.

Recommendation: A Better City recommends that long-term licenses are continually provided in the Ch. 91 regulatory process. We suggest that DEP explore the role of operations management organizations to help implement changes in waterfront resiliency needs in long-term licenses, and to consider how maintenance and operations should be addressed in licenses and/or license renewals. We also recommend that DEP expedite localized and district-scale resilient infrastructure solutions along the water's edge, and ensure that regulatory language does not preclude the development of resilient infrastructure solutions.

4. ENSURING CONSISTENCY, PREDICTABILITY, AND POLICY ALIGNMENT

A. Ensure Regulatory Consistency and Predictable Policy Across Jurisdictions

As DEP implements Ch. 91 regulatory updates, A Better City recommends aligning such updates with existing parallel policies within the Commonwealth to ensure more effective policy implementation, as well as predictability and consistency for the developer community. The need for regulatory certainty and consistency will be ever more crucial as we seek to revitalize the waterfront in COVID-19 pandemic recovery efforts, and will help to protect Boston's economic vitality and global competitiveness as developers seek to invest in the City and Commonwealth.

B. Align Sea Level Rise and Flood Projections with Parallel Resiliency Policies Impacting the Waterfront

A Better City agrees with DEP's interest in updating sea level rise projections in Ch. 91 to reflect the best-available science, and would recommend providing more clarity on which sea level rise projections will be used, how often they will be updated, and the implications of these updates on Ch. 91 regulations. A key priority for alignment with parallel policy processes is a need for consistency across coastal flood projection maps and flood inundation data, to ensure that climate resilient solutions along the waterfront are coordinated and operating using the best-available science. A Better City recommends Ch. 91 align climate resiliency efforts and flood projections with Land Subject to Coastal Storm Flowage (LSCSF) regulated by the Boston Wetlands Ordinance, referenced in phase II of the regulations recently passed by the Conservation Commission, as well as with the Coastal Flood Resiliency Overlay District, overseen by the Boston Planning and Development Agency. For extreme precipitation projections, we also recommend coordinating with the Boston Water and Sewer Commission on their flood inundation map data projections.

C. Consider How Ch. 91 Regulations Enable or Preclude Waterfront Resilient Infrastructure

A Better City suggests that DEP consider to what extent do Ch. 91 regulations enable or preclude building the climate resilient infrastructure solutions suggested within Climate Ready Boston. As mentioned previously, our members have raised concerns around possible need for seawall construction and maintenance, the use of fill, and incorporating a district-scale approach to a resilient waterfront – many climate resilient solutions would not be allowed under current regulations.

Recommendation: A Better City recommends providing more clarity on which sea level rise projections will be used in Ch. 91 resiliency implementation, how often they will be updated, and the implications of such updates on Ch. 91 regulations. We also recommend coordinating updates to Ch. 91 resiliency with climate resiliency components of the Boston Wetlands Ordinance, the Coastal Flood Resiliency Overlay District, and Climate Ready Boston, and considering the need to update Ch. 91 regulatory language to allow for climate resilient infrastructure along the water's edge. Consistency, coordination, and alignment with local government agencies, as well as with parallel policy and regulatory processes, will be vital for effective implementation.

5. DEFINING WATERFRONT ACCESSIBILITY FOR ALL

A Better City supports the Commonwealth's efforts to amend Ch. 91 to consider climate resilience, and also suggests exploring what Ch. 91 defines as waterfront accessibility and how it can be prioritized as a core component of a climate resilient waterfront. A Better City recommends considering a community resilience approach to waterfront accessibility, in which resiliency strategies ensure equitable accessibility to the waterfront and its associated benefits for all communities in Greater Boston and the Commonwealth. We remain committed to working with DEP and the City of Boston to enhance equity in the built environment as we shape the public, open, and civic spaces along the waterfront, and believe that equitable accessibility to the waterfront is important to consider in Ch. 91 resilience updates.

Recommendation: A Better City recommends defining waterfront accessibility as it relates to a climate resilient waterfront within Ch. 91, and ensuring equitable access to the waterfront as a core component of climate resiliency along the water's edge.