



COMMUNITY PRESERVATION COMMITTEE

Meeting Agenda

January 14, 2015

Boxborough Town Hall

Grange Meeting Room

- 1. CALL TO ORDER, 7 PM**
- 2. TRAINING TO BE PROVIDED BY ATTORNEY LAUREN GOLDBERG**
(topics will include the roles and responsibilities of the CPC, how the CPC should conduct its business, select projects, make recommendations to town meeting, etc.)
- 3. ORGANIZATION OF THE CPC**
- 4. SET NEXT MEETING DATE**
- 5. ADJOURN**

COMMUNITY PRESERVATION COMMITTEE BYLAW

CHAPTER 1: ESTABLISHMENT

- 1.1 There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to M.G.L. Chapter 44B, §5(a).
- 1.2 With the exception of subsection c., which is appointed by the Planning Board, the members of the Committee shall be appointed by the Board of Selectmen as follows:
- a. One member of the Conservation Commission as designated by such Commission.
 - b. One member of the Historical Commission as designated by such Commission.
 - c. One member of the Planning Board as appointed by such Board.
 - d. One member of the Recreation Commission as designated by such Commission.
 - e. One member of the Housing Board as designated by such Board.
 - f. One member of the Agricultural Commission as designated by such Commission.
 - g. One member to be designated by the Finance Committee (FC).
 - h. Two members to be appointed by the Board of Selectmen (BoS).
 - i. Each member of the Committee shall serve for a term of three years or until the person no longer serves in the position or on the board or committee as set forth above, whichever is earlier.
 - j. For the first year, appointments will be staggered as follows:
 - i. Three at 1 year: Agricultural Commission designee; 1 BoS appointee; FC designee;
 - ii. Three at 2 years: 1 BoS appointee; Planning Board appointee; Recreation Commission designee;
 - iii. Three at 3 years: Conservation Commission designee; Housing Board designee; Historical Commission designee.
- 1.3 Should any of the officers, commissions, or boards who have appointment authority under this Chapter be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in his/her place.
- 1.4 Any member of the Committee may be removed for cause by his/her respective appointing authority after hearing.

CHAPTER 2: DUTIES

- 2.1 The Community Preservation Committee shall study the needs, possibilities and resources of the Town regarding community preservation pursuant to M.G.L. Chapter 44B. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Recreation Commission, the Agricultural Commission and the Boxborough Housing Board in conducting such studies. In its study of the needs, possibilities and resources of the Town regarding community preservation, the Committee shall review the Town's Capital Plan, maintained by the Finance Committee, and identify such overlap as may exist between Capital Plan prescriptions and community preservation proposals. As part of its study, the Committee shall hold one or more public informational hearing annually on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper, or equivalent publication, of general circulation in the Town.
- 2.2 The Community Preservation Committee shall make recommendations to Town Meeting for the acquisition, creation and preservation of open space, for the acquisition, preservation, rehabilitation and restoration of historic resources, for the acquisition, creation, preservation, rehabilitation and restoration of land for recreational use, for the acquisition, creation, preservation and support of community housing and for the rehabilitation or restoration of open space and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. The Committee shall, to the degree practicable in its recommendations to Town Meeting, conform its proposed expenditures to the long term capital spending profile outlined in the Town's Capital Plan, so as to moderate fluctuations in the Town's direct and debt service spending.
- 2.3 The Community Preservation Committee may include in its recommendation to Town Meeting 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.
- 2.4 In every fiscal year, the Community Preservation Committee must recommend either that the Town Meeting spend or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for each of (a) open space, (b) historic resources, and, (c) community housing.

CHAPTER 3: REQUIREMENT FOR A QUORUM

- 3.1 The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, M.G.L. c.39 §23B. The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Community Preservation Committee shall constitute a quorum. The Community Preservation Committee shall approve its actions by majority vote.

- 3.2 After receiving such recommendations from the Community Preservation Committee, Town Meeting shall then take such action and approve such appropriations from the Community Preservation Fund as set forth in section 7 of the Act, and such additional appropriations as it deems appropriate to carry out the recommendations of the Community Preservation Committee.

CHAPTER 4: COST ESTIMATES

- 4.1 Recommendations to Town Meeting shall include their anticipated costs and strategies for longer term financing within the provisions of the Community Preservation Act.
- 4.2 Town Meeting may appropriate money in any year from the Community Preservation Fund to the Affordable Housing Trust Fund.

CHAPTER 5: AMENDMENTS

- 5.1 This Bylaw may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not cause a conflict to occur with M.G.L. Chapter 44B.

CHAPTER 6: SEVERABILITY

- 6.1 In case any section, paragraph or part of this Bylaw be, for any reason, declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

CHAPTER 7: EFFECTIVE DATE

- 7.1 This Bylaw shall take effect upon the acceptance by the voters at the November 4, 2014 State Election and approval by the Attorney General of the Commonwealth, and after all requirements of M.G.L. c. 40 §32B have been met.
- 7.2 Each appointing authority shall make their appointments within thirty (30) days of the effective date of this bylaw.

Adopted by Annual Town Meeting: May 13, 2014
Approved by Attorney General: July 8, 2014

COMMUNITY PRESERVATION ACT
General Laws Chapter 44B (2010 Official Edition)
As amended by St. 2012, c. 139, §§ 69-83

Provided by the Massachusetts Department of Revenue, January 2013

Section 1. This chapter shall be known and may be cited as the Massachusetts Community Preservation Act.

Section 2. As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:—

“Acquire”, obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. “Acquire” shall not include a taking by eminent domain, except as provided in this chapter.

“Annual income”, a family’s or person’s gross annual income less such reasonable allowances for dependents, other than a spouse, and for medical expenses as the housing authority or, in the event that there is no housing authority, the department of housing and community development, determines.

“Capital improvement”, reconstruction or alteration of real property that: (1) materially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time.

“Community housing”, low and moderate income housing for individuals and families, including low or moderate income senior housing.

“Community preservation”, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing.

“Community preservation committee”, the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

“Community Preservation Fund”, the municipal fund established under section 7.

“CP”, community preservation.

“Historic resources”, a building, structure, vessel real property, document or artifact that is listed on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.

“Legislative body”, the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan

orders, bond authorizations and other financial matters and whether styled as a city council, board of aldermen, town council, town meeting or by any other title.

“Low income housing”, housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“Low or moderate income senior housing”, housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

“Maintenance”, incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency or readiness.

“Moderate income housing”, housing for those persons and families whose annual income is less than 100 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“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.

“Preservation”, protection of personal or real property from injury, harm or destruction.

“Real property”, land, buildings, appurtenant structures and fixtures attached to buildings or land, including, where applicable, real property interests.

“Real property interest”, a present or future legal or equitable interest in or to real property, including easements and restrictions, and any beneficial interest therein, including the interest of a beneficiary in a trust which holds a legal or equitable interest in real property, but shall not include an interest which is limited to the following: an estate at will or at sufferance and any estate for years having a term of less than 30 years; the reversionary right, condition or right of entry for condition broken; the interest of a mortgagee or other secured party in a mortgage or security agreement.

“Recreational use”, 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. “Recreational use” shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

“Rehabilitation”, capital improvements, or the making of extraordinary repairs, to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended uses, including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building

or access codes; provided, that with respect to historic resources, "rehabilitation" shall comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68; and provided further, that with respect to land for recreational use, "rehabilitation" shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use.

"Support of Community housing", shall include, but not be limited to, programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable.

Section 3. (a) Sections 3 to 7, inclusive, shall take effect in any city or town upon the approval by the legislative body and their acceptance by the voters of a ballot question as set forth in this section.

(b) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not more than 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(b½) Notwithstanding chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property, and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal revenue, including, but not limited to, hotel excises pursuant to chapter 64G, linkage fees and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A, and 20A½ of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, and gifts received from private sources for community preservation purposes; and provided further that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions, adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

(c) All exemptions and abatement of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. A taxpayer receiving an exemption of real property authorized by said chapter 59 or any other law shall be exempt from any surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving an abatement of real property

authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

(d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(e) The legislative body may also vote to accept one or more of the following exemptions:

(1) for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the city or town;

(2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said chapter 59, in cities or towns with classified tax rates;

(3) for \$100,000 of the value of each taxable parcel of residential real property; or

(4) for \$100,000 of the value of each taxable parcel of class three, commercial property, and class four, industrial property as defined in section 2A of said chapter 59.

(f) Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the voters of a city or town at the next regular municipal or state election. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question:

"Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?"

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town, but not otherwise.

(g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or

town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

(i) With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile shall be considered real property owned by that member for the purposes of exemptions provided under this section. The member's portion of the real estate shall be represented by the member's share or shares of stock in the cooperative corporation, and the percentage of that portion to the whole shall be determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. This portion of the real property shall be eligible for any exemption provided in this section if the member meets all requirements for the exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in this subsection shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home is located if all other requirements of this clause are met. This subsection shall take effect in a city or town upon its acceptance by the city or town.

Section 4. (a) Upon acceptance of sections 3 to 7, inclusive, and upon the assessors' warrant to the tax collector, the accepted surcharge shall be imposed.

(b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall pay the amounts so collected, quarterly or semi-annually, according to the schedule for collection of property taxes for the tax on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with respect to such surcharge, which shall be subject to public examination upon reasonable request from time to time.

(c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.

Section 5. (a) A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members. The ordinance or by-law shall determine the composition of the committee, the length of its term and the method of selecting its members, whether by election or appointment or by a combination thereof. The committee shall include, but not be limited to, one member of the conservation commission established under section 8C of chapter 40 as designated by the commission, one member of the historical commission established under section 8D of said chapter 40 as designated by the commission, one member of the planning board established under section 81A of chapter 41 as designated by the board, one member of the board of park commissioners established under section 2 of chapter 45 as designated by the board and one member of the housing authority established under section 3 of chapter 121B as designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they

have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

(b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation, including the consideration of regional projects for community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation, preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for rehabilitation or restoration of open space and community housing that is acquired or created as provided in this section; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. With respect to recreational use, the acquisition of artificial turf for athletic fields shall be prohibited.

(3) The community preservation committee may include in its recommendation to the legislative body 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.

(c) The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the legislative body shall include their anticipated costs.

(d) After receiving recommendations from the community preservation committee, the legislative body shall take such action and approve such appropriations from the Community Preservation Fund as set forth in section 7, and such additional non-Community Preservation Fund appropriations as it deems appropriate to carry out the recommendations of the community preservation committee. In the case of a city, the ordinance shall provide for the mechanisms under which the legislative body may

approve and veto appropriations made pursuant to this chapter, in accordance with the city charter.

(e) For the purposes of community preservation and upon the recommendation of the community preservation committee, a city or town may take by eminent domain under chapter 79, the fee or any lesser interest in real property or waters located in such city or town if such taking has first been approved by a two-thirds vote of the legislative body. Upon a like recommendation and vote, a city or town may expend monies in the Community Preservation Fund, if any, for the purpose of paying, in whole or in part, any damages for which a city or town may be liable by reason of a taking for the purposes of community preservation.

(f) Section 16 of chapter 30B shall not apply to the acquisition by a city or town, of real property or an interest therein, as authorized by this chapter for the purposes of community preservation and upon recommendation of the community preservation committee and, notwithstanding section 14 of chapter 40, for purposes of this chapter, no such real property, or interest therein, shall be acquired by any city or town for a price exceeding the value of the property as determined by such city or town through procedures customarily accepted by the appraising profession as valid.

A city or town may appropriate money in any year from the Community Preservation Fund to an affordable housing trust fund.

Section 6. In each fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee and such appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. The legislative body may also make appropriations from the Community Preservation Fund as it deems necessary for costs associated with tax billing software and outside vendors necessary to integrate such software for the first year that a city or town implements this chapter; provided, however, that the total of any administrative and operating expenses of the community preservation committee and the first year implementation expenses do not exceed 5 per cent of the annual revenues in the Community Preservation Fund.

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years; provided, however, that funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town. The community preservation funds shall not replace existing operating funds, only augment them.

Section 7. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts sections 3 to 7, inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian. The authority to approve

expenditures from the fund shall be limited to, the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the fund: (i) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (ii) additional funds appropriated or dedicated from allowable municipal sources pursuant to subsection (b½) of section 3, if applicable; (iii) all funds received from the commonwealth or any other source for such purposes; and (iv) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee.

Section 8. (a) Except as otherwise provided, the fees of the registers of deeds to be paid when a document or instrument is recorded shall be subject to a surcharge of \$20; provided, however, that if the document or instrument to be filed includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional \$20 surcharge. The fee for recording a municipal lien certificate shall be subject to a surcharge of \$10; provided, however, that if the certificate includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional \$10 surcharge. The surcharges imposed shall be used for community preservation purposes. No surcharge shall apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards or additional square feet for the recording of plans.

(b) The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots shown on plans, for indexing instruments recorded while a petition for registering is pending, for additional certificates of sewer assessments, for old age assistance liens, for duplicates and for photocopies.

(c) All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts Community Preservation Trust Fund, established in section 9.

Section 9. (a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Massachusetts Community Preservation Trust Fund, for the benefit of cities and towns that have accepted sections 3 to 7, inclusive, and pursuant to said sections 3 to 7, inclusive, have imposed a surcharge on their real property tax levy, subject to any exemptions adopted by a municipality. The fund shall consist of all revenues received by the commonwealth: (1) under the provisions of section 8; (2) from public and private sources as gifts, grants and donations to further community preservation programs; (3) from damages, penalties, costs or interest received on account of litigation or settlement thereof for a violation of section 15; or (4) all other monies credited to or transferred to from any other fund or source pursuant to law.

(b) The state treasurer shall deposit the fund in accordance with the provisions of section 10 in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings shall be deposited into the fund. The fund shall be expended solely for the administration and implementation of this chapter. Any unexpended balances shall be redeposited for future use consistent with the provisions of this chapter.

(c) The state treasurer shall make all disbursements and expenditures from the fund without further appropriation, as directed by the commissioner of revenue in accordance with said section 10. The department of revenue shall report by source all amounts credited to said fund and all expenditures from said fund. The commissioner of revenue shall assign personnel of the department as it may need to administer and manage the fund disbursements and any expense incurred by the department shall be deemed an operating and administrative expense of the program. The operating and administrative expenses shall not exceed 5 per cent of the annual total revenue received under the provisions of said section 10.

Section 10. (a) The commissioner of revenue shall annually on or before November 15 disburse monies from the fund established in section 9 to a city or town that has accepted sections 3 to 7, inclusive, and notified the commissioner of its acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the city or town has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied. In the event a city or town accepts said sections 3 to 7, inclusive, pursuant to subsection (b $\frac{1}{2}$) of section 3 the municipal tax collecting authority shall certify to the commissioner by October 30, the maximum additional funds the city or town intends to transfer to the Community Preservation Fund from allowable municipal sources for the following fiscal year. Once certified, the city or town may choose to transfer less than the certified amount during the following fiscal year.

(b) The commissioner shall multiply the amount remaining in the fund after any disbursements for operating and administrative expenses pursuant to subsection (c) of section 9 by 80 percent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on

real property by each city or town and if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b½) of section 3. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the city or town's equalized property valuation per capita ranking, ranking cities and towns from highest to lowest valuation. The commissioner shall also determine the population of each city or town and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by 2. The dividend is the community preservation raw score for that city or town.

(e) The commissioner shall then order each city or town by community preservation raw score, from the lowest raw score to the highest raw score. This order shall be the community preservation rank for each city or town. If more than 1 city or town has the same community preservation raw score, the city or town with the higher equalized valuation rank shall receive the higher community preservation rank.

(f) After determining the community preservation rank for each city and town, the commissioner shall divide all cities or towns into deciles according to their community preservation ranking, with approximately the same number of cities and towns in each decile, and the cities or towns with the highest community preservation rank shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as follows:

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.
decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.
decile 10	50 per cent of the base figure.

After assigning each city and town to a decile according to their community preservation rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

(g) Notwithstanding any other provision of this section, the total state contribution for each city and town shall not exceed the actual amount raised by the city or town's surcharge on its real property levy and, if applicable, additional funds committed from allowable municipal sources pursuant to subsection (b½) of section 3.

(h) When there are monies remaining in the Massachusetts Community Preservation Trust Fund after the first and second round distributions and any necessary administrative expenses have been paid in accordance with section 9 the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted sections 3 to 7, inclusive. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

(i) The commissioner shall determine each participant's total state grant by adding the amount received in the first round distribution with the amounts received in any later round of distributions, with the exception of a city or town that has already received a grant equal to 100 per cent of the amount the community raised by its surcharge on its real property levy.

(1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection (b) of section 3 and those cities and towns that adopt the maximum surcharge and additional funds committed from allowable municipal sources such that the total funds are the equivalent of 3 percent of the real estate tax levy against real property pursuant to subsection (b½) of said section 3 shall be eligible to receive additional state monies through the equity and surplus distributions.

(2) If less than 10 per cent of the cities and towns have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only 1 round of distributions, or in any other equitable manner.

(j) After distributing the Massachusetts Community Preservation Trust Fund in accordance with this section, the commissioner shall keep any remaining funds in the trust for distribution in the following year.

Section 11. A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued

pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

Section 12. (a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on the property.

(b) Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

Section 13. The community preservation committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The committee shall also keep records of any real property interests acquired, disposed of or improved by the city or town upon its recommendation, including the names and addresses of the grantor's or grantees and the nature of the consideration. The records and accounts shall be public records.

Section 14. Notwithstanding the provisions of any general or special law to the contrary, every city and town may accept sections 3 to 7, inclusive, and may thereupon receive state grants under section 10. A city or town that accepts said sections 3 to 7, inclusive, shall not be precluded from participating in state grant programs.

State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by the city or town as the local share for state or federal grants upon recommendation of the community preservation committee and the legislative body, as provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

Section 15. (a) A person who, without permission, knowingly carries away or steals, mutilates, destroys, damages, causes to be damaged or cuts any tree, shrub, grass or any

other portion of real property purchased by a city or town with funds derived from this chapter shall be liable to the city or town in tort for such actions.

(b) Damages, including punitive damages for willful or wanton violation of this chapter or any rule or regulation issued or adopted hereunder, may be recovered in a civil action brought by the city or town or, upon request of the city or town, by the attorney general. The city or town or, upon request of the city or town, the attorney general, may bring an action for injunctive relief against any person violating this chapter or any rule or regulation issued hereunder. The superior court shall have jurisdiction to enjoin violations, to award damages and to grant such further relief as it may deem appropriate.

(c) Any damages, penalties, costs or interest thereon recovered pursuant to this section shall be deposited into the Community Preservation Fund of the city or town in which the violation occurred.

Section 16. (a) At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter, including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b $\frac{1}{2}$) of section 3.

(b) At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

Section 17. The commissioner of revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter.



July 26, 2012

MEMORANDUM TO MUNICIPAL CLIENTS

To: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY
COMMUNITY PRESERVATION COMMITTEE

Re: Significant Amendments to the Community Preservation Act – Use of Funds

“An Act to Sustain Community Preservation,” Chapter 139 of the Acts of 2012, was signed by the Governor on July 9, 2012. The Act contains many anticipated changes to General Laws Chapter 44B, the Community Preservation Act (the “CPA”). Most of the substantive changes fall into two categories: amendments to the purposes for which CPA funds may be used, particularly for recreational land and land for community housing, and changes to the source of revenues that may be deposited by municipalities into the local Community Preservation Act Fund. This Memorandum explores the amendments regarding the purposes for which CPA funds may be used, while a separate Memorandum analyzes the fiscal impacts of the amendments to the CPA.

Land for Recreational Use

1. *Existing Land for Recreational Use*

Prior to the passage of the Act, G.L. c.44B, §5(b)(2) provided that CPA funds could not be used to rehabilitate or restore recreational land unless that land was originally acquired or created using CPA funds. In Seideman v. City of Newton, 452 Mass. 472 (2008), the City proposed to use CPA funds to undertake a large-scale, multi-year project consisting of a comprehensive redesign and replacement of existing recreational facilities and installation of new recreational elements. The Court found that such improvements constituted rehabilitation of recreation land and, because the City had not acquired or created the parks with CPA funds, the City could not use CPA funds to undertake such improvements.

In essence, the Act reverses the outcome of Seideman. The Act amends G.L. c.44B, §5(b)(2) to specifically authorize municipalities to use CPA funds for the rehabilitation or restoration of land for recreational use regardless of whether the land was originally acquired or created with CPA funds. (Note that comparable changes were not made to allow CPA funds to be used for rehabilitation of land acquired or created with other than CPA funds for open space or community housing purposes.) A consistent revision was also made to the definitions section of the CPA, G.L. c.44B, §2, defining “rehabilitation” to include “capital improvements,” and expressly providing that, “with respect to land for recreational use, rehabilitation shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the related recreational use.” This amendment provides

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considerable latitude to municipalities to use CPA funds to improve existing recreational land and facilities.

2. *Capital Improvements*

The insertion in G.L. c.44B, §2 of the definition of the term “capital improvement” is also a significant amendment to the CPA. Municipalities intending to use CPA funds to rehabilitate land and/or facilities for recreational, open space, historic, or community housing purposes must ensure that such projects meet the new definition of a “capital improvement.” A “Capital Improvement” is defined as:

reconstruction or alteration to, or of, real property that (1) materially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself, and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time” (emphasis added).

As before, CPA funds cannot be used for regular “maintenance”, which is now defined as “incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keeps the property in a condition of fitness, efficiency, and/or readiness.”

3. *Miscellaneous*

Be aware that the Act explicitly prohibits the use of CPA funds for artificial turf for athletic fields.

Prior to the Act, G.L. c.44B, §6 provided that municipalities must expend, or reserve for later spending, not less than 10% of the annual revenues for three purposes, including open space purposes, but prohibited the use of such open space funds for recreational purposes. The Act has removed this prohibition, thereby allowing funds required to be spent or reserved for open space to be used for recreational purposes.

Community Housing

1. *“Support” of Community Housing*

The CPA allows municipalities to expend CPA funds to acquire, create, preserve and support community housing. Prior to the Act, the CPA did not define the term “support,” and the failure to do so created ambiguity in determining what activities support community housing, particularly as to whether municipalities could grant loans or grants of CPA funds directly to income-eligible individuals and households. The Act resolves some of the ambiguity. While the Act does not include a definition of the term “support,” it lists activities that would be considered to be in “support of community housing,” including, but not limited to the following:

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“programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to housing, for the purpose of making housing affordable” (emphasis added).

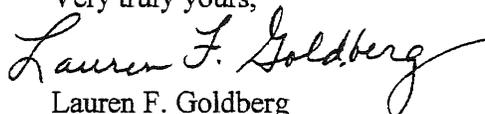
2. *A Focus on Housing*

The Act also clarifies that while municipalities may grant financial assistance to income eligible buyers or renters, CPA funds must be expended for the purpose of making the housing affordable, as quoted above. Thus, in order for municipalities to use CPA funds “for the purpose of making housing affordable,” it is our opinion that the residence itself must be subject to an affordable housing deed restriction preserving the future affordability of the residence. If housing is deed-restricted for community housing purposes, municipalities may expend CPA funds to “preserve and support” such housing. Moreover, since municipalities acquire or create affordable housing by using CPA funds to obtain restrictions on housing that is not restricted for affordable housing purposes, CPA funds may also be appropriated for the “rehabilitation and restoration” of such housing. Examples of other permissible uses of CPA funds for community housing purposes include, without limitation, acquiring property that is or will be subject to an affordable housing deed restriction; granting funds to a buyer to subsidize the difference between the market price and the affordable price of a property that will be subject to an affordable housing deed restriction; granting CPA funds to an affordable housing trust to create housing subject to affordable housing deed restrictions; providing a private homeowner whose property is already deed restricted funds for the “preservation” of such housing; using CPA funds to preserve municipally-owned housing that is already subject to an affordable housing restriction; and using CPA funds to preserve the affordability of properties that would otherwise be at risk of becoming “unaffordable” due to expiring restrictions.

3. *Money from CPA for Restrictions*

General Laws c.44B, §12(a) provides that “a real property interest” acquired with CPA “shall be bound by a permanent restriction,” enforceable by the municipality, the Commonwealth, or nonprofit, charitable corporations or foundations. Since the enactment of the CPA, municipalities have struggled to find eligible organizations that are amenable to holding such restrictions, and have often been asked to pay such organizations for the cost of holding and enforcing such deed restrictions. The Act now clearly states, consistent with our prior advice to municipalities, that the legislative body of the municipality may use CPA funds to pay a fee to “a non-profit organization created pursuant to chapter 180 [charitable corporations] to hold, monitor and enforce” such deed restrictions.

Very truly yours,



Lauren F. Goldberg



Shirin Everett

Important Changes to the Community Preservation Act

Prepared for the 2013 Massachusetts Municipal Association Annual Meeting

“An Act to Sustain Community Preservation,” Chapter 139 of the Acts of 2012 (the “Act”), was signed by the Governor on July 9, 2012. The Act contains much-anticipated changes to General Laws c.44B, the Community Preservation Act (“CPA”), many of which relate to the purposes for which CPA funds may be used, particularly for recreational land and land for community housing, and to the types of funds that may be appropriated or dedicated to a municipality’s Community Preservation Fund. This Memorandum discusses significant changes made to the CPA by the Act.

1. Improvements to Existing Recreational Land and/or Facilities

Before the Act. Prior to passage of the Act, CPA funds could not be used to rehabilitate or restore recreational land unless that land was originally acquired or created using CPA funds. See Seideman v. City of Newton, 452 Mass. 472 (2008) (holding that Newton could not use CPA funds for a large-scale, park project because the City had not acquired or created the parks with CPA funds).

After the Act. The Act amended the CPA to specifically authorize municipalities to use CPA funds to rehabilitate or restore land for recreational use, regardless of whether the land was originally acquired or created with CPA funds. Further, the Act amended the definition of “rehabilitation” to include “capital improvements,” and expressly states, “with respect to land for recreational use, rehabilitation shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the related recreational use.” This amendment provides latitude to municipalities to use CPA funds to improve existing recreational land and facilities. However, the CPA now explicitly prohibits the use of CPA funds to acquire artificial turf for athletic fields.

2. Capital Improvements

New Provision. The Act inserts a provision authorizing municipalities to use CPA funds to make capital improvements to (1) recreational land and facilities and historic resources, regardless of whether CPA funds were originally used to acquire the same, and (2) open space land and community housing if originally acquired or created with CPA funds. The Act also inserts a definition of the term, “capital improvement” to include reconstruction or alteration that adds to the value or prolongs the useful life of the property, becomes part of or is permanently affixed to the property, and is intended to be permanent or remain indefinitely.

Still Prohibited. Regular “maintenance”, now defined as “incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keeps the property in a condition of fitness, efficiency, and/or readiness”, is still prohibited.

3. **“Support” of Community Housing**

Before the Act. While CPA funds could be used to “support” community housing, the term was not defined. This created ambiguity as to whether the Act allowed certain activities, such as the granting of loans or making grants directly to income-eligible individuals and households.

After the Act. The Act resolves some of the ambiguity. Although the Act does not include a definition of the term “support,” it lists activities considered to be in “support of community housing,” including, but not limited to “programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to housing, for the purpose of making housing affordable.” Where the Act provides that such support activities are “for the purpose of making housing affordable,” municipalities are encouraged whenever possible to obtain deed restrictions on dwellings to ensure that the dwellings remain affordable in the future.

4. **Funds for Restrictions**

Use of CPA Funds. General Laws c.44B, §12(a) provides that “a real property interest” acquired with CPA “shall be bound by a permanent restriction,” enforceable by the municipality, the Commonwealth, or nonprofit, charitable corporations or foundations. Municipalities have struggled to find eligible organizations amenable to holding such restrictions. The CPA now clearly states that CPA funds may be appropriated to pay a fee to “a non-profit organization created pursuant to chapter 180 [charitable corporations] to hold, monitor and enforce” such deed restrictions.

5. **New Funds Into the CPA Fund (Other than Tax Surcharge)**

Before the Act. A municipality’s Community Preservation Fund (the “Fund”) was funded by the imposition of a surcharge on real estate of no more than 3% of the real estate tax levy against real property and a share of funds from the Massachusetts Community Preservation Trust Fund.

After the Act. A municipality may now, by vote of its legislative body, dedicate to the Fund monies from other specified sources of municipal revenue. Provided that a minimum surcharge on real property of no less than 1% of the real estate tax levy continues to be imposed, certain alternative revenues not to exceed 2% of the real estate tax levy may be dedicated to the fund. Such monies include but are not limited to: hotel excise taxes; linkage fees and inclusionary zoning payments; funds from the sale of real estate; parking fines and surcharges; existing dedicated housing open space, and historic preservation funds, however authorized; and gifts from private sources for community preservation purposes. Federal and state funds cannot be dedicated to the Fund. Further details on implementation of this option will be provided as they become available.

Please contact Shirin Everett at severett@k-plaw.com or Lauren Goldberg at lgoldberg@k-plaw.com or at 617.556.0007 with further questions.



Use of CPA Funds Appropriated prior to July 1, 2012 for Acquisition of Artificial Turf

Last year, the General Court enacted Chapter 139 of the Acts of 2012, entitled "An Act to Sustain Community Preservation". The Act made a number of amendments to the Community Preservation Act (the "CPA") authorizing the use of CPA funds in connection with land already held by a municipality for recreational use. However, one amendment specifically prohibited the use of CPA funds to acquire artificial turf for athletic fields. The amendment at issue did not state that it was retroactive. Established rules of statutory construction supported the conclusion that the amendment was therefore not retroactive in nature, and for that reason, any funds appropriated for such purposes prior to the effective date of the original amendment, July 1, 2012, could be expended consistent with law.

Be advised that the General Court has explicitly clarified the prospective nature of the original amendment. On February 15, 2013 the General Court approved Chapter 3 of the Acts of 2013, a supplemental budget appropriation, which contained as an outside section a further amendment to the CPA. The relevant portion of Section 5 of said Chapter 3 states, "any project approved by a municipality for the acquisition of artificial turf for athletic fields prior to July 1, 2012 shall be a permitted use" of CPA funds. Thus, depending on the circumstances applicable in any particular case, it is possible that CPA funds appropriated prior to July 1, 2012 for the acquisition of artificial turf may be utilized for such purposes in conformance with law.

For more information please contact Shirin Everett (severett@k-plaw.com) or Lauren Goldberg (lgoldberg@k-plaw.com) by e-mail or at 617.556.0007.

COMMUNITY PRESERVATION ACT

Town of Boxborough
January 14, 2015

Lauren F. Goldberg, Esq.



KOPELMAN AND PAIGE, P.C.



ATTORNEYS AT LAW

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The Community Preservation Act

- Local acceptance statute enacted in 2000 (Chapter 267 of the Acts of 2000)
- Revised several times, most recently in 2012 (Chapter 139 of the Acts of 2012)
- Result of lobbying by several groups with varied interests
- Creates dedicated funding sources at both state and local level for those interests



Purposes of the CPA

Three basic purposes:

- Open Space
 - Land for Recreational Use
- Historic Resources
 - Structures, vistas, documents and other artifacts
- Community Housing
 - "affordable housing" subject to particular definitions



Purposes of the CPA – Open Space

- Open Space

Includes, but not 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.



Purposes of the CPA - Historic

- Historic Resources

A building, structure, vessel, real property, document or artifact that is listed on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.



Purposes of the CPA - Housing

- Community Housing

Low and moderate income housing for individuals and families, including low or moderate income senior housing

- "Low income housing" - housing for persons and families whose annual income is less than 80 per cent of the areawide median income set by HUD
- "Low or moderate income senior housing" - housing for persons 60 or over who would qualify for low or moderate income housing
- "Moderate income housing" - housing for persons and families whose annual income is less than 100 per cent of the areawide median income set by HUD



Purposes of the CPA - Land for Recreational Use

- Recreational Use
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. "Recreational use" shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.



Community Preservation Committee

- A community preservation committee must be created by bylaw. G.L. c.44B, 5(a).
- The bylaw must address: the composition of the committee, which must include five statutory members, and no more than 4 additional members; the length of its term; and the method of selecting its members, whether by election or appointment or a combination thereof
- The statutory members must be designees of the conservation commission, planning board, historic commission, parks and recreation commission, and housing authority, from among the members of the respective board, committee or commission



Community Preservation Committee - Role

- The CPC (sometimes called the CPAC) has a very important role
- The CPC must undertake an annual community preservation needs study and hold an annual hearing for which notice is provided in a newspaper at least one time in each of the two weeks prior to the hearing
- The CPC must make annual recommendations concerning the expenditure of CPA funds
- The CPC must maintain a record of all its recommendations and the action taken on them as well as an inventory of all real property interests acquired, disposed of or improved using CPA funds



Community Preservation Committee - Role

- **No CPA funds may be expended without a recommendation from the CPC**
- The treasurer must keep a record of and should make available to the CPC information concerning the availability of CPA funds for expenditure
- The CPC should keep a similar record
- Many CPCs establish an application process for project funding, but the law does not require the same
- The CPC may recommend funding a project that qualifies under the CPA, but is not required to do so
- The CPC in a town should be cognizant of the timeline for preparing the warrant, or, in a city form of government, for the budget or other item to be presented for action



Community Preservation Committee - Role

- The statutory role of the CPC ends after its recommendation to Town Meeting – any further involvement of the CPC after an appropriation is made is simply a local practice
- The CPA does not authorize the CPC to sign contracts or grants
- The CPA does not authorize the CPC to acquire land or sell land
- The CPA does not even require articles proposing appropriation of CPA funds to appear on the warrant in the absence of a proper petition therefor



Allowable Expenditures from the CPF – Statutory Purposes

- CPA funds may be used for:
 - Acquisition, creation and preservation of open space
 - Acquisition, preservation, restoration and rehabilitation of historic resources
 - Acquisition, creation, preservation, rehabilitation and restoration of land for recreational use
 - Acquisition, creation, preservation and support of community housing
 - Restoration and rehabilitation of open space and community housing acquired or created using CPA funds



**Allowable Expenditures from the CPF –
Statutory Purposes**

- The 2012 amendments to the CPA clarify the various activities that constitute “support of community housing” including:

Programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families that are eligible for community housing, or to housing, for the purpose of making housing affordable [emphasis added]



**Allowable Expenditures from the CPF –
Statutory Purposes**

- The 2012 amendments also specifically provide that CPA funds may be granted to a private, non-profit for the purpose of holding, monitoring or enforcing CPA deed restrictions



**Allowable Expenditures from the CPF –
Statutory Purposes**

- The 2012 amendment to the CPA revised the definition of “rehabilitation”:

capital improvements, or the making of extraordinary repairs ...for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended uses including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. . . . and provided further, that with respect to land for recreational use, “rehabilitation” shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use. [emphasis added]



**Allowable Expenditures from the CPF –
Statutory Purposes**

- The amendment also inserted a definition of “capital improvement”, as follows:
reconstruction or alteration of real property that: (1) materially adds to the value of the real property or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time.



**Allowable Expenditures from the CPF –
Statutory Purposes**

- The definition of “maintenance” is now:
incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency or readiness.
- The definition of “preservation” is:
protection of personal or real property from injury, harm or destruction.



**Allowable Expenditures from the CPF –
Seideman v. City of Newton**

- In the only appellate level case interpreting the CPA, Seideman v. City of Newton, 425 Mass. 472 (2008), the Court interpreted the then-existing version of the law strictly, prohibiting the City from using CPA funds to completely rehabilitate an existing park
- The General Court responded to this case by revising the CPA to allow for CPA funds to be used in connection with existing playgrounds and other land for recreational use
- The holding in Seideman is still relevant, however, because it shows the Court’s inclination to interpret the provisions of the law strictly



Allowable Expenditures from the CPF – Other

- CPA funds may be appropriated to a Conservation Fund, Conservation or Municipal Affordable Housing Trust, or a Housing Authority
- CPA funds may also be appropriated for:
 - Administrative and operating expenses of the CPC
 - Annual principal and interest payments on CPA-related borrowings, and other bond-related costs
 - Damages to property owners for CPA-related takings
 - Matching funds for state and federal grants consistent with CPA purposes
 - Property acquisition costs including appraisals, surveys, title searches, closing fees



Prohibited Expenditures from the CPF

- CPA funds may not be appropriated to:
 - Supplant funds being used for existing purposes consistent with the CPA
 - Pay for maintenance of any real or personal property
 - Restore or rehabilitate open space or community housing not created or acquired with CPA funds
- CPA funds may therefore not be used to “reimburse” the municipality for expenditures already made or authorized from other funding sources for CPA-related purposes



CPF – Required Expenditures or Set-Asides

- Each year, no less than 10% of the estimated annual revenues must be set aside or spent for each of the below three purposes
 - Open Space (now appears to include land for recreational use)
 - Historic Resources
 - Community Housing
- “Estimated annual revenues” are the total of the amount to be collected in the upcoming fiscal year under the local surcharge and the November 15 state matching funds for the prior fiscal year



Requirements Applicable to Acquisition of Interests in Land

- A real property interest acquired by a municipality under the CPA must be bound by a permanent deed restriction meeting the requirements of G.L. c.184
- The deed restriction runs with the land and must be enforceable by the municipality or the commonwealth
- The deed restriction may also run to the benefit of and be enforceable by a non-profit, charitable corporation, or foundation



Requirements Applicable to Acquisition of Interests in Land - Ownership

- Real property interests acquired by the municipality must be owned by the municipality but management may be delegated to the conservation commission, historical commission, park and recreation commission or housing authority, or in certain circumstances to a water, water supply, or fire district, or a non-profit organization



Grants of Funds to Private Entities - Public Purpose

- Must meet "public purpose" test
- Cannot be solely for the benefit of individuals
- Must comply with the anti-aid amendment, cannot be solely for the benefit of a private non-profit educational or religious institution
- Can provide funds to a private entity or individual if the benefit is for the public, however
- Use a grant agreement to ensure that the municipality controls use of the funds



Grants of Funds to Private Entities – Public Purpose

- Possible resistance to this concept either at the board and committee level or from Town Meeting
- While there is a public benefit, it is obvious that a private entity will also benefit
- Municipality needs to act affirmatively to protect public interest, which may be in the form of a restriction
- Develop forms for grant agreements and restrictions that can be used as a “baseline” for negotiations
- Form is not provided for or dictated by state law



Grants of Funds to Private Entities - Grant Agreements - Elements

- Provide for a “claw back” if the money is used improperly
- Require appropriate record keeping, reporting, and access
- Require conveyance of an appropriate deed restriction (i.e., conservation, historic, or affordable housing) and/or public access or other public benefit
- Contracting authority for Town should sign agreement, with such support from CPC as to terms and conditions and negotiation of same as Town determines
- Warrant article authorizing project must also include authorization for acceptance of restriction



CPA – Funding Sources

- Community Preservation Fund (“CPF”) is a revenue fund – all CPA revenues are automatically credited
 - Local surcharge
 - State match
 - Proceeds from all CPA borrowings
 - All funds from public and private sources for the CPA
 - Damages and penalties from persons who knowingly damage CPA properties
 - Proceeds from sale of land acquired with CPA funds
 - Interest



CPA – Funding Sources

- Local surcharge
- State match – size based upon number of recordings at Registries of Deeds
 - Three “rounds” of distributions – distributed on November 15 based upon amount collected locally in prior fiscal year
 - First round, 80% evenly distributed
 - Second round “equity distribution”, to those municipalities with a 3% surcharge
 - Third round, “surplus distribution”, to those municipalities with a 3% surcharge
- State match has been erratic- for years it was at 100%, dropped to 26.64%, and is variable at best



CPF – Available Funds

- The CPF is accounted for separately from other monies; however, depending on when during the year an appropriation might be made, different funds are likely to be available
- This is similar to the regular municipal budget process; for example, after the tax rate is set, a municipality may not raise additional funds by taxation, and funds may only be available as previously appropriated, by transfer from other appropriations, or from special funds



CPF – Available Funds – Reserve Accounts

- Within the CPF are at least three separate reserve accounts, commonly referred to as “buckets”
 - Open Space
 - Historic Resources
 - Community Housing
- These buckets are available for appropriation at any time during the fiscal year
- In addition, some municipalities create a “budgeted reserve” which includes all estimated annual revenues not otherwise expended, which would also be available at any time during the fiscal year



CPF – Available Funds – Estimated Annual Revenues

- Estimated annual revenues are available at any time until the tax rate is set
 - As noted, they include both the amount to be collected through the surcharge in the upcoming fiscal year, as well as the anticipated state matching funds
- If all of the estimated annual revenues are not appropriated, they become “unavailable” after the tax rate is set
- It is for this reason that many municipalities appropriate such funds to a “budgeted reserve”



CPF – Available Funds – Amounts Reserved for a Particular CPA Purpose

- CPA revenues may be set aside or reserved for a particular purpose, even though sufficient funds do not exist to allow them to be expended for that purpose at that time; they will be available for appropriation thereafter, even if the tax rate has been set



CPF – Available Funds – Fund Balance

- Fund balance – funds remaining in the CPF at the close of the fiscal year that were not appropriated, set aside or reserved are reported to DOR ;
- After DOR “approves” the same, such funds are available at any time until the close of the then-current fiscal year



Contact

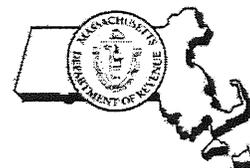
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Bulletin

2003-04B

COMMUNITY PRESERVATION FUND

TO: Assessors, Collectors, Treasurers, Accountants, Auditors, Mayors, Selectmen, City/Town Managers, Executive Secretaries, Finance Directors, City/Town Councils, City Solicitors and Town Counsels

FROM: James R. Johnson, Director of Accounts

DATE: February 2003

SUBJECT: Community Preservation Act Implementation and Appropriation Votes

This *Bulletin* provides communities that have adopted the Community Preservation Act (CPA) with guidance about identifying the source of CPA funds for proposals being presented to their legislative bodies for the upcoming fiscal year. It also includes recommendations for acceptance proposals in communities presenting a CPA acceptance referendum to the voters during 2003.

I. ACCEPTANCE VOTES

We strongly recommend that any community presenting a CPA acceptance referendum to its voters during 2003 **expressly** state the fiscal year the surcharge will first be assessed in the underlying acceptance proposal presented to the legislative body (or contained in an initiative petition). This implementation date should also be included in the summary prepared by municipal counsel that appears on the ballot underneath the referendum question. This will avoid issues that have arisen in a few communities about the intended year and will enable assessors, collectors and other officials to properly plan for CPA implementation.

As a general matter, please note that where voters consider a CPA referendum at a spring annual town election, it is expected that the surcharge will be assessed in FY04. If the town intends otherwise, it needs to include a FY05 implementation date in its underlying acceptance proposal. A city that presents a CPA referendum to voters at a fall election, on the other hand, has the option of assessing the surcharge in either FY04 or FY05 and therefore, should clearly identify the intended implementation date. The CPA contemplates that the surcharge will be assessed along with the real estate tax for a fiscal year. Therefore, if the city wants to implement the CPA in FY04, the referendum has to take place before the FY04 tax rate is set with the expectation of implementing the surcharge in the actual tax bills issued thereafter.

II. APPROPRIATION VOTES

We also recommend that communities adopt consistent terminology for identifying CPA financing sources in proposals presented to and approved by their legislative bodies. During the FY03 tax setting process, we found that there were often questions about the particular source of funds voted for a CPA acquisition or other initiative. As you know, this difficulty arises from the multiple financing source structure of the Community Preservation Fund. The use of consistent and clear terminology will assist the clerk in certifying and the accounting officer in tracking all appropriations and reservations approved by the legislative body.

Attachment 1 sets out the language we recommended in our initial CPA implementation guidelines. See Property Tax Bureau Informational Guideline Release No. 00-209, *Community Preservation Fund* (December 2000), as later amended by IGRs 01-207 and 02-208. (The amended version of IGR 00-209 is available on our web site: www.dls.state.ma.us). The attachment also includes a sample warrant article and motion using that language. If you do not want to adopt that language, we suggest that the Community Preservation Committee (CPC), clerk, accounting officer and other officials involved in financial matters work together to establish a term for each CPA financing source before the upcoming budget cycle so that those terms can be used consistently in all future recommendations made to town meeting or city council.

III. FY04 BUDGET CYCLE

We continue to receive questions about the availability of CPA financing sources available at different points during the municipal fiscal cycle, particularly annual revenues that have not been appropriated for particular purposes or reserved for later appropriation for one of the three CPA purposes (open space, historic resources and community housing) before the tax rate is set.

The chart in *Attachment 2* explains the various CPA financing sources. For communities that adopted and implemented the CPA in FY02 or FY03, the sources available to them at different points during the FY04 budget cycle are shown in *Attachment 3*. For communities that first assess a surcharge for FY04, *Attachment 4* identifies the sources that will be available in both the FY04 and FY05 budget cycles.

During the FY04 budget cycle, communities may upon recommendation of the CPC appropriate or reserve the estimated FY04 Community Preservation fund revenues any time before they set their FY04 tax rate in the fall of 2003. After the rate is set, however, they can only approve new spending from any available Community Preservation fund reserves or by authorizing debt under the CPA. Available reserves would include any (1) fund balance (as of 6/30/03 and reported by accounting officer), (2) fund special purpose reserves (Open space, Historic resources and Community housing) and (3) year's budgeted reserve (see explanation in paragraph 3 below).

With respect to the estimated annual fund revenues, communities may do any of the following upon recommendation of the CPC:

1. Appropriate them for specific acquisitions or projects, CPC operating expenses, or debt service on CPA borrowings. For example:

Voted: to appropriate \$100,000 from FY04 Community Preservation fund revenues for X purpose.

2. Reserve them for later appropriation for one of the following three categories of CPA purposes: (a) Open space (excluding recreational), (b) Historic resources, and (c) Community housing. For example:

Voted: to reserve \$100,000 from FY04 Community Preservation fund revenues for open space purposes (or to the Community Preservation Fund Open Space Reserve).

3. Reserve monies for later appropriation for any CPA purpose during FY04. For example:

Voted: to reserve \$250,000 from FY04 Community Preservation fund revenues for Community Preservation fund purposes during FY04 (or to the FY04 Community Preservation Fund Budgeted Reserve).

EXPLANATION: We suggest voting an annual budgeted reserve if communities want the flexibility to use any annual revenues not appropriated for particular purposes, or reserved for later appropriation for open space, historic resources or community housing, after the tax rate is set. Upon recommendation of the CPC, the legislative body may vote annual revenues into the reserve any time until the rate is set. Amounts in the reserve may be transferred by the legislative body upon CPC recommendation to fund any CPA spending purpose at any time during the FY (e.g., transfers can be made from the FY04 Community Preservation Fund Budgeted Reserve any time from 7/1/03 to 6/30/04). Any balance remaining at the end of the fiscal year closes to the overall Community Preservation fund balance and becomes part of that funding source after the accounting officer reports it.

As a practical matter, it may be best to wait until after October 15 when state matching funds are in hand to place any unappropriated or unreserved annual revenues into a budgeted reserve. That way the community can use a firm revenue figure and avoid the possibility that it appropriates and reserves more than is actually collected, *i.e.*, runs a deficit in the fund at year end that has to be covered by next year's revenues. That timing may not work for many communities, however, particularly those that set tax rates in September and October and towns that do not typically have a fall special town meeting.

Regardless of the timing, we think the CPC could vote to recommend that the legislative body place an amount equal to the difference between the estimated annual revenues and the amount actually appropriated and reserved for CPA purposes into the year's budgeted reserve. For example, if municipal budget officials estimate total FY04 fund revenues will be \$1,000,000, the CPC might vote to recommend that town meeting or city council reserve FY04 Community Preservation fund revenues for community preservation purposes during FY04 in an amount equal to the difference between \$1,000,000 and the amount appropriated and reserved to date. The CPC should consult with municipal counsel and the town meeting moderator to determine how to properly move this recommendation after the legislative body has disposed of all other recommendations and the specific dollar amount is then known.

Finally, please note that surcharge and state matching monies are not separate and distinct financing sources for appropriation or reservation purposes. The total amount the community anticipates collecting from the two receipts during any fiscal year makes up the estimated annual fund revenues for that year. Also, once a fiscal year ends, any annual revenues collected that were not appropriated or reserved before the tax rate was set for that year flow into the fund balance and become part of that available funding source once it is reported by the accounting officer. They do not remain a separate and distinct funding source.

Attachment 1

SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES

SOURCE

- Annual revenues
 - To appropriate \$10,000 from FY2004 Community Preservation Fund revenues for _____.
 - To reserve \$250,000 from FY2004 Community Preservation Fund revenues for FY2004 Community Preservation Fund purposes (FY2004 Budgeted Reserve)
 - To reserve \$100,000 from FY2004 Community Preservation Fund revenues for Open Space.

- Annual Budgeted Reserve
 - To appropriate/transfer \$75,000 from FY2004 Community Preservation Budgeted Reserve to _____.

- Special Purpose Reserves
 - To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.

- Fund Balance
 - To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.

- Excess Bond Proceeds
 - To appropriate/transfer \$10,000 from Community Preservation – Parcel X Land Acquisition Loan balance to _____.

VOTE

SAMPLE COMMUNITY PRESERVATION PROGRAM APPROPRIATION VOTE

ARTICLE: TO SEE IF THE TOWN WILL VOTE TO ACQUIRE BY PURCHASE OR EMINENT DOMAIN A PARCEL OF LAND DESCRIBED AS ASSESSORS MAP 30 LOT 125 CONSISTING OF APPROXIMATELY 25.2 ACRES FOR OPEN SPACE PURPOSES UNDER THE COMMUNITY PRESERVATION ACT, AND TO APPROPRIATE OR TRANSFER FROM THE COMMUNITY PRESERVATION FUND, ANNUAL REVENUES OR AVAILABLE FUNDS, OR TO AUTHORIZE THE TREASURER WITH THE APPROVAL OF THE SELECTMEN TO BORROW UNDER THE COMMUNITY PRESERVATION ACT, A SUM OF MONEY TO FUND SUCH ACQUISITION, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for open space purposes under the Community Preservation Act and to fund such acquisition, that \$5,000,000 be appropriated with \$400,000 to be appropriated from FY04 Community Preservation Fund revenues, \$100,000 to be transferred from the Community Preservation Fund Open Space Reserve, \$1,000,000 to be transferred from the Community Preservation Fund balance and that \$3,500,000 be borrowed by the treasurer, who is authorized with the approval of the selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B §11, or any other general or special law, for a period not to exceed 20 years.

Attachment 2

COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES	BUDGETED RESERVES	FUND BALANCE	BORROWING
Definition	Annual recurring revenues	Funds designated by the legislative body for later appropriation for any CPA purpose during the fiscal year and/or for one of the following specific CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing	Unspent funds generated by favorable operations during the previous FY that are available for appropriation	Debt repaid with future fund revenues
Source	<p>Surcharges assessed for FY</p> <p>State trust fund distribution received during FY (beginning in 2nd year of fund operation)</p>	<p>Appropriations from annual fund revenues or fund balance</p>	<p>Appropriation turn-backs, including unappropriated balance from any annual budgeted reserve</p> <p>Actual receipts in excess of budgeted revenues</p> <p>Investment interest</p> <p>Miscellaneous non-recurring revenues, e.g., proceeds from sale of community preservation fund acquisitions, damages and fines related to the acquisitions, or public/private gifts/grants for non-specific community preservation fund purposes</p>	Proceeds from notes, bonds or other debt obligations issued for a CPA purpose
Limitations	<p>Legislative body <i>must</i> appropriate or place in budgeted special purpose reserves at least 10% of each year's annual revenues for each of following CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing</p> <p>Cannot spend from appropriations until FY begins (i.e., 7/1)</p>	<p>Appropriations to a particular reserve require legislative body vote that states the specific dollar amount and source being reserved</p> <p>Appropriations <i>from</i> the annual budgeted reserve may be made for any CPA purpose during the FY only and any unappropriated balance at year-end closes to fund balance</p> <p>Appropriations <i>from</i> a particular special purpose reserve limited to that CPA purpose</p>	<p>May be appropriated by legislative body for any CPA purpose</p>	<p>Legislative body <i>must</i> specifically authorize borrowing under CPA (G.L. Ch. 44B)</p> <p>Borrowing limited to purposes and terms applicable to municipal borrowing generally under G.L. Ch. 44 §§7 and 8</p> <p>Appropriations <i>from</i> proceeds remaining after purpose completed or abandoned restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan</p>
Availability	Until tax rate set for FY. Once rate set, only budgeted reserves, fund balance or borrowing may be used as financing source.	<p>Annual budgeted reserve during FY (i.e. 7/1 to 6/30)</p> <p>Special purpose reserves any time after reservation</p>	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY	Anytime
Similarity	<p>General fund annual tax levy (taxes, state aid, receipts)</p> <p>Enterprise fund annual revenues (user charges and fees)</p>	<p>Stabilization fund (i.e., general fund monies reserved for later appropriation for municipal purpose)</p> <p>Enterprise fund budgeted surplus</p>	<p>Free cash</p> <p>Enterprise fund free cash (retained earnings)</p>	Other municipal debt

Attachment 3

CPA FINANCING SOURCES

Sources available during FY04 budget cycle for communities that first assessed surcharge in FY02 or FY03

COMMUNITIES THAT IMPLEMENTED SURCHARGE IN FY02

COMMUNITIES THAT IMPLEMENTED SURCHARGE IN FY03

Spring 2003 Annual Town Meeting/City Council Budget Meeting

- **FY04 CP fund revenues** (amount available = estimated (1) FY04 surcharges and (2) 10/15/2003 state trust fund distribution based on FY03 net surcharge levy as of 6/30/2003). Cannot spend appropriations made from this source until 7/1/03.
- CP fund balance (amount available = balance as of 6/30/02 less appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY02 fund activity, including FY02 surcharge collections above the amounts appropriated & reserved at the time the FY02 rate was set)
- **FY03 CP budgeted reserve balance** if any
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

- **FY04 CP fund revenues** (amount available = estimated (1) FY04 surcharges and (2) 10/15/2003 state trust fund distribution based on FY03 net surcharge levy as of 6/30/2003). Cannot spend appropriations made from this source until 7/1/03.
- **NO FUND BALANCE AVAILABLE UNTIL 1st YEAR OF FUND OPERATION ENDS ON 6/30/03**. Any FY03 estimated fund revenues that were not appropriated or reserved at time FY03 rate was set are not available until they become part of the 6/30/03 fund balance and are reported by accounting officer.
- **FY03 CP budgeted reserve balance** if any
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

Any Special Town Meeting/City Council Meeting Held Before 7/1/2003

- Same sources as available before 7/1 to the extent not already appropriated or reserved at previous meetings

Any Special Town Meeting/City Council Meeting Held After 7/1/2003 and Before FY04 Tax Rate Set

- FY04 CP fund revenues not appropriated or reserved at previous meetings
- CP fund balance (amount available = balance as of 6/30/03 less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects 6/30/02 balance not appropriated or reserved during FY03 and favorable FY03 fund activity, including FY03 surcharge collections above the amounts appropriated & reserved at the time the FY03 rate was set)
- **FY04 CP budgeted reserve balance** if any (Unappropriated FY03 budgeted reserve closed to fund balance as of 6/30/03)
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

- FY04 CP fund revenues not appropriated or reserved at previous meetings
- CP fund balance (amount available = balance as of 6/30/03 less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY03 fund activity, including FY03 surcharge collections above the amounts appropriated & reserved at the time the FY03 rate was set)
- **FY04 CP budgeted reserve balance** if any (Unappropriated FY03 budgeted reserve closed to fund balance as of 6/30/03)
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

Any Special Town Meeting/City Council Meeting Held After 7/1/2003 and After FY04 Tax Rate Set

- **EXCEPT FY04 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY04 fund revenues not appropriated or reserved at time FY04 tax rate set are not available until they become part of the 6/30/04 fund balance and are reported by accounting officer.)

- **EXCEPT FY04 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY04 fund revenues not appropriated or reserved at time FY04 tax rate set are not available until they become part of the 6/30/04 fund balance and are reported by accounting officer.)

Attachment 4

CPA FINANCING SOURCES

Sources available during FY04 and FY05 budget cycles for communities that first assess surcharge in FY04

Any Town Meeting/City Council Meeting Held Before FY04 Tax Rate Set

- FY04 CP fund revenues to the extent not appropriated or reserved at any previous meetings held since CPA referendum approved. (Amount available = estimated FY04 surcharges only. First state trust fund distribution will not be received until 10/15/2004, i.e., during FY05). Cannot spend appropriations made from this source until 7/1/03.
- FY04 CP budgeted reserve balance if any created by reservations made at any previous meetings
- CP open space, historic resource, community housing reserve balances if any created by reservations made at any previous meetings
- CP borrowing
- EXCEPT FY04 FUND REVENUES, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY04 fund revenues not appropriated or reserved at time FY04 tax rate set are not available until they become part of the 6/30/04 fund balance and are reported by accounting officer.)

Any Special Town Meeting/City Council Meeting Held After FY04 Tax Rate Set

Sources available during FY05 budget cycle

Spring 2004 Annual Town Meeting/City Council Budget Meeting

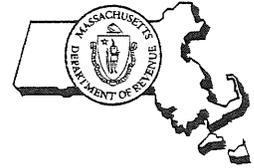
- FY05 CP fund revenues (amount available = estimated (1) FY05 surcharges and (2) 10/15/2004 state trust fund distribution based on FY04 net surcharge levy as of 6/30/2004). Cannot spend appropriations made from this source until 7/1/04.
- NO FUND BALANCE AVAILABLE UNTIL 1ST YEAR OF FUND OPERATION ENDS ON 6/30/04. Any FY04 estimated fund revenues that were not appropriated or reserved at time FY04 rate was set are not available until they become part of the 6/30/04 fund balance and are reported by accounting officer.
- FY04 CP budgeted reserve balance if any
- CP open space, historic resource, community housing reserve balances if any
- CP Borrowing

Any Special Town Meeting/City Council Meeting Held Before 7/1/2004

- Same sources as available before 7/1 to the extent not already appropriated or reserved at previous meetings

Any Special Town Meeting/City Council Meeting Held After 7/1/2004 and Before FY05 Tax Rate Set

- FY05 CP fund revenues not appropriated or reserved at previous meetings
- FY05 CP budgeted reserve balance if any (Unappropriated FY04 budgeted reserve closed to fund balance as of 6/30/04)
- CP fund balance (amount available = balance as of 6/30/04 less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY04 fund activity, including FY04 surcharge collections above the amounts appropriated & reserved at the time the FY04 rate was set)
- CP open space, historic resource, community housing reserve balances if any
- CP Borrowing
- EXCEPT FY05 FUND REVENUES, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY05 fund revenues not appropriated or reserved at time FY05 tax rate set are not available until they become part of the 6/30/05 fund balance and are reported by accounting officer.)



Bulletin

2008-08B

COMMUNITY PRESERVATION REPORTING REQUIREMENTS

TO: Assessors, Accountants/Auditors and Community Preservation Committees
FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs
DATE: August 2008
SUBJECT: Annual Reporting Requirements (CP Forms)

This *Bulletin* explains important changes in the annual reporting requirements that apply to cities and towns that have accepted the Community Preservation Act (CPA).

ANNUAL REPORTS

Community preservation communities are required to submit three reports each year. As detailed in Section VII of Informational Guideline Release 00-209, *Community Preservation Fund*, these reports are:

- A “*Community Preservation Surcharge Report*” (Form CP-1) that contains the information needed to distribute the state matching funds to the community. This report is submitted to the Municipal Data Management/Technical Assistance Bureau.
- A “*Community Preservation Fund Report*” (Form CP-2) that details fund activity of the previous fiscal year and fund balances as of 6/30. This report is submitted to the Bureau of Accounts.
- A “*Community Preservation Initiatives Report*” (Form CP-3) that details community preservation projects of the previous fiscal year. This report is submitted to the Executive Office of Energy and Environmental Affairs (EOEEA).

REPORT SCHEDULES

Beginning in 2008, **both** the Community Preservation Surcharge Report (CP-1) and Community Preservation Initiatives Report (CP-3) **must be submitted by September 15 each year** in order for a community to receive a trust fund distribution by October 15.

REPORT CONTENT AND FORMAT

The attached chart summarizes the changes made in the content and format of the reports that take effect for 2008.

Both reports submitted to Division of Local Services Bureaus have been revised to improve reporting and accommodate online reporting in the DLS Gateway system. The Community Preservation Surcharge Report (CP-1) now includes a separate line to report prior year abatements and exemptions. The Community Preservation Fund Report (CP-2) was streamlined, particularly with respect to reporting of fund balance details. Last month, the Bureau of Accounts provided accounting officers with the revised CP-2 report and instructions for completing it as part of the annual Year End Letters. CP-1 and CP2 reports should be submitted online through DLS Gateway, but paper reports will be accepted. The hard copy forms can be found on the DLS website and the chart contains links to their locations.

The EOEEA revised the Community Preservation Initiatives Report (CP-3) in order to obtain more detailed information about the uses of community preservation fund monies throughout the state. CP-3 reports must now be submitted to EOEEA using a new online reporting system. The system and instructions can be accessed through the DLS website and a link is provided in the chart.

QUESTIONS

If you have questions about completing the CP-1, using the EOEEA CP-3 online application, or using DLS Gateway generally, including password issues, please contact the Municipal Databank at (617) 626-2384 or databank@dor.state.ma.us.

If you have questions about the information to be reported in the revised CP-2, please contact your Bureau of Accounts Representative.

COMMUNITY PRESERVATION REPORTING CHANGES

FORM NAME	NO.	PREPARER	RECIPIENT	CHANGES
Surcharge Report	<u>CP-1</u>	Assessors Accounting Officer	MDM/TAB	<ul style="list-style-type: none"> • Report form revised to report prior year abatements and exemptions • May now be submitted online through <u>DLS Gateway</u>
Fund Report	<u>CP-2</u> <u>Instructions</u>	Accounting Officer	BOA	<ul style="list-style-type: none"> • Report format streamlined with expenditure categories consolidated and fund balance categories consistent with UMAS accounts • May now be submitted online through <u>DLS Gateway</u> • Copy no longer submitted to EOEEA
Initiatives Report	<u>CP-3</u> <u>Instructions</u>	Community Preservation Committee	EOEEA	<ul style="list-style-type: none"> • Now due by 9/15 in order to receive trust fund distribution by 10/15 • Now submitted online to EOEEA

