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April 30, 2024

Via email: jared.staley2@boston.gov

Mayor's Office of Arts and Culture
Attn: Jared Staley
1 City Hall Square, Room 802
Boston MA. 02201

Re: Waterfront Civic/Cultural Space Planning Study

Dear Mr. Staley,

Boston Harbor Now respectfully submits the following comments on the Draft Recommendations for the Waterfront Civic / Cultural Space Planning Study prepared by the Mayor's Office of Arts and Culture (MOAC). Our organization has been following this study since its inception and has been deeply involved in efforts to activate our Harbor and Waterfront areas for the past decade and beyond.

As longtime stewards of the Boston Harborwalk, Boston Harbor Now is committed to ensuring that the waterfront we build today is designed for a more resilient and inclusive future. We use the term "Harborwalk 2.0" to capture the aspirations of this work to ensure the waterfront is accessible and welcoming; is prepared for the coastal impacts of climate change; and centers equity and inclusion in the development of its design, construction, and programming. Through our role as Harborwalk stewards, we have helped create and improve the Harborwalk throughout the city.

Points of Clarification

As MOAC is aware, the tidelands of the Commonwealth are held in trust by the Commonwealth for the benefit of all citizens of the Commonwealth. Deciphering that public benefit and enhancing it when private entities want to build along the coastline is the purpose of Mass General Law Chapter 91 and the job of the Massachusetts Department of Environmental Protection (MassDEP), with input from all of us.

There are a few fundamental misunderstandings in the study that are important to clarify upfront.

1. Chapter 91 licenses are issued solely by MassDEP and not by the City of Boston as stated on Page 7.
2. Even MassDEP cannot and does not dictate to developers specifically who and what users of required Facility of Public Accommodation (FPA) space should be, as that is outside their authority under the Waterways Regulations. Although a Waterways License confirms and approves how much space and where that space should be in the project design, it is uncommon for licenses to dictate a specific user successfully. In some instances where that has been tried, it has failed, even recently.
3. The current FPA tenancing process discussed on Page 8 is not widely used by the development community or the general public. While there are shared goals – lively FPAs that will provide public amenities – the FPA operators must be economically viable, since property owners have responsibilities to their lenders, investors, and shareholders/members.



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4. The discussion on Page 11 appears to misunderstand the nature of legal ownership and long-term responsibility for FPA spaces. FPA spaces remain privately owned by the property owner, who continues to pay real estate taxes on the area despite who leases the area or for how long. Furthermore, real estate tax “breaks” or concessions must have a statutory basis, and no such basis currently exists for FPAs.

Those misunderstandings certainly require some rethinking of the Draft Recommendations and particularly the proposed apportionment of responsibility for many of the recommendations, but the value of doing this study and analysis remains.

Recommendations from the Study

The study correctly points out the importance of good street visibility to the success of any FPA, which we also advocate for. Foot traffic is vital not only for the benefit of the FPA business but also for the benefit of the public, who should be able to easily find and navigate to the public amenities guaranteed to them by Chapter 91. We also appreciate the study’s recognition of climate change’s impacts on existing and future FPA spaces. Boston Harbor Now agrees that passive building-level protection is the developer’s responsibility but also recommends that tenants who will have spaces vulnerable to flooding in the near term take steps to floodproof their buildings now. Though not a long-term solution, deployable flood barriers can help protect from coastal inundation now while developers look for longer-term solutions. The City of Boston’s Environment Department soon plans on releasing more information about deployables, which we recommend MOAC share as part of their web portal of centralized information.

It should also be applauded that the study highlights the real need for better pedestrian and transportation planning connecting our current transit system, our city’s waterfront, and the array of FPA uses around the Harbor. It is disheartening to know that even today, people as proximate to the Downtown Waterfront as those who live in Chinatown do not see or feel there is an easy path to get from Chinatown to Commercial Wharf. The same is true for other travelers on the Orange and Red Lines.

The legal underpinnings of Ch. 91 require FPAs to be located on the waterfront near the tidelands being used. In our time as waterfront advocates, we also have found access to be a significant barrier to equitable use of the waterfront and are sympathetic to the access challenges from more inland neighborhoods such as Roxbury, Brighton, and Mattapan. However, we pause at the idea of creating more private shuttles and parking, which could cause more traffic congestion and, in the case of parking, be taken advantage of by members of the general public rather than the intended audience. We recommend that new developments work with the MBTA and Transportation Management Associations (TMAs) to better understand how to efficiently achieve the goal of connecting more inland neighborhoods to the waterfront and FPAs along it. There may already be some routes in existence that members of the public can utilize at a discounted rate, similar to the Seaport TMA ferry model. Public transportation is a public good and a public responsibility. No one development should be responsible for creating inland connections, but



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collectively, we hope waterfront developments, working with established TMAs and the City, can help improve access to the waterfront.

Although the City has proposed matching the timing of the RFI process to the intended use, going so far as recommending the RFI process start as early as three years from opening, we have concerns that the practical realities of timing and sequencing the tenanting process are misaligned. The nature of lead time construction, the landowners' fiduciary responsibilities, and the local economy's market impact all influence when a developer seeks FPA tenants and what the nature of the operators and leases will look like. Additionally, tailoring the design of a space to any one given operator is potentially economically risky, especially if the space needs to be re-tenanted in the future. Ensuring that FPA spaces work for civic and cultural operators might require a different approach. Design guidelines and best practices for different uses from the City would be helpful.

Future Study Topics and Roles of the City

We appreciate that this study has inventoried FPA spaces along the water. We have long felt that an updated record of FPAs and analysis of FPA best practices could help guide future waterfront development to produce spaces that meet the needs of the arts and culture community and the local community.

Now knowing that there are 23 civic/cultural spaces in Boston, totaling nearly a half million sf of publicly useable and accessible space, highlights the tremendous opportunity to learn more about what is needed to make FPAs effective. We'd also like to better understand how FPAs are being used. How much is currently used for cultural purposes? How much for active recreation, retail, restaurants, etc? Are there concentrations of particular uses in different areas of the City that may encourage more such uses to build upon or discourage uses to ensure a wider variety of experiences around the waterfront? Are there lessons we can learn regarding rents historically charged, lease terms previously agreed to, and services being provided that can help expand our knowledge base and, ultimately, more and better activation opportunities? We realize, for example, that even if the base rent is zero, FPA tenants will still incur operating costs – staffing, utility and other space costs, etc.

In the future, it would be helpful if the City acted as a clearinghouse of needs and ideas in addition to creating a web portal with centralized information on FPAs. Keeping a repository of the individuals and non-profits seeking FPA space, as well as the developers and landlords looking to fill FPA space, could be highly beneficial to both parties.

In conclusion, as an organization engaged regularly in trying to utilize both Article 80 and Chapter 91 to create a more diverse, active, and resilient waterfront for our city and state residents, we appreciate MOAC's willingness to undertake this study to better understand the current state of waterfront civic and cultural spaces. We hope additional analysis will be done to determine FPA locations, types of uses existing on the waterfront, as well as best practices that could be implemented in future development. We encourage you to continue working with the MassDEP, the BPDA, advocacy organizations such as ours and other members of the Boston



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Waterfront Partners group, members of the waterfront development community, and neighborhood associations from both waterfront and inland districts to continue to better understand FPAs and how to make them even more valuable.

We appreciate the opportunity to comment on this project and look forward to following its progress toward finalization and implementation. We would be happy to speak with you further if there are additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine F. Abbott".

Katherine F. Abbott
President and CEO
Boston Harbor Now