

WORKSHOP C SPECIAL FUNDS

DISCUSSION SUMMARY (Prepared For Informational and Training Purposes Only)

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COMMUNITY PRESERVATION FUNDS

1. Can community preservation surcharge billing software or other implementation expenses be charged to the community preservation (CP) fund? Can expenses incurred by the municipality's law department, manager or other department for general legal or policy advice or other municipal departments on Community Preservation Act (CPA) issues, *e.g.*, by the accounting officer, law department, town managers, etc., be charged to the CP fund?

G.L. c. 44B, § 6

Communities can use monies in the Community Preservation Committee (CPC) annual administrative and operating budget to pay for tax billing software, but only in the first year of implementation. This is a change made by the 2016 Municipal Modernization Act. Otherwise, like any city or town committee, board or department, the annual appropriation is intended for the committee to pay for salaries, expenses and contractual services to carry out its duties, as defined by the CPA and by-law or ordinance that established it.

The CP fund is not like an enterprise fund, which allows expenses incurred by different departments on behalf of the enterprise to be funded from enterprise revenues. It cannot be used to fund general expenses of another department. However, the appropriation for a CP funded project can be charged for expenses ordinarily covered by the appropriation, even if incurred by a municipal department. For example, the appropriation for a conservation land acquisition may cover legal expenses incurred by the law department in order to complete the acquisition.

2. Does the community preservation committee (CPC) have to submit its operating budget or project recommendations for review by the finance committee, selectboard, mayor, manager or capital improvement committee before submission to the legislative body for action? Can those officials make any changes in the recommendations or refuse to present the recommendations to the legislative body?

G.L. c. 44B, §§ 5 and 6

The CPA simply provides for a special revenue fund. It does not alter the usual procedures that apply in a city or town for presenting budgets and special purpose appropriations to the legislative body for action.

Therefore, as a city or town committee, the CPC must follow the usual procedures for submitting its annual operating budget request to the finance committee, manager or mayor.

If the community has a capital planning by-law or ordinance that requires special purpose capital projects to be reviewed, then the CPC will need to coordinate its proposals with that process. In most towns, that would be the capital planning committee and finance committee.

CPC's proposed recommendations get before the legislative body for action in the usual way based on the form of government, local charter and by-laws or ordinances.

- In a town, the selectboard generally controls the content of the town meeting warrant. G.L. c. 39, § 10. Therefore, unless town officers and boards have the right to have articles submitted within certain time periods placed on the warrant, or the article is petitioned, the selectboard decides whether to place articles with the CPC's recommendations before town meeting. If the selectboard does not place the article on the warrant, town voters may petition for its insertion or a special town meeting to consider the article. G.L. c. 39, § 10.**
- In a city, spending proposals usually have to be submitted to the council by the mayor. Department heads cannot ordinarily present appropriation requests directly to the council. In that case, the mayor decides whether to place any of the recommendations before the council.**

If the selectboard or mayor decides to place a CPC recommendation to the legislative body for action, we believe the recommendation must be presented as made.

Once presented, however, the general rules regarding town meeting and city council action on proposed appropriations apply with one important difference.

- In a town, town meeting can usually approve, reject, reduce or increase a proposed appropriation within the scope of the article before it. However, under the CPA, fund monies can only be appropriated and spent for CPC annual administrative expenses and to implement recommendations of the CPC. G.L. c. 44B, § 7. As a result of this "gatekeeper" language with respect to recommendations for CPA projects, a town meeting cannot increase the amount to be appropriated for any purpose. The CPC has not recommended appropriating those "additional" CP funds.**
- In a city, a city council cannot usually increase the mayor's recommended appropriations so it can just approve, reject or reduce a proposed appropriation.**

3. Can a community ever appropriate from CPA funds without a CPC recommendation?

G.L. c. 44B, §§ 6 and 7

Yes. A CPC recommendation is not needed for the legislative body to appropriate in three circumstances.

- 1. Appropriation of up to 5% of annual fund revenues for the CPC's annual budget. This is based on reviewing the language regarding action of the legislative body in G.L. c. 44B, § 6 and the language in G.L. c. 44B, § 7 limiting fund expenditures to CPC recommendations and CPC operating expenses. The distinction appears to be intentional, since it makes sense that when the community first adopts the CPA, it may need to establish a budget for the CPC's expenses before the committee is even formed.**
- 2. For debt service on a CP fund borrowing. The CPC needs to budget for annual debt service before allocating monies to new projects so it should be making a recommendation each year. However, failure to do so does not preclude the municipality from going ahead and funding the debt from CP funds. This is based again on the language in G.L. c. 44B, § 7 limiting fund expenditures to CPC recommendations and CPC operating expenses. The recommendation was the original one to use a CP fund borrowing to finance the project. Once that borrowing was authorized, the debt became an obligation of the fund.**
- 3. To wind-down the fund upon revocation of the CPA. Once the CPA is revoked, the CPC no longer has a statutory role in administering any remaining fund monies, unless the by-law or ordinance continues the CPC in that case.**
4. Can a CPA borrowing be authorized against all annual revenues (surcharges, additional municipal revenues in community that accepted G.L. c. 44B, § 3(b^{1/2}) and state matching distribution)?

G.L. c. 44B, § 11

No. Under G.L. c. 44B, § 11, CP fund debt is limited to that supported by "revenues to be raised pursuant to section 3." Revenues under that section are the locally assessed surcharge and additional municipal revenues appropriated to the fund if the community has accepted G.L. c. 44B, § 3(b^{1/2})(blended CPA). G.L. c. 44B, § 11. The reason is that the local revenues are more predictable in amount, but the state match may be more variable from year to year.

5. If the community receives a premium and accrued interest on a CPA borrowing, does it stay with the CP fund or go to the general fund?

G.L. c. 44, § 20; IGR 17-21

As a result of a change made by the Municipal Modernization Act in G.L. c. 44, § 20, which governs bond and note proceeds, premiums (net of issuance costs) and accrued interest received on bonds or notes sold for a CP fund borrowing remain subject to CP fund restrictions. If the premiums and accrued interest are not used to pay CPA project costs and reduce the amount borrowed for the project by the same amount, they are reserved for appropriation for capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums and interest were

received. The amount of the reserved premiums and interest may only be appropriated, after a CPC recommendation, for a capital project for which CP funds may be spent. See Section V-B-2 of [Informational Guideline Release \(IGR\) 17-22, Borrowing](#).

6. Investment income of \$25,000 was earned on surcharges collected during FY2018. If there are balances in any or all of the three special purpose reserves: open space, historic resources and community housing, does any of the interest get allocated to those reserves?

G.L. c. 44B, § 7

No. Interest belongs to the fund. The reserves are unspent appropriations made from annual revenues of the fund.

7. A town appropriated \$450,000 for an open space acquisition, which included \$8,500 for title insurance, recording fees and legal services contracted for the project. These costs have exceeded the \$8,500. It does not have enough money in the appropriation to cover these costs and the purchase price. Can it charge the CPC operating budget to cover them?

G.L. c. 44B, § 6

No. This is a scope of appropriation issue. There are two types of CP fund appropriations. CP fund monies can be used for CPC administrative and operating expenses and the eligible projects specified in G.L. c. 44B, § 5(b)(2). As with any other appropriation, project expenses are those for the specific project and include any expenses incidental to that project.

Here, the appropriation for the open space project, including its associated costs, is a special purpose appropriation and the CPC administrative or operating budget is a separate appropriation for a different purpose altogether. To spend an additional \$8,500 for the project from the CPC operating appropriation, the legislative body, upon a CPC recommendation, would have to vote to transfer unspent and unencumbered monies in the appropriation to the project appropriation as needed. G.L. c. 44, § 33B.

8. The town accepted the CPA in 2010 by petition. A surcharge of 1.5% was adopted. Some residents want the town to increase its local contribution by “adding” some room occupancy and meals tax revenue to the community preservation fund. Others want to add the proceeds of the sale of a valuable parcel that the town just sold? Can the town do so? If so, how?

G.L. c. 44B, §§ 3(b½) and 16(a)

Yes if the town originally accepted the CPA by adopting the alternative or blended local financing plan under G.L. c. 44B, § 3(b½) or if not, amends its CPA acceptance. The blended § 3(b½) financing plan requires the city or town to assess a surcharge of at least 1% and permits an additional amount to be appropriated into the fund using other

municipal financing sources. The surcharge and additional monies cannot exceed 3% of the tax levy.

Most communities accepted the CPA under the original or traditional local financing plan under G.L. c. 44B, § 3(b). To use the blended financing plan, these communities must first follow the CPA amendment process. The amendment procedure is found in G.L. c. 44B, § 16(a) and requires a legislative body vote and voter approval of a ballot question. Sample language that may be used for an amendment vote and ballot question is found on page 23 of the [Workshop C materials](#).

If a community's acceptance of CPA originally adopted the alternative or blended local financing plan under G.L. c. 44B, § 3(b½), it can appropriate additional revenue into the CP Fund. For example, if it has accepted a 2% surcharge, the community could appropriate an amount up to 1% of the real estate tax levy in additional local revenue into the fund, for a total not to exceed 3% of that levy.

9. Others in the town want to end the CPA. Can the town revoke its acceptance? Does it matter if the town has \$1,000,000 in CPA debt outstanding? All of the debt was issued to fund open space acquisitions. If yes, what is the process for revoking? When does it stop assessing the surcharge? Can the surcharge be collected after the revocation just to fulfill the debt obligation? What does the town have to do to complete a revocation if it has \$300,000 in fund balance, \$250,000 in the Community Housing reserve \$200,000 in the Historic Resources reserve and anticipates a state trust fund distribution the next fiscal year of about \$75,000. Can it use the monies in the historic and housing reserves to fund the outstanding open space debt services?

G.L. c. 44B, § 16(b)

A community can revoke the CPA so long as it operates the fund for at least 5 fiscal years. To do so, it must follow the exact same procedure used to accept the CPA. See G.L. c. 44B, § 16(b). For example, if a voter petition was used to present the acceptance ballot question to the voters, a petition must be used to present a revocation question to the voters. Sample language that may be used for a revocation vote or petition and ballot question is found on page 24 of the [Workshop C materials](#).

If revoked, the CPA will no longer be operative and the city or town must wind down the fund. This means that (1) no new CP fund borrowings can be authorized, (2) 10% of any future annual revenues no longer must be appropriated or reserved for open space, historic resources and community housing and (3) a CPC recommendation is no longer needed for recommendations unless the CPC by-law or ordinance provides for that role during the wind down of the fund.

However, the community may still have to assess the surcharge for one or more years until sufficient funds are accumulated to meet fund obligations, including debt service payments owed on CP fund borrowings. If the CPA is revoked, the accounting officer has to analyze fund obligations (future debt services, etc.) and determine the uncommitted or restricted fund monies available to be reserved to meet them (fund balance, uncommitted annual revenues and applicable reserves).

Here, the fund balance of \$300,000 and estimated \$75,000 in annual revenues next year from the state match are available to meet the \$1,000,000 in outstanding debt obligation. The balances in the historic resources and community housing reserves cannot be used as those monies reflect the required allocation of at least 10% of annual revenues to those purposes and can only be used for eligible CP purposes within those categories.

Consequently, the community will have to assess a surcharge for 1 or more years to accumulate the additional \$625,000 needed to meet fund obligations. If it would produce sufficient funds, the community can use the surcharge amendment procedure in G.L. c. 44B, § 16(a) to reduce the current surcharge rate, provided the current rate has been imposed for at least 1 fiscal year. The accounting officer would continue to reserve uncommitted funds generated by the surcharge and state match until the amount needed is reserved. Thereafter, any uncommitted and restricted monies remaining can be appropriated for new CP initiatives, *i.e.*, the monies remain restricted for allowable CP purposes only.

The revocation or surcharge amendment is implemented in:

- The next (or later fiscal year) that begins following the election as stated in the vote
- The next fiscal year that begins following the election if the vote does not state an effective date
- The fiscal year the election was held if that year is expressly stated in the vote and the tax rate had not been set at the time of election.

10. A local non-profit organization makes a \$25,000 gift to the community for use in developing a new recreational site. Since that is a CPA purpose, does the accounting officer credit the gift to the community preservation fund? If so, can it be spent without appropriation like other gifts and who would decide the specific spending purpose?

G.L. c. 44, § 53A; G.L. c. 44B, § 7

The answer depends on how the gift is given.

Under G.L. c. 44B, § 7, gifts and grants may be credited to the CP fund. Therefore, if the gift is given specifically for the CP fund, the regular gift and grant statute, G.L. c. 44, § 53A, doesn't apply. The monies become part of the CP fund and are subject to the requirement that they be appropriated upon recommendation of the CPC. There is a timing issue. If received before the tax rate is set, the amount can be included as part of estimated fund revenues and support appropriations from that source. If received after, then they are unavailable for appropriation until reported as part of fund balance at the close of the fiscal year.

If the gift is to the CPC (or other board or officer) for a specific approved project, then it is accounted for as a regular G.L. c. 44, § 53A gift account. The monies in that account would then be available for expenditure without appropriation for the project in addition to the CP fund appropriation for the project.

A gift to the community, or the CPC, for general community preservation purposes or a broad category of those purposes (e.g., open space) presents a more difficult problem. The best answer is that such a gift be treated as estimated fund revenues, *i.e.*, just like a gift to

the fund (see above). We say the same thing for general or broad categorical gifts to a community rather than to a particular board or officer (e.g., gifts for any town or public safety purpose). The legislative body decides how to spend them consistent with the purposes specified by the donor. In this case, it would do so after a CPC recommendation. The accounting officer and CPC would need to track these amounts to ensure the purposes of the gift are carried out.

11. If the community appropriates CP funds to a "Municipal Affordable Housing Trust Fund," does the community just give a lump sum payment to the trust? How does the trust account for monies? Are there any restrictions on the use of the monies by the trust?

G.L. c. 44, § 55C

A community can appropriate CPA money to its Affordable Housing Trust Fund. G.L. c. 44B, § 5. That appropriation counts toward meeting the minimum 10% spending requirement for community housing. At that time, the monies become part of the trust assets and could be spent by the trustees for purposes of the trust, i.e., affordable housing.

For Municipal Housing Trust Funds created under G.L. c. 44, § 55C, the trustees are a municipal agency so the municipal treasurer would have custody of all trust funds. The funds can be spent by the trustees without further legislative body action. The Municipal Modernization Act amended G.L. c. 44, § 55C to limit the power of the trustees to spend CPA funds for purposes other than those that qualify under G.L. c. 44B. The monies must be accounted for separately and the trustees must give an annual report at the end of each fiscal year to the CPC so it can make a required annual report on expenditure of CP funds. If the trust fund is established under a special act, however, the act would have to be consulted as to the custody and expenditure of trust assets.

12. Can CPA funds be used to:
- Exercise an option to purchase a private golf course currently classified under G.L. Ch. 61B that is being sold for development.
 - Paint an historic building its original color.
 - Install art works in city parks and green spaces.
 - Make site improvements and upgrade the electrical system at a public housing development for seniors in order to comply with the ADA and other state and local codes.
 - Site assessment and other pre-development, environmental assessments, construction plans and legal, permitting and other fees, in connection with the private development of affordable housing.

G.L. c. 44B, §§ 2 and 5

Eligible purposes for CP funding are related to certain assets, i.e., it is asset based. In order to determine whether any proposed expenditure is allowable, the CPC must determine:

- **What is the community preservation asset as defined in G.L. c. 44B, § 2?**

- What can CP fund money be used for in connection with that asset as set forth in G.L. c. 44B, § 5?
- Is the proposed expenditure for one of those uses?

See the Community Preservation Fund Allowable Use Chart on page 32 and Community Preservation Fund Project Eligibility Flow Chart on page 33 of the [Workshop C materials](#).

Golf Course Acquisition – Does land used for golf come within the definition of land used for a recreational use? Under G.L. c. 44B, § 2, land for recreational use is included in the definition of open space with a focus is on use of the land for active and passive outdoor sports and other recreational uses, as also defined in the statute. It is very similar to the types of uses that allowed the land to be classified under G.L. c. 61B. Land for recreational use is a CP asset and CP funds may be used to acquire it.

Historic Building Painting – Is the building historic? Under G.L. c. 44B, § 2, the definition of a historic resource includes a building that is on the state register of historic places or is determined by the municipal historic preservation commission to be significant in its history, archeology, architecture or culture. Assuming the building meets that definition and is a CP asset, painting the building for the purpose of restoration is an eligible CP project provided the restoration complies with certain federal standards. As a general rule, however, painting is not eligible because it is maintenance as defined by the statute.

Art Works Installation – The asset is land for recreational use. As noted previously, that asset is part of open space definition so the focus is on use of the land for active and passive recreational use, as also defined in the statute. The proposed installation is not eligible as it not one of the eligible uses of CP funds in connection with that land. Funding art alone is not acquisition, creation, preservation or rehabilitation of the land for recreational use.

However, art works, just like playground equipment, benches or other amenities could be funded as part of an allowable project, *e.g.*, if city acquired and created a park or other outdoor recreational site, created a new park or recreational site on land not currently used for recreation or rehabilitated an existing park. This is similar to “painting” a historic house or community housing. As indicated above, painting is generally considered maintenance and therefore, not allowable. However, painting might be done during an allowable rehabilitation project and it would be part of that project in that case.

ADA Improvements – Public housing for low or moderate income seniors is community housing under G.L. c. 44B, § 2. The proposed use of CP funds comes clearly within the definition of work that constitutes rehabilitation under the statute. CP funds can only be used to rehabilitate community housing that was acquired or created with CP funds. The proposed use cannot be called preservation of community housing in order to make it eligible because these improvements are specifically defined as rehabilitation and to do so would render that definition meaningless. See Advisory Opinion 2017-78 on page 41 of the [Workshop C materials](#) for that analysis. Note that the Governor proposed legislation to remove the restriction on the use of CP funds to rehabilitate for “pre-existing” housing. If enacted, it would not matter whether the improvements are considered preservation or rehabilitation as they would both be eligible activities.

Affordable Housing Pre-development Expenses – Community housing for low income persons or low or moderate income seniors is a CP asset. Some of these activities may be so

preliminary as to be for the purpose of assisting CPC determine the need and feasibility for the project and make a project funding recommendation. In that case they could be eligible as CPC administrative and operating expenses. Other expenses may be part of a specific project to create or support community housing, which are eligible for CP funding. See Advisory Opinion 2016-838 on page 46 of the [Workshop C materials](#) for that analysis. Note that the Governor proposed legislation to expand the definition of support in G.L. c. 44B, § 2. If enacted, it would make these and other planning and pre-development activities in connection with any acquisition of land for community housing or any acquisition, creation or rehabilitation of community housing eligible for CP funding as support.

OTHER SPECIAL FUNDS

13. The accounting officer is asked to credit or reserve the following revenues or financing sources to certain funds:
- Reserve all receipts from betterments to a debt service reserve to be spent by the treasurer to pay the debt service on funds borrowed for the projects for which the betterments were assessed.
 - Credit “new growth” to the capital stabilization fund.
 - Credit local option room occupancy excises to a departmental revolving fund to be spent by the economic development department on advertising to promote the city as a place to visit and do business.
 - Reserve annual payments being received for 10 years from the owner of a new, major development in a gift account in order to mitigate the impact of the facility.

Can the city dedicate any of these revenues? If so, how? If not, are there other options for accomplishing any of the objectives here?

G.L. c. 40, § 5B; G.L. c. 44, § 53; G.L. c. 44, § 53E½; G.L. c. 44, § 53J; LFO-2018-3; IGR 17-20

Betterments - It depends. For years the position of DLS was that this was not permissible. However, the Municipal Modernization Act added G.L. c. 44 § 53J, which requires that betterment and special assessment payments must be reserved for appropriation to pay debt service “in any city, town...that borrows money to pay for improvements for which betterments or special assessments are assessed...” As a result, when a borrowing is authorized on or after the November 7, 2016 effective date of the Municipal Modernization Act to pay for the improvements for which the betterments or special assessments are assessed, a reservation is required for the revenues from such betterments and assessments. The determining factor here is when the borrowing was authorized.

New Growth – No. As part of the unrestricted monies making up the property tax levy these can only be spent by appropriation. Presumably this community in a situation where they want to take steps to enable any new growth received to be put towards capital projects. While the funds cannot be dedicated, the community could appropriate the estimated amount of growth to the capital stabilization fund for that same purpose.

Local Option Room Occupancy Excises – No. Tax revenue cannot be credited to a departmental revolving fund. The only revenue sources for a departmental revolving fund

are the fees, charges or receipts generated by the department's activity. However, these revenues could be dedicated to a stabilization fund for the identified purposes with any expenditure from the fund requiring a 2/3 vote of the legislative body. See [Informational Guideline Release \(IGR\) 17-20](#) for an explanation of the actions needed to make such a dedication.

Mitigation Payments – No. DLS's longstanding position is that these payments are not gifts for municipal finance law purposes if they are made in consideration of a municipal contract or regulatory approval. In that case, they are general revenue under G.L. c. 44, § 53. See [Local Finance Opinion \(LFO\) 2018-3](#) on page 56 of the [Workshop C materials](#) for a discussion of this position in the context of other mitigation payments. As it states, a payment made by a private party to a municipality in connection with a regulated activity, contract or other municipal action is not a gift, donation or grant within the meaning of and for the purposes of G.L. c. 44, § 53A. Therefore, it may not be accounted for in a separate account and spent without appropriation. These payments lack the donative intent that is an essential characteristic of the genuine gift required by that statute. A gift is ordinarily defined as a voluntary payment of money or transfer of property made without consideration. Although a private party's decision to engage in a regulated activity or contract with a municipality may be one of choice, it is doing so with the expectation of receiving valuable consideration in return, *i.e.*, a privilege or benefit, or some municipal action or authorization. In this case, the developer is giving the payments as a condition of approval of their project. DLS has consistently taken the position that even if the municipality has a legal obligation to spend the amount paid for the designated purpose, in the absence of a statute permitting the payment to be treated otherwise, it must still be accounted for as general fund revenue and an appropriation is needed to authorize the expenditure. Note, however, that if the mitigation payments are being paid over a number of years, the municipality might consider dedicating them to a stabilization fund for the purposes for which the payments are being made. See discussion above under room occupancy excises.

14. Surplus and outdated furniture and equipment used by the school department is sold. Can the department keep the proceeds and place in a revolving fund? How are proceeds from the disposition of municipal personal property handled? Does it matter if general fund monies were not used to acquire the personal property, for example, if it was water department equipment originally financed by enterprise fund revenues?

G.L. c. 44, §§ 53

Generally, the proceeds from the disposition of all real and personal property belong to the general fund. This is because of the statutory rule that all money received or collected from any source by a city, town or district be credited to the general fund and spent after appropriation. G.L. c. 44, § 53. A general or special law exception (*e.g.*, “notwithstanding section 53 of chapter 44”) is needed for a city or town to be able to treat a particular revenue stream in a different manner.

Here, this property is owned by the municipality, not any particular department, and the proceeds from its disposition belong to the general fund. However, if the personal property was acquired with enterprise fund revenues then the proceeds should be credited to the enterprise fund. The reason is that enterprise fund statute, G.L. c. 44, § 53F^{1/2}, creates an

exception to G.L. c. 44, § 53 and provides that “all receipts revenues and funds from any source derived from all activities of the enterprise shall be deposited in such a separate account.” Therefore, if the property was acquired with enterprise funds or any debt service on the acquisition was paid from the enterprise fund, then the sale proceeds would be credited to the enterprise fund. Otherwise, if the property was acquired with general fund financing sources or not dedicated to the use of the department operating the enterprise service, then the sale revenue is credited to the general fund.

15. During the fiscal year, the town makes claims under its insurance policies and receives recoveries for following three events:
- \$120,000 is received on a claim for property damage to a number of computers in the high school computer lab caused by an electrical fire on the second day of school. Before the claim is even made, the school committee reallocates money in its budget and replaces the damaged computers.
 - \$300,000 is received on a claim for property damage to the library caused by burst water pipes.
 - \$22,000 is received on a claim for loss due to the theft of Class of 2020 student funds by a teacher serving as the class advisor.

The library commissioners and school committee claim they can retain the monies received for damage to property under their control. Can the library and school departments retain these proceeds? If so, how may they be used? If not, by what process may they be spent and for what purposes?

G.L. c. 44, § 53; LFO-2018-2

All money received or collected from any source by a city, town or district belongs to its general fund and can only be spent after appropriation unless a general or special law provides an exception. There is an express exception to this basic rule in G.L. c. 44, § 53 within that statute. The exception provides that up to \$150,000 in proceeds from insurance claims for damaged municipal property (also applicable to monies received in restitution for lost or damaged municipal property) may be spent without appropriation during the fiscal year received (or within 120 days of receipt if later) by the officer or department having control of the property in order to restore or replace it. They may not be spent without appropriation for any other purpose. Approval of the chief executive officer (CEO) is also required for the officer or department to spend the proceeds. Interest on the proceeds belongs to the general fund. See [LFO-2018-2](#) on Insurance and Restitution Proceeds, which is on page 59 of the [Workshop C materials](#).

School Computers - The monies received by the municipality for the damage to the computers in the high school computer lab meet all the criteria to be an exception to the general rule. Specifically, the school department had property under its custody and control damaged, the proceeds received from an insurance policy to fix that damage were under \$150,000 and presumably the CEO would approve their expenditure for this purpose. However, in this case, the school already reallocated and spent funds to fix the damage before the insurance monies were received. Therefore, the school can no longer spend the insurance proceeds to fix the damage as under the current language of G.L. c. 44, § 53, the treatment of the proceeds no longer qualifies for the exception and belong to the general fund. The community cannot reimburse the account that the school reallocated

from because revenues cannot be credited directly to an appropriation. The legislative body could make a supplemental appropriation for the school budget and in a town, a reserve fund transfer could be made as the replacement was the result of an unforeseen or extraordinary circumstance.

Burst Water Pipes - Per the analysis from the prior example, as the amount received here exceeds \$150,000 so it cannot be retained and spent without appropriation. Ordinarily, the proceeds would not have been budgeted before the tax rate is set so they would not be available for appropriation until certified as free cash based on the balance sheet at the close of the fiscal year for the year the proceeds are received. However, because G.L. c. 44, § 53 sets up a class of receipts that may be spent without first being certified as free cash, and the Director has the power to determine when funds are available for appropriation, the Director has said that proceeds over \$150,000, the \$ 300,000 in this case, can be reserved for appropriation for repair or replacement of the property in the fiscal year received. This allows a community to use the funds more quickly for restorative purposes. However, if not appropriated by June 30, the reserve closes out and becomes part of free cash.

Stolen Student Funds - The exception in G.L. c. 44, § 53 only applies to restitution for damage to property so would not be applicable here as this claim was not property related. The municipality, acting through the school department, is a fiduciary and custodian of these funds, which belong to the students. Since the funds did not belong to the municipality, the account could be reimbursed.

16. Recently, the town received the following:

- A long-time resident who appreciated the response of the fire department to a medical emergency of a family member made a donation to the fire department for any fire protection purposes. The Fire Chief wants to use the money to buy new automated external defibrillators.
- The personal representative of a former resident sent the town a sizeable check with a letter stating that the resident had fond memories of her life there and had bequeathed the town the money in her will.
- A local business donated equipment to the cemetery department for its use in maintaining the grounds.
- A non-profit organization gives the town a small portion of its land that abuts a park to use in improving the park.

Who may accept gifts of cash, personal property and real property for the town? How are the cash gifts accounted for and spent? How is any interest earned treated? Does each donation have to be deposited in a separate bank account?

Does it make a difference if the letter from the personal representative of the deceased former resident stated that the bequest is for recreational programs that will benefit the town's children now and in the future? How?

How are handle multiple small donations for the same purpose handled, *e.g.*, for construction of an addition to the town library for which the town can only afford to move forward with if it can raise a certain amount in donations? Does interest earned stay

with the donations? If the town does not construct the addition, do the donations have to be returned?

G.L. c. 40, § 3; G.L. c. 44, § 53; G.L. c. 44, § 53A

Under G.L. c. 44, § 53A, a city, town or district officer or department head may accept a gift or grant of money for the purposes or functions the office or department carries out. The funds are credited to a separate gift or grant account that the officer or department may spend without appropriation for those purposes, with certain approvals (school committee for gifts for educational purposes, otherwise, the selectboard, mayor or manager and city council or prudential committee). Interest belongs to the general fund unless the donor or grantor has expressly specified in writing that it remains with the gift or grant. A separate bank account is not needed for each gift. Cash may be pooled by the treasurer for investment purposes.

Fire Department - The fire chief can accept the donation and spend it without appropriation for the purposes of the donation but the expenditure requires the approval of the town's selectboard. The gift was given for fire protection purposes so there could be a question as to whether buying the defibrillators is consistent with that purpose. The answer depends on the intent of the donor, *i.e.*, was fire protection purposes a reference to the overall mission of the fire department and not intended to exclude expenditures the department might have in carrying out any of its functions.

Bequest - Where a gift is made for the general, unrestricted use of the municipality, the selectboard or mayor could accept the gift, but the legislative body should determine through appropriation the purposes for which the funds may be spent. Since the gift was not given to a particular department for particular spending purposes, there is no basis under G.L. c. 44, § 53A for any officer or department to spend the funds in this case.

If the letter said the bequest was to provide recreational programs for the town's children now and in the future, the gift could be accepted by the recreation department. If the letter indicates an intent on the part of the donor that the gift be in the nature of trust fund, it would be invested to provide a revenue stream that the department could spend on recreational programs for the town's children in future years. This is often referred to as a non-expendable trust for accounting classification purposes.

Cemetery Equipment – Gifts of personal property to a municipality are accepted by the selectboard in a town or city council with mayor's approval if required by charter in a city to be used as specified by the donor and as it considers appropriate if no particular use or purpose was specified. See G.L. c. 44, § 53A^{1/2}.

Land – As a general rule, gifts of real estate must be accepted by legislative body per G.L. c. 40, § 3 which says that a town "may hold" real property for corporate purposes. There are legal obligations associated with ownership so the legislative body should decide whether or not to accept. If the gift is for a particular use, the legislative body would place the property under the care and custody of the appropriate department.

Consolidated Gifts Account - Generally, if a city or town wants to accept donations for a particular project or purpose, the appropriate officials can ask the accounting officer to establish a single, consolidated gift account to hold the expected multiple donations. In this

situation, it is recommended that the city or town designate a name for the account and specify the terms and conditions under which the gifts will be accepted. For example, it should specify the purposes for which the monies may be spent, whether interest earned will stay with the gift (remember if not so specified by the donor it belongs to the general fund) and whether the donations will be returned if the project is not undertaken in a certain number of years. In that case, donor contact information must be obtained and maintained by the city or town.

17. During the course of the year, the following revenues are received by the town in connection with school or student activities:
- Medicaid reimbursements for medical services provided to special needs students.
 - Fees charged for pre-kindergarten and after school programs and for professional development programs for district and out of district teachers.
 - Admission charges to school sporting events
 - Dues and payments for a three-day Columbus Day trip to Washington D.C made by the civic engagement club members.
 - Monies left in the account for the Class of 2018.
 - Lease payments received for the annual rental of a vacant wing of the elementary school.
 - Fees charged for students to park in school parking lots.
 - Fees charged to an informal basketball group that rents the gym one night a week.
 - Monies raised by the Boosters Club to help defray the costs of various athletic and other programs, including proceeds from an event for the specific purpose of buying new uniforms for boys and girls basketball teams.

Can the school committee retain and spend any of these revenues? If so, are there any restrictions on how the monies may be used? If not, by what process may they be spent and for what

G.L. c. 40, § 3; G.L. c. 44, § 53; G.L. c. 44, § 53A; G.L. c. 44, § 53E½; G.L. c. 44, § 72; G.L. c. 71, §§ 26A-26C; G.L. c. 71, § 47; G.L. c. 71, § 71E

Medicaid Reimbursements – No. The receipts belong to the general fund as operational revenue. There is clear legislative intent to this effect as any funds received by a local government entity pursuant to G.L. c. 44, § 72 clearly state that they “shall be considered unrestricted revenue of the local government entity and may be spent in accordance with any general or special law governing the expenditure of the entity’s revenues.”

Student and Teacher Programs –The school committee can retain and spend the fees for the pre-kindergarten and after school programs. G.L. c. 71, §§ 26A-26C. The fees charged parents and any contributions made for the programs are deposited in a separate extended school service revolving account school committee may spend without appropriation for program purposes. Note, however, that those programs must be approved by the Commissioner of the Department of Elementary and Secondary Education (DESE). No legislative body action or approval is required. For the professional development program and student programs outside the scope of the extended school services statutes, the city or town could establish a departmental revolving fund for the school department under G.L. c. 44, § 53E½. The fund is established by a bylaw or ordinance approved by the legislative

body. In addition, the legislative body must vote to establish the annual expenditure limit on or before July 1 of each year. In both case, interest belongs to the general fund.

Admission Charges – Yes. The school committee could retain and spend the fees for these programs to spend for program expenses. The fees are deposited in the student athletics and activities revolving fund under G.L. c. 71, § 47. That fund is credited with any participation fees or program receipts for school athletic and extracurricular programs and other programs sponsored by the school committee. Interest earned on the fees or receipts belongs to the general fund. No legislative body action or approval is required. However, use of the funds for out-of-state travel expenses requires approval of the mayor or selectboard.

Civic Engagement Club Funds – Yes. The school committee could retain and spend the dues and payments for the club's activities. Monies from authorized student activities, such as dues and payments in this case, and interest earned on those monies, are deposited in a student activity agency fund under G.L. c. 71, § 47. They belong to the students and are held by the school committee in a fiduciary capacity to pay the expenses of authorized activities.

Class 2018 Funds – It depends. As part of authorizing activities for which student activity agency accounts may be used, the school committee should establish policies and procedures for closing out the accounts. For example, it could provide that the account of a graduating class will be closed out within a certain time period and if not, it will be donated to the next class, school department, particular school or the library.

Rental Receipts – Yes. Under G.L. c. 40, § 3, the school committee may retain rent paid for leasing a surplus school building, or surplus space in school still in use, to spend to fulfill the obligations of a landlord with respect to the leased premises. Cities and towns may lease the building or space with legislative body authorization and school committee approval. If the building is still in use, DESE approval is also needed to lease the space. DESE approval is not required if the entire building is no longer being used for school purposes. The school committee must also approve the terms of all leases. The accounting officer must credit all rent or lease payments from tenants to a separate revolving fund. However, any interest earned on those monies belongs to the general fund. During the term of the lease, the school committee may spend monies in the account in the fiscal year they are received without appropriation for the maintenance of the rented facility or space. Any balance in the account not spent for those purposes during the fiscal year must be closed out to the general fund at year-end unless the city or town has accepted a local acceptance provision that allows the carry-over of the funds. If accepted, any remaining surplus revenue in the revolving fund is carried forward from year to year and the school committee may spend the revenues in the fund without appropriation for the upkeep and maintenance of any facility under its control.

Student Parking Fees – Yes, if G.L. c. 71, § 71E has been accepted. That statute allows the school committee to retain monies received in connection with the "use of school property" by individuals, groups or organizations for civic, social educational or recreational groups under committee policies and spend them without appropriation for the expenses incurred in making the property available for that use. The statute was amended by the Municipal Modernization Act to specifically provide for the deposit of parking fees into this revolving fund. The rationale being that to park at the school is to temporarily use the school

property. Interest on the fees belongs to the general fund. However, as noted, these funds can only be used to make property available for use and not to supplement the school department's operating budget.

Gym Rental Fees – Yes, G.L. c. 71, § 71E has been accepted. As noted above, that statute allows the school committee to retain monies received in connection with the "use of school property" by individuals, groups or organizations for civic, social educational or recreational groups under committee policies and spend them without appropriation for the expenses incurred in making the property available for that use. Those expenses would typically include additional utility or custodial costs and ordinary maintenance and repairs incurred by the use. Interest on the fees belongs to the general fund. Note that the use is temporary in nature so that the payment is more like a user charge than rent.

Booster Club Fundraisers – Yes. A gift from the Booster Club would be credited to a separate gift account under G.L. c. 44, § 53A. It can be spent by school committee without appropriation for the purposes given. Interest belongs to the general fund unless the donor, here the Booster Club, expressly provided otherwise.

18. The town plans to lease out unoccupied space in a town owned building. The town, as landlord, must maintain the building. The town manager directs town accountant to set up a special "maintenance and upkeep account" and credit 10% of the annual lease payments to that account to maintain the building as required. Can the accounting officer to set up a special account for this particular purpose and credit the rental payments to it? What if the legislative body had voted or adopted a by-law or ordinance stating that the funds were to be dedicated to such a separate account?

G.L. c. 40, § 3; G.L. c. 44, § 53; IGR 17-15

Cities and towns that rent or lease public buildings or property, or space within a building or property, may deposit monies received from the rental or lease into a separate revolving fund. During the term of the lease, the department in charge of the leased building or property may spend monies in the account in the fiscal year they are received without appropriation for the maintenance of the premises. Any interest earned on those monies belongs to the general fund. Unlike the revolving fund for the proceeds of school rentals, however, a revolving fund for this purpose is discretionary, *i.e.*, the payments may continue to be treated as general fund revenues. However, the town manager cannot unilaterally make that decision and have the fund set up. A vote of the local legislative body is required to establish a revolving fund for a particular rental or lease of municipal property. This may be done by separate votes for each rental or lease, or by by-law or ordinance that sets out the rentals or leases for which a revolving fund will be established. It is also not entirely clear that 10%, as opposed to the entire amount, can be credited to the fund based on the language in the statute that the municipality "may deposit any money received." Note, however, that any monies remaining in the fund at the end of the fiscal year close out and in the ordinary course would become part of the municipality's free cash unless the city or town has accepted a local acceptance provision that allows the carry-over of the funds. If accepted, any remaining surplus revenue in the revolving fund is carried forward from year to year and the department in charge of the leased premises may spend the revenues in the fund without appropriation for the upkeep and maintenance of any facility under its control.

19. The city owns 4 acres of vacant land in its downtown area. It decides to sell the land as does not foresee using it for town purposes in the near future and there is strong demand for land in the area. It sells the land for \$5 million dollars. The accounting officer deposits the proceeds into the sale of real estate fund. Immediately following the sale, all department heads line up to request funding for items from their respective wish lists.

These requests include:

- A new tree pruner for the DPW
- 20 new bulletproof vests for the Police Department
- The purchase of a small parcel land by the Conservation Commission
- New archiving hardware for the IT Department
- The hiring of an assistant in the Assessing Department
- Fixing the roof of Town Hall
- A feasibility study of possible renovations of the Town's elementary schools
- To pay a judgment against the Town in the amount of \$25,000
- To cover the rental payments of equipment leased by the Town

May any of these items or projects be funded from the sale of real estate fund? If yes, what is the process for funding them?

G.L. c. 44, § 63

The general rule in G.L. c. 44, § 63 is that money from the sale of real estate (over \$500 in amount) must be used to retire the debt used in acquiring the parcel sold and any balance remaining may be appropriated for any purpose for which the city or town could borrow five years or more (or for any land acquisition or public building improvement purpose). It is important to note that the statute's reference to using the proceeds for land acquisition or building improvement purposes is no longer correct as it was amended by the Municipal Modernization Act. It is now found in G.L. c. 44, § 7(1) instead of G.L. c. 44, § 7(3), which is what the statute says. A conforming amendment has been filed and DLS presently interprets the statute as maintaining the status quo.

Tree Pruner – It depends. Under G.L. c. 44, § 7(1), a city or town can borrow for up to 5 years to acquire an asset with a maximum useful life of at least 5 years. As such, if the item here has a maximum useful life of five years, the city can appropriate from the sale proceeds to fund the purchase. The maximum useful life of an asset for purposes of borrowing is established in guidelines issued by the Director of Accounts. See [Asset Useful Life Schedules and Maximum Borrowing Terms](#).

Bulletproof Vests – It depends. Under G.L. c. 44, § 7(1), a city or town can borrow for up to 5 years to acquire an asset with a maximum useful life of at least 5 years. As such, if the item here has a maximum useful life of five years, the city can appropriate from the sale proceeds to fund the purchase. The maximum useful life of an asset for purposes of borrowing is established in guidelines issued by the Director of Accounts. See [Asset Useful Life Schedules and Maximum Borrowing Terms](#).

Conservation Land – Yes. Under G.L. c. 44, § 7(1), a city or town can borrow for land acquisition so long as it has a useful life of 5 years or more. The Director's guidelines establish a 30 year useful life for land, which is the maximum term permitted under the statute.

IT Hardware – It depends. Under G.L. c. 44, § 7(1), a city or town can borrow for up to 5 years to acquire an asset with a maximum useful life of at least 5 years. As such, if the item here has a maximum useful life of five years, the city can appropriate from the sale proceeds to fund the purchase. The maximum useful life of an asset for purposes of borrowing is established in guidelines issued by the Director of Accounts. See [Asset Useful Life Schedules and Maximum Borrowing Terms](#).

Assessing Department staff – No. A city or town cannot borrow for this purpose.

Roof Repair – Yes. Under G.L. c. 44, § 7(1), a city or town can borrow for improvements and extraordinary repairs to public buildings so long as it has a useful life of 5 years or more. The Director’s guidelines establish a useful life of 5 or 30 years for a public building project, depending on the extent of the work needed to fix the roof.

Feasibility Study – Yes. Under G.L. c. 44, § 7(7) and G.L. c. 70B § 6(e), a city or town can borrow for this purpose for 5 years.

Court Judgment - No. Under G.L. c. 44, § 7(3) a city or town can only borrow for this purpose for 1 year.

Rental Payments – No. A city or town cannot borrow to lease equipment. However, it can borrow to acquire equipment. Therefore, if a “lease” is really an installment sales agreement, then the payments are part of the purchase price. The analysis would then be the same as for other equipment, *i.e.*, does it have a maximum useful life of at least 5 years.

20. The town has an enterprise fund for its water service. The water department has accumulated a large surplus in retained earnings and at town meeting is offering to pay for a small dump truck for the DPW. The DPW would use the truck to do hot-top patches where the water department has dug up the road. Is this a permissible use of retained earnings? What about helping to cover the town’s snow and ice removal expenses?

Can other departments get paid for the services they provide to the water enterprise? If so, how? Can the water department bill other municipal departments for the services the enterprise provides to the properties under their custody and control?

The water department has recently leased space on top of the water tower to a cell phone company to place equipment there. Would the rent be general fund revenue or stay with the enterprise fund?

G.L. c. 44, § 53F½

An enterprise fund is an accounting and budgeting method. It does not grant additional powers to the department providing the service. It simply lets a city or town account in a separate fund for a service financed and delivered in a manner similar to a private business, *i.e.*, a proprietary service or operation of the city or town. The fund is used to account for all revenue, direct and indirect costs and assets of the services. The annual revenue stream is a separate financing source to support annual expenses of enterprise and

any surplus resulting from favorable operations is certified by the Director of Accounts and may be appropriated for enterprise purposes.

DPW Truck – The capital expenses of the water department such as construction or major repairs, equipment or acquisitions are clearly enterprise expenses. Although these capital expenses may be reviewed and recommended by a capital planning committee, the legislative body may appropriate from enterprise revenues to fund them. The facts here suggest this equipment would be under the control of the DPW and used for purposes other than those that benefit the water service. Since the dump truck will not be used exclusively for water department purposes, it cannot be funded entirely from enterprise fund financing sources.

Services to/from other Departments – An enterprise is still a municipal department that is subject to ordinary municipal finance procedures. As a general rule, services provided by other departments for the benefit of the enterprise as indirect expenses should be reimbursed to the general fund through inter-fund transfers from the enterprise fund. Ideally, these transfers should be done monthly so the enterprise fund expenses are tracked and its financial position is accurately reflected. For example, the collector, whose salary is funded in the budget by the general fund, may process enterprise user bill payments and the cost of performing that service may be financed with enterprise funds. DLS recommends that every community with an enterprise fund establish a written, internal policy regarding indirect cost allocation and should review this policy annually. The policy should be reasonable and calculated on a fair and consistent basis. Local financial officials should understand and agree on what indirect costs are appropriated as part of the general fund operating budget and what percentage of these costs may appropriately be allocated to the enterprise fund. The Director of Accounts may reject any community's methodology, written or otherwise, as unreasonable for tax rate setting purposes.

With respect to services provided to another department by the enterprise, *e.g.*, the water used by municipal buildings in a city or town with a water enterprise, the use of the services should be taken into account in the rate setting process. This is the most appropriate way to consider the municipal use and have that cost attributable to that use funded in the tax levy rather than user fees, unless the city or town has established interdepartmental charge-back policies and procedures. The department using the service is not a separate legal entity, *i.e.*, the city or town cannot owe itself and enforce payment using the usual collection remedies. However, the actual use by each department can and should be documented and that information provided to the departments even if there is no charge-back.

Lease Payments - First, it should be noted that the city or town department operating the enterprise service can only lease or rent property under its control if it is specifically authorized by statute or in the absence of statute, with legislative body approval. With regard to the disposition of the funds, it depends on the acquisition and use of the asset being leased. If the leased asset was acquired or is currently maintained with enterprise funds, or any debt service on the acquisition was paid from the enterprise fund, then the sale proceeds would be credited to the enterprise fund. Otherwise, if the asset was acquired with general fund financing sources or not dedicated to the use of the department operating the enterprise service, then the sale revenue is credited to the general fund.

21. The town finance committee has the following requests to transfer funds from the reserve fund:
- The DPW director requests a transfer to cover a project deficit in the departments' wage and salary account. At a special town meeting in May, town meeting transferred surplus funds in the department's wage and salary line item to another department. The director now realizes he will not have enough in the account to cover the last two weeks of the fiscal year.
 - The library commissioners request a transfer to cover additional costs to recarpet the library. After the existing carpet had been ripped up, library officials discovered the wood underfloor was rotting and had to be repaired before the new carpet can be installed. This will cause the project to exceed the appropriation by \$10,000. What if the condition was caused by a water leak and the extra \$10,000 needed to repair the damage was likely to be covered by insurance? What if there was no unexpected damage, but the project is now over budget?
 - The treasurer has requested funds to pay penalties assessed by the Internal Revenue Service and Department of Revenue related to failures in reporting of wages withheld.

Are these transfers the finance committee can make? Are there other options available?

G.L. c. 40, § 6

Under G.L. c. 40, §6, the purpose of the reserve fund is to provide for "extraordinary or unforeseen" expenditures that may arise during the course of the year. Funds are transferred to such uses as determined by the local finance committee. Some committees will only transfer the funds for emergencies (e.g., natural disasters). Other committees are willing to use the fund for less critical purposes that were simply not foreseen when the budget was approved. However, if town meeting has rejected funding for a particular item, it cannot later be funded through the reserve fund. In general, extraordinary or unforeseen items such as an increased insurance premium or replacing a damaged police cruiser are acceptable. Salary increases are generally not an acceptable use of this reserve.

DPW Salaries - This could be seen as being in contravention of a town meeting vote so does not seem to be eligible for a reserve fund transfer. The analysis may change if, for example, the transfer was made by mistake or was inadvertent. Under G.L. c. 44 § 33B, it is also possible for an end of the year transfer from another line item to address the issue if the finance committee and selectboard agree.

Library Project – A reserve fund transfer is not appropriate to provide supplemental funding for a project that is over budget. The appropriation voted by the town set a limit on the amount available to spend on the project. If additional monies are needed to complete the project, then a supplemental appropriation is necessary. If the additional amount is de minimis, a reserve fund transfer may be justifiable, particularly where it would be more costly to hold a special town meeting to address. Otherwise, unless there is an intervening unforeseen or extraordinary circumstance, like the water leak, a transfer is probably not appropriate.

Wage Withholding Penalties – Proper withholding is an essential part of the treasurer's job so this is not an appropriate situation for a transfer.