



Special Funds

Community Preservation Fund and Other Special Fund Issues

Workshop C 2018

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Discussion Questions

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 CPA issues, *e.g.*, by the accounting officer, law department, town managers, etc., be charged to the CP fund?

G.L. c. 44B, § 6

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

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

G.L. c. 44B, §§ 6 and 7

4. Can a CPA borrowing be authorized against all annual revenues (surcharges, additional municipal revenues in community that accepted G.L. c. 44B, § 3(b½) and state matching distribution)?

G.L. c. 44B, § 11

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

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

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

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)

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 as 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)

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

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

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

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

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

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

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

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. 71, §§ 26A-26C; G.L. c. 71, § 47; G.L. c. 71, § 71E

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

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

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

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

MUNICIPAL PROPERTY

General Laws Chapter 40, § 3

Section 3. A town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized; may by its selectmen let or lease for not more than 30 years, on such terms as the selectmen determine, a public building or part thereof, except schoolhouses in actual use as such; may by its selectmen let or lease for not more than twenty-five years, real estate to the Massachusetts Bay Transportation Authority for use by the authority as a parking lot for commuters; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same; may hold real and personal estate in trust for the support of schools, and for the promotion of education, within the limits of the town; may receive, hold and manage any devise, bequest or gift for the establishment or equipment of memorials for properly commemorating the services of the soldiers, sailors and marines who have served the country in war, and for the establishment or maintenance of any reading room for which it may grant money under the provisions of section five; and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property. All real estate or personal property of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or section nine.

Notwithstanding this section or section 53 of chapter 44, a city or town that rents or leases any public building or property, or space within a building or property, other than a building or property under the control of the school committee, may deposit any monies received from the rental or lease in a separate account in the city or town treasury. The monies may be expended by the board, committee or department head in control of the building or property without further appropriation for the upkeep of the facility so rented or leased. Any balance remaining in the account at the close of a fiscal year shall be paid into the general fund of such city or town; provided that in any city or town that accepts this proviso, any balance shall remain in the account and may be expended for the upkeep and maintenance of any facility under the control of the board, committee or department head in control of the building or property.

Notwithstanding the provisions of this section, a city or town, with the approval of the school committee, may rent or lease any school building not in actual use and, with the approval of the commissioner of education, surplus space in a school building in actual use to any one or more public or private profit-making businesses or nonprofit organizations; provided, however, that joint occupancy of a school building in actual use as such shall not interfere with educational programs being conducted in said building. The terms of any such rental or lease shall be as approved by the school committee; provided, however, that no school building not in actual use shall be rented or leased for an initial term longer than ten years, but with renewal options if approved by the school committee.

The monies received from such rental or lease shall be kept separate and apart from other city or town funds in the city or town treasury and may be expended by the school committee without further appropriation for the upkeep of the facility so rented or surplus space which is so rented; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the General Fund of such city or town; and, provided further, that in any city or town that accepts this proviso, any such balance shall remain in said account and may be expended for the upkeep and maintenance of any facility under the control of the school committee.

STABILIZATION FUNDS

General Laws Chapter 40, § 5B

Section 5B. Cities, towns and districts may create 1 or more stabilization funds and appropriate any amount into the funds. Any interest shall be added to and become part of the fund. The treasurer shall be the custodian of all stabilization funds and may deposit the proceeds in a trust company, co-operative bank or savings bank, if the trust company or bank is organized or exists pursuant to the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank or federal savings and loan association, if the bank or association may transact business and has its main office or a branch office in the commonwealth; provided, however, that a state-chartered or federally-chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; or may invest the funds in participation units in a combined investment fund pursuant to section 38A of chapter 29 or in securities that are legal investments for savings banks. At the time of creating any stabilization fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without limitation, an approved school project pursuant to chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. The specification and any alteration of purpose, and any appropriation of funds from any such fund, shall be approved by a two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C of said chapter 59, any such vote shall be of the legislative body of the city, town or district, subject to charter.

Notwithstanding section 53 of chapter 44 or any other general or special law to the contrary, a city, town or district that accepts this paragraph may dedicate, without further appropriation, all, or a percentage not less than 25 per cent, of a particular fee, charge or other receipt to any stabilization fund established pursuant to this section; provided, however, that the receipt is not reserved by law for expenditure for a particular purpose. For purposes of this paragraph, a receipt shall not include taxes or excises assessed pursuant to chapter 59, 60A, 60B, 61, 61A or 61B or surcharges assessed pursuant to section 39M or chapter 44B. A dedication shall be approved by a two-thirds vote of the legislative body of the city, town or district, subject to charter, and may be terminated in the same manner. A vote to dedicate or terminate a dedication shall be made before the fiscal year in which the dedication or termination is to commence and shall be effective at least for 3 fiscal years.

TOWN RESERVE FUNDS

General Laws Chapter 40, § 6

Section 6. To provide for extraordinary or unforeseen expenditures, a town may at an annual or special town meeting appropriate or transfer a sum or sums not exceeding in the aggregate five per cent of the levy of the fiscal year preceding the fiscal year for which the fund, to be known as the reserve fund, is established. No direct drafts against this fund shall be made, but transfers from the fund may from time to time be voted by the finance or appropriation committee of the town, in towns having such a committee, and in other towns by the selectmen; and the town accountant in towns having such an official, and in other towns the auditor or board of auditors, shall make such transfers accordingly.

BOND PREMIUMS

General Laws Chapter 44, § 20

Section 20. The proceeds of any sale of bonds or notes shall be used only for the purposes specified in the authorization of the loan; provided, however, that such proceeds may also be used for costs of preparing, issuing and marketing the bonds or notes, except as otherwise authorized by this section. If a balance remains after the completion of the project for which the loan was authorized, the balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any balance not in excess of \$50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness. If a loan has been issued for a specified purpose but the project for which the loan was authorized has not been completed and no liability remains outstanding and unpaid on account thereof, a city, by a two-thirds vote of all of the members of the city council, or a town or district, by a two-thirds vote of the voters present and voting thereon at an annual town or district meeting, may vote to abandon or discontinue the project and the unexpended proceeds of the loan may be appropriated for any purpose for which a loan may be authorized for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any premium received upon the sale of the bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of the bonds or notes shall be: (i) applied, if so provided in the loan authorization, to the costs of the project being financed by the bonds or notes and to reduce the amount authorized to be borrowed for the project by like amount; or (ii) appropriated for a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing, for an equal or longer period of time than the original loan, including any temporary debt, was issued, thereby reducing the amount of any bonds or notes authorized to be issued for the project by like amount. Notwithstanding this section, no appropriation from a loan or balance thereof shall be made that would increase the amount available from borrowed money for any purpose to an amount in excess of any limit imposed by general law or special act for that purpose. Additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.

MUNICIPAL REVENUES

General Laws Chapter 44, § 53

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of \$150,000 recovered under the terms of a fire or physical damage insurance policy or received in restitution for damage done to such city, town or district property may, with the approval of the chief executive officer, be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation during the fiscal year in which they are received or 120 days after receipt,

whichever is later, and (3) sums recovered from pupils in the public schools for loss of or damage to school books, materials, electronic devices or other learning aids provided by the school committee, or paid by pupils for materials used in the industrial arts projects, may be used by the school committee for the restoration or replacement of such books or materials without specific appropriation.

GIFTS AND GRANTS

General Laws Chapter 44, § 53A

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. In the case of grants from the federal government or from the commonwealth, a county or municipality or agency or instrumentality thereof, upon receipt of an agreement from the grantor to provide advance payment or reimbursement to the city, town or district, the officer or department may spend the amount of the advance payment, or the amount to be reimbursed, for the purposes of the grant, subject to the approvals required by this section. Any advance payment or reimbursement shall be applied to finance the grant expenditures; provided, however, that any expenditures outstanding at the close of the fiscal year after the fiscal year in which the grantor approved the agreement shall be reported by the auditor or accountant of the city, town or district, or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for

services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

GIFTS OF TANGIBLE PERSONAL PROPERTY

General Laws Chapter 44, § 53A½

Section 53A1/2. A city council, with the mayor's approval if the charter so provides, or a board of selectmen, or prudential committee or town council may, in its sole discretion and authority, accept gifts of tangible personal property on behalf of the city, town or district from the federal government, a charitable foundation, private corporation, individual, or from the commonwealth or any political subdivision thereof, and may, in its sole discretion and authority, use said gifts, without specific appropriation thereof, for the purpose of such a gift or, if no restrictions are attached to the gift, for such other purposes as it deems advisable.

DEPARTMENTAL REVOLVING FUND

General Laws Chapter 44, § 53E½

Section 53E 1/2. Notwithstanding section 53, a city or town may authorize by by-law or ordinance the use of 1 or more revolving funds by 1 or more municipal agencies, boards, departments or offices, which shall be accounted for separately from all other monies in the city or town and to which shall be credited any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund or in excess of the total authorized expenditures from such fund, and no expenditures shall be made unless approved in accordance with sections 41, 42, 52 and 56 of chapter 41.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established under this section for receipts of a municipal water or sewer department, a municipal hospital, a cable television access service or facility or for receipts reserved by law or as authorized by law for expenditure for a particular purpose. Revolving fund expenditures shall not be made to pay wages or salaries for full-time employees unless the revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full-time or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay the wages or salaries of those employees who are employed as drivers providing transportation for public school students; and provided further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund shall be established pursuant to this section by by-law or ordinance. The by-law or ordinance shall specify for each fund: (1) the programs or activities for which the revolving fund may be expended; (2) the departmental receipts in connection with those programs or activities that shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; and (4) any reporting or other requirements the city or town may impose. The establishment of any fund shall be made not later than the beginning of the fiscal

year in which the fund shall begin. Notwithstanding this section, whenever, during the course of any fiscal year, any new revenue source becomes available for the establishment of a revolving fund under this section, such a fund may be established in accordance with this section upon certification by the city auditor, town accountant, or other officer having similar duties that the revenue source was not used in computing the most recent tax levy.

The city or town shall, on or before July 1 of each year, vote on the limit on the total amount that may be expended from each revolving fund established under this section. In any fiscal year, the limit on the amount that may be spent from a revolving fund may be increased with the approval of the city council and mayor in a city or with the approval of the board of selectmen and finance committee in a town.

Upon termination of a revolving fund, the balance in the fund at the end of that fiscal year shall revert to surplus revenue at the close of the fiscal year.

The director of accounts may issue guidelines further regulating revolving funds established pursuant to this section.

ENTERPRISE FUND

General Laws Chapter 44, § 53F½

Section 53F1/2. Notwithstanding the provisions of section fifty-three or any other provision of law to the contrary, a city or town which accepts the provisions of this section may establish a separate account classified as an “Enterprise Fund”, for a utility, health care, recreational or transportation facility, and its operation, as the city or town may designate, hereinafter referred to as the enterprise. Such account shall be maintained by the treasurer, and all receipts, revenues and funds from any source derived from all activities of the enterprise shall be deposited in such separate account. The treasurer may invest the funds in such separate account in the manner authorized by sections fifty-five and fifty-five A of chapter forty-four. Any interest earned thereon shall be credited to and become part of such separate account. The books and records of the enterprise shall be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of section thirty-eight.

No later than one hundred and twenty days prior to the beginning of each fiscal year, an estimate of the income for the ensuing fiscal year and a proposed line item budget of the enterprise shall be submitted to the mayor, board of selectmen or other executive authority of the city or town by the appropriate local entity responsible for operations of the enterprise. Said board, mayor or other executive authority shall submit its recommendation to the town meeting, town council or city council, as the case may be, which shall act upon the budget in the same manner as all other budgets.

The city or town shall include in its tax levy for the fiscal year the amount appropriated for the total expenses of the enterprise and an estimate of the income to be derived by the operations of the enterprise. If the estimated income is less than the total appropriation, the difference shall be added to the tax levy and raised by taxation. If the estimated income is more than the total appropriation, the excess shall be appropriated to a separate reserve fund and used for capital expenditures of the enterprise, subject to appropriation, or to reduce user charges if authorized by the appropriate entity responsible for operations of the enterprise. If during a fiscal year the enterprise incurs a loss, such loss shall be included in the succeeding fiscal year’s budget.

If during a fiscal year the enterprise produces a surplus, such surplus shall be kept in such separate reserve fund and used for the purposes provided therefor in this section.

For the purposes of this section, acceptance in a city shall be by vote of the city council and approval of the mayor, in a town, by vote of a special or annual town meeting and in any other municipality by vote of the legislative body.

A city or town which has accepted the provisions of this section with respect to a designated enterprise may, in like manner, revoke its acceptance.

BETTERMENT RESERVE

General Laws Chapter 44, § 53J

Section 53J. Notwithstanding sections 53 and 53F 1/2, in any city, town or district that borrows money to pay for improvements for which betterments or special assessments are assessed, revenues from such betterments and assessments, including interest charged thereon, shall be reserved for appropriation for the payment of debt issued in connection with such improvements. Any such revenues received by the treasurer shall be kept separate from all other monies of such city, town or district. Interest earned on the revenues shall remain with and become part of such revenues available for appropriation. No appropriations from the revenues for payments of principal and interest on such debt issue for any fiscal year shall exceed the same percentage of the principal and interest payment due in such year as the percentage of project costs for which the betterments or special assessments are assessed. Any surplus remaining after such debt is repaid shall belong to any enterprise fund established under section 53F 1/2 that the improvement for which the betterments or special assessments are assessed is part of, or, if no such enterprise fund is established, to the general fund of such city, town or district.

AFFORDABLE HOUSING TRUST FUND (Excerpt)

General Laws Chapter 44, § 55C

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households and for the funding of community housing, as defined in and in accordance with the provisions of chapter 44B. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. ...

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the board additional powers consistent with this section:--

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B; provided, however, that any such money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the trust, and such funds shall be accounted for separately by the trust; and provided further, that at the end of each fiscal year, the trust shall ensure

that all expenditures of funds received from said chapter 44B are reported to the community preservation committee of the city or town for inclusion in the community preservation initiatives report, form CP-3, to the department of revenue;

...

SALE OF REAL ESTATE FUND

General Laws Chapter 44, § 63

Section 63. Whenever the proceeds of the sale or other disposal of real estate, including the taking by eminent domain by another governmental unit, but other than that acquired through tax title foreclosure, by a city, town, or district, exceed five hundred dollars, the same shall be applied to the payment of indebtedness incurred in acquiring such real estate or shall be added to the sinking fund, if any, from which said indebtedness is payable, or if no such indebtedness is outstanding may be used for any purpose or purposes for which the city, town or district is authorized to incur debt for a period of five years or more or be applied to the payment of indebtedness incurred under clause (3) of section seven, except that the proceeds of a sale in excess of five hundred dollars of any park land by a city, town, or district shall be used only by said city, town, or district for acquisition of land for park purposes or for capital improvements to park land.

MEDICAID REIMBURSEMENTS (Excerpt)

General Laws Chapter 44, § 72

Section 72. Notwithstanding the provisions of any general or special law to the contrary, any local government entity may receive federal funds for reimbursable medical services where all conditions set forth in this section are met. ... Any funds received by a local government entity pursuant to the provisions of this section 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. Before incurring any cost or providing any service for which it intends to claim federal payments under this section, the local government entity shall obtain the approval of the division, but the division, in its sole discretion, may waive this requirement where it determines that such a waiver would be in the best interests of the commonwealth. To receive any amounts under this section, the local government entity shall enter into a written agreement with the division directly or indirectly through an agency or other political subdivision, which agreement shall contain all provisions that the division deems suitable or necessary to support any claim for federal payments under this section. In addition, any local government entity that has entered into a written agreement with the division shall provide to the division, on such forms and at such times as the division may require, any information that the division deems suitable or necessary to support any claim for federal payments under this section. The division shall have the sole discretion to approve or disapprove any local government entity's proposal to claim federal payments. ... For the purposes of this section, "local government entity" shall mean any city or town, public health commission, charter school or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for payment of the state share for services described herein. Such state share shall consist exclusively of public funds. Any local or regional school district or committee and the department of education may also contribute to the state share for any such services that are provided under the auspices of said department. For the purposes of this section, "reimbursable medical services" shall mean services, including administrative activities related to such services, that are medically necessary and for which federal payment otherwise is available under the programs of medical care and assistance established under

chapter 118E and policies, procedures and criteria established by the division. For the purposes of this section, "state share" shall mean amounts which the commonwealth is obligated to assume in order to claim federal payment for reimbursable medical services.

COMMUNITY PRESERVATION ACT (Excerpts)

General Laws Chapter 44B, §§ 2, 3, 5, 6, 7, 11 and 16

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 or 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 the provisions of 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 excise taxes pursuant to chapter 64G, linkage fee 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 20A1/2 of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, 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.

...

(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.

...

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.

...

(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.

...

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 the provisions of 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 (b $\frac{1}{2}$) 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 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 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 1, 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.

SCHOOL DAY CARE REVOLVING FUND

General Laws Chapter 71, §§ 26A-26C

Section 26A. If the school committee of a city, town or regional school district determines that sufficient need exists therein for extended school services for children, the school committee, subject to section 26B, may establish and maintain such services.

Section 26B. If said school committee, upon determination by it of sufficient need, votes that said services should be established by it, it shall submit in writing a plan of said services to the commissioner of elementary and secondary education for his written approval; provided, that said extended school services proposed in said plan shall consist of such care as shall be determined by standards established by said commissioner in consultation with the state department of public health and shall be operated by said school committee under the general supervision of said commissioner; and provided further, that said school committee shall establish as one of the rules of admission of any such child to the benefits of said extended school services that the parents of such child shall pay toward the cost of said services such sum as said school committee shall determine. For the purposes of clause (2) of section five of chapter forty, the establishment and maintenance of said extended school services shall be deemed to be included within the term "support of public schools".

Section 26C. The commonwealth and the school committee may accept funds from the federal government for the purposes of sections 26A to 26D, inclusive. The school committee may receive contributions in the form of money, material, quarters or services for the purposes of the sections from organizations, employers and other individuals. The contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such city, town or regional school district and held as a separate account and expended by said school committee without appropriation, notwithstanding section 53 of chapter 44.

STUDENT ATHLETIC AND ACTIVITIES REVOLVING FUND

STUDENT ACTIVITY AGENCY FUND

General Laws Chapter 71, § 47

Section 47. The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools. Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose, and for the employment of experienced athletic directors to supervise said physical education, athletics, sports, games and play, shall be deemed to be for a school purpose. Expenditures by the committee for making special awards to pupils who have performed

meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall also be deemed to be for a school purpose. Cities and towns may appropriate for the employment of coaches to supervise in public schools physical education, athletics, sports, games and play, and for the transportation and expenses of public school athletic teams, coaches, cheerleaders, bands and any other groups composed of public school pupils which bear the school name and are under the control of the school committee, within and without the commonwealth, to places where athletic contests or physical education, sports, games, play, musical festivals, competition or other events are held, and for the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands composed of public school pupils and bearing the school name and under the control of the school committee. All receipts by the committee in connection with the conduct of activities provided for under this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district and held as a separate account and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. No moneys may be expended from an appropriation or from the separate fund authorized by this section except upon the approval of the school committee, or of the selectmen in towns and of mayors in cities, for travel to other states.

Notwithstanding the provisions of the preceding paragraph or section fifty-three of chapter forty-four, the school committee of a city, town or district may authorize a school principal to receive money in connection with the conduct of certain student activities and to deposit such money, with the municipal or regional school district treasurer, into an interest bearing bank account, hereinafter referred to as the Student Activity Agency Account, duly established by vote of the school committee to be used for the express purpose of conducting student activities. Interest earned by such Student Activity Agency Account shall be retained by the fund and the school committee shall determine for what purpose such earnings may be used. In addition to such Student Activity Agency Account, the school committee may authorize the municipal or regional school district treasurer to establish a checking account, hereinafter referred to as the Student Activity Checking Account, to be operated and controlled by a school principal and from which funds may be expended exclusively for student activity purposes for the student activities authorized by the school committee. Such account shall be used for expenditures only and funds received for student activities may not be deposited directly into such account.

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in such amount as the treasurer shall determine to secure the principal's faithful performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds

which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

USE OF SCHOOL PROPERTY

General Laws Chapter 71, § 71

Section 71. For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not apply to Boston.

USE OF SCHOOL PROPERTY FUND

General Laws Chapter 71, § 71E

Section 71E. In any city, town or regional school district that accepts this section, all monies received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to: (1) adult physical fitness programs conducted under section 71B; (2) summer school programs and enrichment programs, authorized by the school committee and in connection with the use of school property under section 71; and (3) including parking fees, shall be deposited with the treasurer of the city, town or regional school district and held as separate accounts. The receipts held in such a separate account may be expended by the school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding section 53 of chapter 44. A city, town or regional school district may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Acceptance in a city or town shall be in the manner provided in section 4 of chapter 4 and in a regional school district by vote of the regional school committee. In a city, town or regional school district that accepts this paragraph, said city, town or district may rescind its original acceptance every third year thereafter.

COMMUNITY PRESERVATION ACT SAMPLE LANGUAGE

(Samples should not be used without the advice of municipal counsel.)

SURCHARGE RATE OR EXEMPTION AMENDMENTS

[G.L. c. 44B, § 16\(a\)](#)

LEGISLATIVE BODY VOTE

To amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from __ % to __ % of the taxes assessed annually on real property, starting with taxes assessed for the fiscal year beginning on July 1, ____.

OR

To adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for (type exemption), starting with taxes assessed for the fiscal year beginning on July 1, ____.

OR

To amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from __ % to ____ % (not less than one) and approve annual appropriations of other municipal revenues into the Community Preservation Fund under Section 3(b½) of Chapter 44B of up to ____ % (not more than two) of the taxes assessed annually on real property, starting with taxes assessed and appropriations made for the fiscal year beginning on July 1, ____

BALLOT QUESTION

Shall the (city or town) amend the property tax surcharge/adopt/eliminate an exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?

FAIR AND CONCISE SUMMARY

A fair, concise summary and purpose of the amendment proposal must appear underneath the question on the election ballot. The summary is to be prepared by the community's city solicitor or town counsel and must include any change in surcharge percentage and any change in exemptions adopted by the legislative body. It must also state if the amendment purpose is to adopt the alternative CPA funding plan under § 3(b½) and, if so, the change in the surcharge percentage and the maximum percentage of additional municipal revenues that may be appropriated to the fund under that section. It should also include the fiscal year the amendment will take effect and any other relevant information.

Sample Summary

City/town accepted Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, and established a “Community Preservation Fund” with a dedicated funding source. Fund monies may be spent to (1) acquire open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) acquire and restore historic buildings and sites, and (3) create affordable housing. The funding source is a surcharge on the annual property tax assessed on real property. The surcharge accepted by the city/town is (____) %.

This amendment will (reduce/increase) the surcharge from (____) % to (____) % starting in fiscal year _____, which begins on July 1, _____. [It will also approve (city council/the town council/town meeting) appropriation of other municipal revenues into the Fund under Section 3(b ½) of Chapter 44b. That amount appropriated will be an amount up to ____% of the annual property taxes assessed on real property, starting in the same year. In city/town, the surcharge and appropriations together will not exceed ____% of the annual real estate taxes on real property.]

The surcharge will continue to be calculated in the same manner by multiplying the real estate tax on the parcel by the adopted percentage. There is also no change in surcharge exemptions. A taxpayer receiving any other exemption or abatement of tax on real property receives a pro rata reduction in surcharge.

REVOCATION

Must Follow Same Process as Acceptance

G.L. c. 44B, § 16(b)

LEGISLATIVE BODY VOTE

To revoke the town’s acceptance of Sections 3 to 7 of Chapter 44B of the General Laws, the Community Preservation Act, effective for the fiscal year beginning on July 1, _____.

OR

PETITION

We the undersigned request that the question of revoking acceptance of sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, the Community Preservation Act, effective for the fiscal year beginning on July 1, _____, be placed on the ballot for the next regular municipal or state election.

BALLOT QUESTION

Shall the (city or town) revoke its acceptance of sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body/proposed by

a petition signed by at least five percent of the registered voters of this (city or town), a summary of which appears below?

FAIR AND CONCISE SUMMARY

A fair and concise summary of the amendment or revocation proposal must appear underneath the question on the election ballot. The summary is to be prepared by the community's city solicitor or town counsel. It should include the details of the proposal, such as the fiscal year it takes effect.

Sample Summary

City/town accepted Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, and established a "Community Preservation Fund" with a dedicated funding source. Fund monies may be spent to (1) acquire open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) acquire and restore historic buildings and sites, and (3) create affordable housing. The funding source is a surcharge on the annual property tax assessed on real property [and appropriations from other municipal revenues]. The surcharge accepted by the city/town is (__)%.

A revocation of acceptance will take effect starting in fiscal year _____, which begins on July 1, _____. However, the surcharge will continue to be assessed in future years until monies in the Community Preservation Fund are sufficient to fully pay all community preservation obligations incurred by the city/ town.

If acceptance is revoked, any monies remaining in the Community Preservation Fund must still be appropriated and spent only for the open space, historic and affordable housing purposes allowed by the Act.

COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES		FUND BALANCE	BUDGETED RESERVES	BORROWING
	Traditional Surcharge <u>G.L. c. 44B, § 3(b)</u>	Blended Surcharge (Surcharge + Alternative Financing Sources) <u>G.L. c. 44B, § 3(b½)</u>			
Definition / Source	Annual recurring revenues. - Surcharges (up to 3%) assessed for FY. - State trust fund distribution received during FY (beginning in 2 nd year of fund operation and based upon surcharge assessed in previous FY).	Annual recurring revenues. - Surcharges (at least 1%) assessed for FY. - Appropriations from other municipal financing sources to the CP Fund made from the tax levy (general fund) before the tax rate set, or from available funds until 6/30. (Cannot exceed 2% of the year's tax levy and, when added to the surcharge, the total cannot exceed 3% of the tax levy.) - State trust fund distribution received during FY (beginning in 2 nd year of fund operation and based upon surcharge assessed in previous FY and additional funds appropriated to the fund).	Unspent funds generated by favorable operations during the previous FY that are available for appropriation. Funds result from: - Appropriation turn-backs, including unappropriated balance annual budgeted reserve. - Actual receipts in excess of budgeted revenues. - Investment interest. - Miscellaneous non-recurring revenues, <i>e.g.</i> , proceeds from sale of community preservation fund acquisitions, damages and fines related to the acquisitions, or public/private gifts/grants for the community preservation fund	- <u>Annual Budgeted Reserve</u> : reserved by legislative body for future appropriation for any CPA purpose during FY. - <u>Special Purpose (restricted Reserve)</u> : reserved by legislative body for future appropriation for one of the three CPA purposes: (1) open space (including recreation), (2) historic resources and (3) community housing.	Debt repaid with future fund revenues. Proceeds from notes, bonds or other debt obligations issued for a CPA purpose.

	ANNUAL FUND REVENUES		FUND BALANCE	BUDGETED RESERVES	BORROWING
	Traditional Surcharge <u>G.L. c. 44B, § 3(b)</u>	Blended Surcharge (Surcharge + Alternative Financing Sources) <u>G.L. c. 44B, § 3(b½)</u>			
Limitations	<p>- Legislative body <i>must</i> appropriate or reserve 10% of each year's annual revenues for each CPA purpose: (1) open space (including recreation), (2) historic resources and (3) community housing.</p> <p>- Cannot spend from appropriations from annual revenues until FY begins (<i>i.e.</i>, 7/1).</p>	<p>- See "Traditional Surcharge" for 10% minimum annual commitments. (Additional funds from other financing sources are annual revenues for purposes of meeting the annual 10% commitments.)</p> <p>- Cannot spend from appropriations from annual revenues until FY begins (<i>i.e.</i>, 7/1).</p> <p>- Appropriations from other financing sources require legislative body vote that states the specific dollar amount being appropriated from the tax levy (general fund) or available funds to the community preservation fund. If financing source is restricted, restriction stays with the funds.</p>	May be appropriated by legislative body for any CPA purpose.	<p>Appropriations <u>to</u> a particular reserve require legislative body vote that states the specific dollar amount and source being reserved.</p> <p>Appropriations <u>from</u> 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 <u>from</u> a particular special purpose reserve are limited to that CPA purpose.</p>	<p>Legislative body <i>must</i> specifically vote borrowing under CPA (G.L. c. 44B, § 11) by two-thirds vote (G.L. c. 44, § 2).</p> <p>Borrowing limited in amount to debt service payable from estimated surcharge revenues and, for "blended" surcharge communities, estimated additional revenues from alternative financing sources.</p> <p>Borrowing subject to purpose and term limitations under G.L. c. 44.</p> <p>Appropriations <u>from</u> proceeds remaining after purpose completed restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan. G.L. c. 44, § 20.</p>
Available to Appropriate	Until tax rate set for FY. Once rate set, only CPA available funds (budgeted reserves or fund balance) or borrowing may be used as financing source.	<p>See Traditional Surcharge for "Available to Appropriate" information regarding surcharge revenues.</p> <p>For other financing sources, any time after appropriation into fund if appropriating from available funds (or after 7/1 for appropriations from general fund revenues).</p>	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY.	<p>Annual budgeted reserve - during FY (<i>i.e.</i> 7/1 to 6/30).</p> <p>Special purpose reserves - any time (or after 7/1 for new reservations from annual revenues).</p>	Anytime.

	ANNUAL FUND REVENUES		FUND BALANCE	BUDGETED RESERVES	BORROWING
	Traditional Surcharge <u>G.L. c. 44B, § 3(b)</u>	Blended Surcharge (Surcharge + Alternative Financing Sources) <u>G.L. c. 44B, § 3(b½)</u>			
Similarity	General fund annual tax levy (taxes, state aid, receipts). Enterprise fund annual revenues (user charges and fees).	For surcharge revenues, see Traditional Surcharge “Similarity” information. For additional funds appropriated to the community preservation fund, similarity is with general fund and available funds appropriated into special purpose funds (<i>e.g.</i> , conservation fund).	Free cash. Enterprise fund free cash (retained earnings).	Stabilization fund (<i>i.e.</i> , general fund monies reserved for later appropriation for municipal purpose). Enterprise fund budgeted surplus.	Other municipal debt.

SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES

<u>SOURCE</u>	<u>VOTE</u>
Annual revenues	<ul style="list-style-type: none"> To appropriate \$100,000 from FY20__ Community Preservation Fund revenues for _____. To appropriate/reserve \$100,000 from FY20__ Community Preservation Fund revenues for the Open Space Reserve. To appropriate/reserve \$250,000 from FY20__ Community Preservation Fund revenues for the FY20__ Community Preservation Budgeted Reserve (for FY20__ Community Preservation Purposes).
Annual Budgeted Reserve	<ul style="list-style-type: none"> To appropriate/transfer \$75,000 from FY20__ Community Preservation Budgeted Reserve to _____.
Special Purpose Reserves	<ul style="list-style-type: none"> To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.
Fund Balance	<ul style="list-style-type: none"> To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.
Excess Bond Proceeds	<ul style="list-style-type: none"> To appropriate/transfer \$10,000 from Community Preservation – Parcel X Land Acquisition Loan balance to _____.

SAMPLE VOTES TO COMMUNITY PRESERVATION FUND FROM ALTERNATIVE FINANCING SOURCES (Under G.L. c. 44B, § 3(b½))

<u>SOURCE</u>	<u>VOTE</u>
Annual General Fund revenues	<ul style="list-style-type: none"> To raise and appropriate (or appropriate from the levy) \$100,000 and thereby dedicate \$100,000 of FY20__ estimated meals excise revenues to the Community Preservation Fund.
Available Funds	<ul style="list-style-type: none"> To appropriate/transfer \$75,000 from the Sale of Real Estate Fund to the Community Preservation Fund.

SAMPLE COMMUNITY PRESERVATION ARTICLES/ORDERS AND MOTIONS

(Samples should not be used without the advice of municipal counsel)

ARTICLE/ORDER: To see if the town/city will act on the report of the community preservation committee on the Fiscal Year 20__ community preservation budget and to appropriate or reserve for later appropriation monies from community preservation fund annual revenues or available funds for the administrative expenses of the community preservation committee, the payment of debt service, the undertaking of community preservation projects and all other necessary and proper expenses for the year, or take any other action relative thereto.

MOTION: I move that the town/city appropriate or reserve from Community Preservation Fund annual revenues or available funds the amounts recommended by the Community Preservation Committee for committee administrative expenses, debt service, community preservation projects and other expenses in Fiscal Year 20__, with each item to be considered a separate appropriation.

PROPOSED FISCAL YEAR 20__ COMMUNITY PRESERVATION BUDGET

The community preservation committee recommends that the following amounts be appropriated or reserved from Fiscal Year 20__ community preservation fund revenues, unless otherwise specified, for Fiscal Year 20__ community preservation purposes with each item considered a separate appropriation:

<u>ANNUAL REVENUES AND OTHER AVAILABLE FUNDS</u>	<u>AMOUNT</u>	<u>OTHER FINANCING SOURCES</u>
Surcharges	\$400,000	
State Trust Fund Distribution	\$100,000	
Other Financing Sources (if using alternative financing plan under G.L. c. 44, § 3(b ½))	<u>\$100,000</u>	Appropriated from tax levy to dedicate \$100,000 of FY2018 estimated meals excise revenues
Total Annual Revenues	\$600,000	
Fund Balance and Reserves	<u>\$50,000</u>	Appropriated from Community Preservation Fund Historic Resources Reserve for library rehabilitation
TOTAL ANNUAL REVENUES AND AVAILABLE FUNDS	\$650,000	
Appropriations		
Community Preservation Committee Administrative Expenses	\$30,000	
Green Acre Farm Acquisition debt service (open space)	\$100,000	
Historic town library Rehabilitation (historic preservation)	\$140,000	
Special Purpose Reservations		
Open Space		
Historic Resources		
Community Housing	\$60,000	
Annual Budgeted Reservation	<u>\$320,000</u>	
TOTAL APPROPRIATIONS AND RESERVATIONS	\$650,000	

**SAMPLE PROPOSED PROJECT APPROPRIATION ARTICLE/ORDER AND MOTION
(INCLUDES BORROWING AUTHORIZATION)**

(Samples should not be used without the advice of municipal counsel and if borrowing, bond counsel)

ARTICLE/ORDER: To see if the town/city 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 [specific open space] purposes under the Community Preservation Act, and to appropriate or transfer community preservation fund annual revenues or available funds, or to borrow under General Laws Chapter 44B, § 11, or any other general or special law for that purpose, a sum of money to fund such acquisition, and to authorize the treasurer, with the approval of the selectboard, to issue bonds or notes for that purpose, for a period not to exceed the maximum number of years authorized by law, and to apply any premium received upon the sale of any bonds or notes, less any such premium applied to the payment of issuance costs of the bonds or notes, to the payment of project costs authorized by this vote and thereby reduce the amount authorized to be borrowed to pay those costs by the same amount, and to authorize the granting of a permanent restriction on the parcel under General Laws Chapter 44B, § 12, or take any other action relative thereto.

MOTION: I move that the town/city authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for [state specific 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 FY20__ 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 selectboard, 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 the maximum number of years authorized by law, and to apply any premium received upon the sale of any bonds or notes, less any such premium applied to the payment of issuance costs of the bonds or notes, to the payment of project costs authorized by this vote and thereby reduce the amount authorized to be borrowed to pay those costs by the same amount, and to authorize the granting of a permanent restriction on the parcel under General Laws Chapter 44B, § 12 to the following: [insert identity of proposed holder of restriction here].

COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)

	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
	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	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for 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 Does <u>not</u> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.	Housing for low and moderate income individuals and families, including low or moderate income seniors Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
ACQUISITION Obtain property interest by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
CREATION To bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes		Yes	Yes
PRESERVATION Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
SUPPORT 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 entity that owns, operates or manages such housing, <u>for the purpose of making housing affordable</u>				Yes provided the housing asset itself is made affordable by the expenditure
REHABILITATION AND RESTORATION Make capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes if open space asset acquired or created with CP funds	Yes provided that rehabilitation complies with Secretary of Interior's Standards for Treatment of Historic Properties	Yes (includes replacement of playground equipment)	Yes if housing asset acquired or created with CP funds
AFFORDABLE HOUSING TRUSTS (G.L. c. 44, § 53C)				Yes but trust must spend CP funds for CPA community housing purposes
<p style="text-align: center;">Maintenance expenditures are prohibited for all assets even if they could otherwise be considered acquisition, creation, preservation, support, rehabilitation or restoration</p> <p style="text-align: center;">Maintenance means incidental repairs that do <u>not</u> materially add to value of property or appreciably prolong property's life, but keep property in condition of fitness, efficiency or readiness</p>				

COMMUNITY PRESERVATION FUND PROJECT ELIGIBILITY FLOW-CHART

Refer to CPA definitions under [G.L. c. 44B, § 2](#) for words in italics

1	<p>-Does the expenditure fund an affordable housing trust? If YES, go to 3.</p> <p>-Does the expenditure relate to one of the three community preservation assets – (1) <i>open space</i>, including land for <i>recreational use</i>; (2) <i>historic resources</i>; (3) <i>community housing</i>? If YES, go to 2. If NO, the expenditure is not eligible for CPA funding.</p>
2	<p>-If the expenditure is related to <i>open space</i> but not to land for <i>recreational use</i>, go to 4.</p> <p>-If the expenditure is related to land for <i>recreational use</i>, go to 6.</p> <p>-If the expenditure is related to a <i>historic resource</i>, go to 7.</p> <p>-If the expenditure is related to <i>community housing</i>, go to 8.</p>
3	<p>A city or town may appropriate CP funds in any year to an affordable housing trust fund under G.L. c. 44, § 55C. The trust must spend the funds for an allowable CP community housing purposes. SEE 8 and 9 and if asset owned by a private entity or individual, SEE 10.</p>
4	<p>-Does the expenditure <i>acquire</i>, create or <i>preserve</i> open space?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a private entity or individual.</p> <p>-If NO, does the expenditure <i>rehabilitate</i> or restore open space? If YES, go to 5.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
5	<p>-Was the <i>open space acquired</i> or created with CPA funds?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
6	<p>-Does the expenditure <i>acquire</i>, create, <i>preserve</i>, <i>rehabilitate</i> or restore land for <i>recreational use</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
7	<p>-Does the expenditure <i>acquire</i>, <i>preserve</i>, <i>rehabilitate</i> or restore a <i>historic resource</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
8	<p>-Does the expenditure <i>acquire</i>, create, <i>preserve</i> or <i>support community housing</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a private entity or individual.</p> <p>-If NO, does the expenditure <i>rehabilitate</i> or restore <i>community housing</i>? If YES, go to 9.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
9	<p>-Was the <i>community housing acquired</i> or created with CPA funds?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
10	<p>The <i>Anti-aid Amendment to the Massachusetts Constitution, Mass. Const. Amend.</i> Article 42, § 2, as amended by Article 103, restricts grants of public funds to organizations, institutions, charities, churches or other entities churches not publicly owned and under the exclusive control of public officers. A three-factor test is used to determine the constitutionality of grants challenged under the Anti-aid Amendment: (i) whether the proposed grant is for the purpose of founding, maintaining or aiding the private entity; (ii) whether the effect of the grant is to substantially aid the private entity; and (iii) whether the grant avoids the political and economic abuses which prompted the passage of the Anti-aid Amendment. <i>Commonwealth v. School Committee of Springfield</i>, 382 Mass. 665, 675 (1981). <i>Caplan v. Acton</i>, 479 Mass. 69 (2018). Massachusetts case law also prohibits gratuitous payments, gifts or grants of public funds (which include CPA funds) to individuals. <i>Opinion of the Justices</i> 313 Mass. 779, 784 (1943). Consult with municipal counsel whenever these grants to private entities or individuals are being considered.</p>



April 21, 2015

Donald Corey
Historic Preservation Commission
Town of Bedford
Town Hall
Bedford, MA 01730

Re: Use of Community Preservation Act Funds for Painting of Historic Assets
Our File No. 2015-147

Dear Mr. Corey:

You asked that we adopt a broader interpretation with regard to the use of Community Preservation Act (CPA) funds to paint historic buildings beyond that described in our advisory opinion 2013-1280 (copy enclosed). In that opinion, we concluded that "generally, painting would fall within the CPA definition of 'maintenance' and not be eligible for CPA funding." We also indicated that the "following types of painting projects related to historic buildings could be eligible for CPA funding:

- As rehabilitation or restoration of a historic resource, painting that is an integral part of a larger eligible rehabilitation or restoration project, i.e., painting after substantial repair or restoration of walls, woodwork, trim or siding (etc.). Periodic painting or repainting of a historic building, however, would not be eligible for CPA funding as it would be in the nature of maintenance.
- As restoration of a historic resource, painting to restore the historic color of a building. For example, a historic building was painted purple in the 1970's whereas its historic color is yellow. In such a case, painting the building yellow would not be 'maintenance' because the painting is not a repair of any kind. The purple paint may be fully intact, but the painting to yellow is done to restore the historic resource."

For the reasons stated in advisory opinion 2013-1280 and below, we are unable to broaden our interpretation about whether the painting of historic buildings is eligible for CPA funding beyond the projects previously expressed in the opinion.

CPA Definitions and Allowable Spending Purposes

As stated in our previous opinion, to determine whether a project is eligible for CPA funding, one must look to the CPA itself. With respect to historic resources, CPA funds may be used "for the ... acquisition, preservation, rehabilitation and restoration of historic resources...; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance..." G.L. c. 44B, § 5(b)(2). (Emphasis supplied.)

The CPA also sets forth the definitions applicable to the implementation of the CPA. G.L. c. 44B, § 2. The CPA definitions relevant to this issue are:

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

"Rehabilitation", capital improvements, or the making of extraordinary repairs, to historic resources... for the purpose of making such historic resources... 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....

"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.

"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.

Secretary of The Interior's Standards for the Treatment of Historic Properties

In support of broadening our interpretation, you suggest that periodic painting is "preservation" under the definition of "preservation" set forth in the Secretary of the Interior's Standards for the Treatment of Historic Properties contained in 36 C.F.R. Part 68. You have quoted the first sentence of that definition: "Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic Property."¹

Although the CPA incorporates the Secretary's Standards for Rehabilitation within the CPA definition of "rehabilitation," it does not so incorporate the Secretary's definitions or Standards for Preservation. G.L. c. 44B, § 2. To determine eligibility of a project under the CPA, we must follow the CPA definition of "preservation" together with the CPA's other definitions and provisions. Moreover, as explained in our advisory opinion, CPA monies cannot be used to fund any project that is in the nature of "maintenance," even if it may be "acquisition," "preservation," "rehabilitation" or "restoration." G.L. c. 44B, § 5(b)(2).

¹ The first sentence of the Secretary's definition of "preservation" was quoted in the submittal. The second sentence of that definition indicates "preservation," so-defined, focuses on ongoing maintenance (for which CPA funding is not allowable): "Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features..." (Emphasis added). 36 C.F.R Part 68, § 68.2(a).

Local Definitions

You indicate that your community defines “maintenance” and “capital” projects using a “break point” of whether the project has a useful life of five years. You suggest that we adopt a similar rule for distinguishing “maintenance” from “capital improvement” projects with regard to CPA funding. We are unable to do so. While a local definition of “maintenance” and “capital” expenditures is relevant to whether a community funds through its operating or capital budget, we must look to the CPA definitions of “capital improvement” and “maintenance” when interpreting the statute.

Conclusion

In conclusion, we arrived at the interpretation in advisory opinion 2013-1280 after a thorough analysis of the CPA, including its definitions. In addition, we reviewed decisions instructive on whether painting is “maintenance” or a “capital improvement.” See the opinion for the discussion of other decisions considered. Consequently, for the reasons set forth in the opinion and this letter, we do not believe the CPA permits a broader interpretation regarding the eligibility of painting of an historic building beyond that previously expressed.

Please do not hesitate to contact us again if you have further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:PH

Enclosure: Opinion 2013-1280



April 3, 2014

The Honorable James M. Cantwell
Room 23
The State House
Boston, MA 02133-1054

Re: Use of Community Preservation Act Funds for Painting of Historic Assets
Our File No. 2013-1280

Dear Representative Cantwell:

You asked about the use of Community Preservation Act (CPA) funds for painting projects on historic buildings. You state that you have received some indication from the Division of Local Services that funding such projects is not allowable due to the statutory prohibition on the use of community preservation funds for maintenance work. G.L. c. 44B, §§ 2 and 5. You seek clarification on this issue as it relates to the painting of historic buildings.

CPA Definitions and Allowable Spending Purposes

Monies in the CPA fund may be used "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; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance. ..." (Emphasis supplied). G.L. c. 44B, § 5(b)(2).

Section 2 of G.L. c. 44B defines various terms for CPA purposes:

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

"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(Emphasis supplied.)

"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.

"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.

"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.

The CPA does not provide a definition of "restoration" and we are not aware of any cases that define "restoration" in the CPA context. In the absence of such an interpretation, we look to the usual and generally understood meaning of words from sources known to the legislature, such as use in other legal contexts and dictionary definitions. See *Seideman v. Newton*, 452 Mass. 472, 477-478 (2008). At *webster-dictionary.org*, "restoration" is defined as "the act of restoring or bringing back to a former place, station, or condition."

Painting of Historic Buildings

Assuming that the building is a "historic resource" within the CPA definition, the painting of a historic building could be eligible for CPA funding if it falls within one of the CPA allowable expenditure purposes of "preservation, rehabilitation or restoration" of an historic resource. However, if the painting project falls within the CPA definition of "maintenance," notwithstanding that it is a "preservation, rehabilitation or restoration" project, it will not be eligible for CPA funding. This is because G.L. c. 44B, § 5(b)(2) expressly prohibits use of any CPA funds for maintenance ("provided, however, that funds expended pursuant to this chapter shall not be used for maintenance.")

Before the July, 2012 CPA amendments, "maintenance" was defined as "the upkeep of real or personal property." The amendment changed the definition of "maintenance" to "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." We have observed that this amended definition mirrors language of an Internal Revenue Service (IRS) regulation in effect at the time the amendment was submitted:

§ 1.162-4 Repairs.

The cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted as an expense, provided the cost of acquisition or production or the gain or loss basis of the taxpayer's plant, equipment, or other property, as the case may be, is not increased by the amount of such expenditures. Repairs in the nature of replacements, to the extent that they arrest deterioration and appreciably prolong the life of the property, shall either be capitalized and depreciated in accordance with section 167 or charged against the depreciation reserve if such an account is kept. 26 CFR § 1.162-4. (Emphasis supplied.)¹

¹ This regulation was in effect at the time of the filing of the Senate and House Bills containing the proposed 2012 CPA amended definition of "maintenance": SB1841 (2011-2012) and HB765 (2011-2012). The IRS regulation was changed afterward to the following: "§ 1.162-4 Repairs. (a) through (d) [Reserved]. For further guidance, see § 1.162-4T(a) through (d). [T.D. 9564, 76 FR 81084, Dec. 27, 2011] § 1.162-4T Repairs (temporary). (a) In general. A taxpayer may deduct amounts paid for repairs and maintenance to tangible property if the amounts paid are not otherwise required to be capitalized."

The IRS regulation relates to allowable business deductions. Generally, when an expense is in the nature of a “repair” to business property, it is deductible in the year the expenditure is made. If the expenditure is in the nature of a capital expenditure, it cannot be deducted in one year and must be amortized over the useful life of the improvement.

While we are not aware of any court decisions that interpret the CPA definition of “maintenance,” there are several decisions that have interpreted the IRS definition of “repair,” specifically with regard to painting. Because the legislature used the same language to define “maintenance” under the CPA as the IRS definition of “repair,” we believe such decisions are instructive as to whether painting is “maintenance” for purposes of the CPA.

Painting expenses have generally been held to fall within the IRS definition of “repair” (and, thus, would be “maintenance” and not allowable for CPA purposes). See *Rose, Collector of Internal Revenue, v. Haverty Furniture Co.*, 15 F. 2d 345 (5th Cir. 1926) (painting costs deemed to be repair or ordinary maintenance); *Kirkland v. U.S.* 267 F. Supp. 259 (D. Neb. 1967) (painting and decorating expenses treated as repair or ordinary maintenance); *Newark Morning Ledger Co. v United States*, 416 F. Supp. 689, 696 (D.N.J. 1975) (painting, repairing cracks in plaster and putting new washers in faucets are in the nature of repairs; “... [t]he making of repairs does no more than restore the value of the building to the level of one that is kept in good condition.”); *Schroeder v. Commissioner*, T.C. Memo 1996-336; 72 T.C.M. (CCH) 185 (1996) (painting and sealing of barns not been painted in years deemed a repair; the expenditures simply restored the buildings to their previous condition without adding to the value of the buildings or prolonging their life in a way that requires the expenditures to be treated as capital).

However, courts have held that painting is not a “repair” (and, thus, would not be “maintenance” for CPA purposes) when the painting is done as an integral part of a larger improvement project or general plan of rehabilitation, modernization and improvement. In those cases, the project is treated as a whole, even if individual expenditures would be “incidental maintenance” or a repair, if considered separately. See *Stoeltzing v. Commissioner of Internal Revenue*, 266 F.2d. 374, 377 (3rd Cir. 1959) (building in bad state of repair; project included repairs to concrete steps, landing and driveway, new joists, shoring up parts of first and second floors, repair/replacement of basement doors, flooring, trim, replacement of rotted-out front and rear doors, roof and gutter patching, replacement of electrical wiring, removal of old plumbing and wallpaper, new roof, window screens, wall covering, acoustical ceiling, weather-stripping, plastering, insulation, carpentry work, painting of gutters, outside brick work and inside trim; repairs not “incidental”, but made to put, rather than maintain, the building in an ordinarily efficient operating condition); *Jones v. United States*, 279 F. Supp. 772 (D. Del. 1968) (painting performed in conjunction with carpentry, plastering and plumbing deemed not a repair; no painting or repairs for over 20 years; building in disrepair and un-rentable; walls and ceilings cracked and damaged from frozen pipes; exterior wall buckled, window sills, door sills and door frames deteriorated); *United States v. Wherli*, 400 F 2d. 686, 689 (10th Cir. 1968) (painting deemed not a repair when project included tearing out a hallway, load-bearing wall and two concrete vaults, installing steel support columns, new wall partitions, floor covering, electrical wiring, and plumbing fixtures, plastering and painting, moving rest rooms and installing new doors).

In *Moss v. Commissioner of Internal Revenue*, 831 F.2d 833 (9th Cir. 1987), however, the court determined the “plan of rehabilitation” doctrine was not applicable to painting performed in conjunction with a hotel capital improvement plan. In that case, the painting was a repair (and in the CPA context, “maintenance”). The project included \$1.4 million for new signage, carpeting, drapes, hotel furnishings, dining and kitchen furnishings and office equipment, plus \$400,000 for work including repainting guest rooms and public areas. There were no structural or building envelope renovations or improvements. Although a substantial sum was spent on painting and it was done in conjunction with the other work, the painting was in the nature of recurring maintenance to keep the property in its ordinary and efficient operating condition.

As a result of a review of these cases and the CPA definitions of “maintenance,” “rehabilitation” and “capital improvement,” we believe that, generally, painting would fall within the CPA definition of “maintenance” and not be eligible for CPA funding. However, we believe that the following types of painting projects related to historic buildings could be eligible for CPA funding:

- As rehabilitation or restoration of a historic resource, painting that is an integral part of a larger eligible rehabilitation or restoration project, i.e., painting after substantial repair or restoration of walls, woodwork, trim or siding (etc.). Periodic painting or repainting of a historic building, however, would not be eligible for CPA funding as it would be in the nature of maintenance.
- As restoration of a historic resource, painting to restore the historic color of a building. For example, a historic building was painted purple in the 1970’s whereas its historic color is yellow. In such a case, painting the building yellow would not be “maintenance” because the painting is not a repair of any kind. The purple paint may be fully intact, but the painting to yellow is done to restore the historic resource.

We also note that although “creation” is not an allowable CPA expenditure with regard to historic resources, it is allowable with regard to “community housing.” In that context, the initial painting of new community housing constructed with CPA funds would be an allowable CPA expenditure, but repainting on a recurring basis would be “maintenance” and would not be allowable.

If you have further questions, please do not hesitate to contact us again.

Very truly yours,



Robert G. Nunes
Deputy Commissioner

RGN:ph



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Michael J. Heffernan
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

May 1, 2017

Peter Johnson-Staub
Assistant Town Manager
Town of Falmouth
Town Hall Square
Falmouth, MA 02540

Re: Use of Community Preservation Funds
Our File No. 2017-78

Dear Mr. Johnson-Staub:

You asked whether two types of expenditures related to community housing are eligible for funding under the Community Preservation Act (CPA). We address each type of expenditure separately.

The allowable spending purposes for CPA funds are set forth in G.L. c. 44B, § 5(b)(2) as follows:

"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; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance. ..."
(Emphasis added.)

Support of Community Housing

You asked whether funding for "financial assistance to low and moderate income Falmouth residents to obtain and/or retain stable, affordable housing in Falmouth" is allowable as "support of community housing." Because program details are not provided, we will respond by providing general information regarding expenditures that could be fundable as "support of community housing." We assume that program details are provided to the town during the local approval process so that the Community Preservation Committee (CPC) and legislative body and other appropriate officials can determine whether a particular expenditure is eligible for CPA funding and, if funding is approved, can ensure that the CPA funding is spent for the approved purpose.

We recently issued Advisory Opinion 2016-838 (copy enclosed) which we believe will provide you with the general information and guidance you seek regarding expenditures of CPA funds in support of community housing. That opinion examines the original purpose of the CPA, CPA definitions and amendments to the CPA. The following, from page two of the letter, is of particular relevance to your inquiry:

“... Thus, any programs providing direct financial assistance to individuals, families or entities are now clearly eligible as support so long as they make the housing affordable, i.e., add the housing unit to the community's affordable housing stock. This is consistent with the purpose of the CPA to expand certain of the community's physical assets. It also results in rental assistance, interest write-down programs and other programs consistent with similar conventional programs which generally include restrictive covenants or contracts that make a particular housing unit affordable during the period of the restriction or contract. We have not issued any public written statements saying support only includes these financial assistance programs, but note that any form of support, as well as acquisition, creation, preservation and rehabilitation, is for the purpose of having a physical asset to house income-eligible individuals.” (Emphasis added.)

As stated in the enclosed letter, its listing of examples of eligible programs is non-exclusive. Therefore, other community housing programs could be eligible for CPA funding as support if they meet the general parameters described in the letter. As an example of another such program, the following program to provide a one-time emergency housing assistance would be eligible for CPA funding. An income-eligible individual or family faces eviction from an apartment for nonpayment of rent as a result of job loss, illness or similar issue. The rent for the apartment is affordable for the income-eligible individual or family (generally between 30% and 40% of the income of the individual or family.)¹ If the landlord enters into an agreement to waive the eviction and all grounds for termination of tenancy to date and to reinstate the tenancy upon payment of the arrearage, such a program could be eligible for CPA funding because the payment of CPA funds to the landlord results in the retention of the unit (albeit not for an extended period, but commensurate with the amount of the funding) within the community's affordable housing stock for occupancy by an income-eligible individual or family. In developing this or a similar program, the community would want to seek legal advice regarding the terms of any waiver agreement with the landlord and determine policy issues such as whether to cap the amount of such assistance, allow repeat applications for assistance and impose any other conditions or limitations.

Preservation and Rehabilitation of Community Housing Not Acquired or Created with CPA funds

The second type of expenditure is for “plumbing, electrical, masonry, septic and roof repair and/or replacement” regarding community housing not acquired or created with CPA funds. You ask whether such expenditures are allowable as “preservation” of community housing. We believe the holding in the Supreme Judicial Court case of Seideman v. City of Newton, 452 Mass. 472 (2008) governs such expenditures.

Before reviewing the Seideman decision, it is helpful to understand the evolution of funding for “rehabilitation” under the CPA. When the CPA became law on December 13, 2000,² “rehabilitation” was an allowable spending purpose only with regard to open space, historic resources, land for recreational use and community housing “acquired or created as provided in this section.” In 2002³, the CPA was amended to broaden the allowable expenditures under “rehabilitation,” permitting

¹ “Community housing” is defined as “low and moderate income housing for individuals and families, including low or moderate income senior housing.” G.L. c. 44B, § 2.

² Chapter 267 of the Acts of 2000.

³ Section 4 of Chapter 165 of the Acts of 2002.

rehabilitation of historic resources whether they were acquired under the CPA or not. At the time of the Seidemen decision, with regard to land for recreational use, CPA funding was allowable only for the "acquisition, creation and preservation of land for recreational use" and for the "rehabilitation or restoration of such ... land for recreational use ... that is acquired or created as provided in this section."

In the Seideman case, 10 taxpayers challenged the use of CPA funding for certain expenditures regarding lands for recreational use that had not been acquired or created with CPA funds, including expenditures Newton characterized as "preservation." They claimed the expenditures were in the nature of rehabilitation and were not allowable. The Supreme Judicial Court agreed, stating at page 476:

"Although Newton attempted to characterize some of the proposed projects as 'preservation,' the judge stated that clearly what was planned was 'the rehabilitation and/or restoration' of the parks, in keeping with their recreational purposes. Further, the judge continued, while the appropriation of CPA funds for the 'rehabilitation' or 'restoration' of land for recreational use is permitted under G. L. c. 44B, § 5(b)(2), it is permitted only for recreational land that was originally acquired or created with CPA funds. That, the judge reiterated, did not occur here. Accordingly, because Newton's proposed uses for the CPA funds did not comport with any of the authorized uses set forth in § 5(b)(2), the judge concluded that such funds could not be appropriated for the projects at the parks, and the taxpayers were entitled to summary judgment."

At page 477:

"In Newton's view, given that the projects would prevent significant destruction of the green spaces, through improved drainage, fencing, and curbing, the proposed projects should be considered, more accurately, the "preservation" of land for recreational use, not the mere maintenance of such property for which CPA funds could not be appropriated."

And at pages 478-479:

"As to Newton's contention that its proposed projects at the parks constitute the 'preservation' of land for recreational use, we conclude that the work for which Newton has sought CPA funds is not designed for the 'protection of . . . real property from injury, harm or destruction.' G. L. c. 44B, § 2. Rather, Newton has requested the appropriation of CPA funds for extensive improvements and upgrades to the parks. Projects of this nature are not encompassed by the statutory definition of 'preservation.... Newton is not seeking to 'preserve' the parks by protecting them from decay and destruction, see G. L. c. 44B, § 2, but to improve substantially the parks' over-all quality, attractiveness, and usage. We agree with the motion judge that the proposed projects set forth in Newton's application to the community preservation committee fall more squarely within the definition of 'rehabilitation,' which includes 'the remodeling, reconstruction and making of extraordinary repairs' to 'lands for recreational use' so that they will be 'functional for their intended use, including but not limited to improvements to comply with the Americans with Disabilities Act.' G. L. c. 44B, § 2. However, the appropriation of CPA funds for the parks' 'rehabilitation' is not permitted under G. L. c. 44B, § 5(b)(2), where, as here, it is undisputed that the parks were not acquired or created with such funds in the first instance."

After the Seideman decision, the CPA was again amended with regard to “rehabilitation.” This time, the amendment specifically allowed CPA funding for rehabilitation of lands for recreational use when such lands are not acquired or created with CPA funds.⁴ No similar amendment has been made to allow funding for “rehabilitation” of community housing not acquired or created with CPA funds.

Applying the holding in Seideman, expenditures that fall squarely within the definition of “rehabilitation” of community housing are not allowable unless the community housing was acquired or created with CPA funds. As a matter of statutory construction, we do not believe that preservation can include work that comes within the definition of rehabilitation. If it did, there would be no point in the legislature prohibiting spending CPA money to rehabilitate community housing not acquired with CPA funds, since a city or town could simply characterize the work as preservation and fund it under that rubric. Therefore, the question is whether the proposed expenditures - plumbing, electrical, masonry, septic and roof repair or replacement - fall within the definition of “rehabilitation.”

“Rehabilitation” is defined under the CPA as follows:

“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.P.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.” (Emphasis added.) G.L. c. 44B, § 2.

“Capital improvement” is defined as:

“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.” G.L. c. 44B, § 2.

Plumbing, electrical, masonry, septic and roof repair or replacement (if not “maintenance”⁵) fall squarely within the definition of “rehabilitation” because they are either capital improvements or extraordinary repairs for the purpose of making the housing functional for its intended uses.

⁴ Section 77 of Chapter 139 of the Acts of 2012.

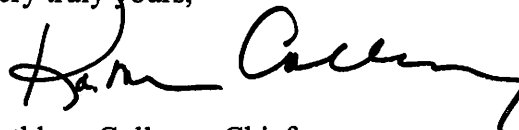
⁵ “Maintenance” is defined as: “incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency or readiness.” G.L. c. 44B, § 2. If any of the work is “maintenance,” it is not eligible for funding under the CPA. G.L. c. 44B, § 5(b)(2). The nature and extent of the proposed work is unclear. However, whether the work is “maintenance,” or “rehabilitation” is immaterial in this case because neither expenditure is allowable in connection with community housing not acquired or created with CPA funds.

Peter Johnson-Staub
Falmouth Assistant Town Manager
Page Five

Additionally, work to comply with state or local building codes (plumbing, electrical, septic) also falls within the definition of "rehabilitation." As a result, under Seideman, the expenditures are not eligible for funding under the CPA because "rehabilitation" is not permitted where, as here, it is undisputed that the community housing was not acquired or created with CPA funds in the first instance.

We hope we have addressed your concerns. If you have further questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:PH
Enclosure (Advisory Opinion 2016-838)



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Michael J. Heffernan
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

January 12, 2017

The Honorable Stephen Kulik
Room 238
The State House
Boston, MA 02133-1054

Re: Support of Community Housing under the Community Preservation Act
Our File No. 2016-838

Dear Representative Kulik:

This replies to your letter regarding the allowable use of Community Preservation Act (CPA) funds for community housing. After receiving your letter and discussion with Nicholas John of your office about the issues that prompted it, our legal staff was in communication with Rita Farrell of the Massachusetts Housing Partnership about what particular community housing expenditures were of concern. This is to confirm that we believe our interpretation of the statute allows most, if not all, of the expenditures cited in your letter and our further discussions with Ms. Farrell.

As we know, the CPA created a special fund with a new dedicated local tax for the specific purpose of expanding four types of physical assets within a community: open space, historic resources, recreational land and community housing. This purpose is evident from the CPA's definitions of those community preservation assets, the allowable uses of fund monies in connection with the assets, and the impermissible uses of fund monies in connection with the assets. G.L. c. 44B, §§ 2 and 5(b)(2).

Allowable CPA appropriations and expenditures fall under one of two categories: (1) administrative and operating expenses of the community preservation committee (CPC), which is charged with certain duties and responsibilities in connection with evaluating existing and needed community preservation assets, or (2) eligible projects, activities and purposes as defined in G.L. c. 44B, § 5. With respect to eligible community housing projects, activities and purposes, a city or town may appropriate and spend CPA funds "for the acquisition, creation, preservation and support of community housing; and for the rehabilitation or restoration of ...community housing that is acquired or created" with CPA funds. G.L. c. 44B, § 5(b)(2). In addition, it may appropriate CPA funds to its affordable housing trust fund. G.L. c. 44B, § 5(f). Use of CPA funds for maintenance of community housing (or any assets) is prohibited. G.L. c. 44B, § 5(b)(2). The CPA defines what projects, activities and purposes constitute acquisition, preservation, rehabilitation, support and maintenance.

As you note, however, originally the CPA did not define "support," which is an allowable purpose only in connection with community housing. "Community housing" was and remains defined as "low and moderate income housing for individuals and families, including low or moderate income senior housing," i.e., it is a physical asset – housing for certain income-eligible individuals. Therefore, our view was that "support" of "community housing" had to be some project, activity or purpose that related to dedicating a physical asset to housing for income-eligible individuals and did not include financial assistance or payments directly to those individuals.

As you noted, the CPA was amended in 2012 to include the following definition of “support of community housing:”

“ ‘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.”(Emphasis added.)

Given the placement of the comma before “for the purpose of making housing affordable,” we agree that the ordinary reading is that the language applies to or qualifies the entire phrase “programs that provide grants... or other forms of assistance directly to individuals ... who are eligible for community housing or to an entity that owns, operates or manages such housing.” Thus, any programs providing direct financial assistance to individuals, families or entities are now clearly eligible as support so long as they make the housing affordable, i.e., add the housing unit to the community’s affordable housing stock. This is consistent with the purpose of the CPA to expand certain of the community’s physical assets. It also results in rental assistance, interest write-down programs and other programs consistent with similar conventional programs which generally include restrictive covenants or contracts that make a particular housing unit affordable during the period of the restriction or contract. We have not issued any public written statements saying support only includes these financial assistance programs, but note that any form of support, as well as acquisition, creation, preservation and rehabilitation, is for the purpose of having a physical asset to house income-eligible individuals.

As we indicated above, we believe that most, if not all, of the following affordable housing programs or activities your letter mentions and we discussed with Ms. Farrell may be funded with CPA monies under the current definition of support or other eligible purposes.

- Rental assistance programs. Where there is a contract (by or on behalf of the municipality) with the owner of a particular unit to lease the unit at below market rent to an income-eligible individual or family, CPA funds may be used to “buy-down” the rent on the unit during the period of the contract. The tenant’s rental payment to the owner of the unit, when added to the CPA “buy-down” payment, then equals a fair market rent for the unit. CPA funds may also be used to pay for the first month’s rent and security deposit on the unit and to fund a management fee to a nonprofit or other private entity to run the program. These expenditures would be allowable as “support of community housing” because the housing unit itself is made affordable and added to the community’s affordable housing stock during the term of the contract.

We note that the payment to a nonprofit or third party to manage the rental assistance program is fair consideration for the management services provided by the nonprofit to the city or town and therefore, does not raise issues under the Anti-aid Amendment to the Massachusetts Constitution, Mass. Const. Amend. Article 42, § 2, as amended by Article 103. See *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981). That amendment generally prohibits grants of public funds to support or subsidize the operations of charitable and other private organizations not under the control of public officers.

- Down payment programs. Funding for a program to assist income-eligible persons make a down payment on a home in return for the municipality's acquisition of an affordable housing restriction on the unit is allowable as "acquisition," "creation" or "support of community housing." As it is an "acquisition" of an interest in land acquired with community preservation funds, we believe an affordable housing restriction is required under G.L. c. 44B, § 12. The restriction on the unit supports making the unit affordable.
- Data collection, land use and development plans, pre-development activities, site assessment. These costs can be funded as administrative and operating expenses of the CPC. Under G.L. c. 44B, §§ 6 and 7, CPA funds may be used to support the CPC in carrying out its statutory responsibilities. The legislature vested in the CPC the duty to study the "needs, possibilities and resources of the city or town regarding community preservation" and make recommendations to the legislative body for appropriations from the community preservation fund. G.L. c. 44B, § 5(b)(1) and (2). Therefore, we believe CPC administrative funds may be used to fund feasibility studies, pre-development activities, data collection, land use and development plans, affordable housing inventories, affordable housing plans, site assessments, appraisals and preliminary plans that assist the CPC study the community preservation needs, possibilities and resources of the city or town and make spending recommendations on eligible CPA projects, activities and purposes to the legislative body.

Moreover, once a community housing project, activity or program progresses beyond the study or preliminary stage, the CPC may recommend funding it to the legislative body. At that point, any expenses for site surveys, environmental assessments, architectural and engineering fees, permit processing fees, legal and accounting fees, and similar expenses that are typically included in an appropriation for a municipal acquisition, improvement or construction project would be funded through the project appropriation approved by the legislative body. Such costs would constitute "creation" or "support" of community housing. If the housing project is owned or to be owned by a private developer, then the community would need to consult with municipal counsel to ensure that the investment of municipal taxes is protected and adds the unit to the affordable housing stock through an affordable housing restriction running to the municipality or other means, G.L. c. 44B, § 12, and otherwise satisfies any Anti-aid Amendment issues.

- Employee compensation. Whether CPA funds may be used for personnel expenses depends upon the services being performed by the employee. Certainly, clerical support for the CPC and wages or salary of an employee providing direct administrative support services to the CPC may be funded as part of the administrative budget of the CPC. Funding for staff to implement and manage CPA-eligible programs, such as the rental assistance or down-payment programs described above, would be allowable as part of the program costs.

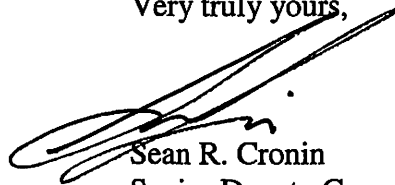
With respect to staff of the municipality's affordable housing trust, before November 6, 2016 our view was that CPA funds appropriated to a municipal housing trust created under G.L. c. 44, § 55C or a special act could be spent by the trust for any purpose for which it could spend funds under its enabling statute and any governing local bylaw or ordinance. This included spending for a wide range of programs and activities that could include staffing. The reason is that appropriations of CPA funds to a municipal affordable housing trust is a separate allowable purpose and in our view,

The Honorable Stephen Kulik
Page Four

once the funds are appropriated to the trust, they became assets of and subject to the trust. As you know, as a result of amendments made by the Municipal Modernization Act and effective November 6, 2016, affordable housing trusts created under G.L. c. 44, § 55C are now required to spend CPA funds for community housing subject "to all the rules, regulations and limitations" of G.L. c. 44B. St. 2016, c. 218, §§ 95 and 96. We understand that this change in the law was intended to limit the trust to spending CPA funds for only those community housing projects, activities and purposes eligible under G.L. c. 44B, § 5(b)(2). Thus, the trust's spending of CPA funds on staffing would now be limited to spending for implementing and managing CPA-eligible acquisition, creation, preservation, support and rehabilitation programs.

We hope we have addressed your concerns. If you have further questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean R. Cronin", with a large, sweeping flourish extending from the end of the signature.

Sean R. Cronin
Senior Deputy Commissioner
Division of Local Services

SRC:PFH

OVERVIEW OF STATUTORY TREATMENT OF MUNICIPAL REVENUES

This summary is intended to provide general information about municipal revenues and special funds under Massachusetts law. It is not designed to address all questions or issues about these revenues or funds. Nothing contained in this summary changes the laws that govern municipal revenues and special funds.

REVENUE TREATMENT

A fundamental principle of municipal finance in Massachusetts is that **all revenue received or collected from any source** by a city, town or district department or official **belongs to the general fund** and can be spent for any lawful purpose **only after appropriation by the legislative body**. [G.L. c. 44, § 53](#). No revenues can be segregated from the general fund into a separate fund to be reserved for specific purposes or spent without appropriation **unless expressly authorized by a statute (general law or session act)**.

GENERAL FUND REVENUES (Estimated Receipts)

Definition: **all unrestricted** revenues, including real and personal property taxes, other local taxes, such as excises, special assessments and betterments, unrestricted local aid, investment and rental income, voluntary and statutory payments in lieu of taxes and other receipts **not expressly dedicated by statute**. The anticipated general fund revenues for a fiscal year constitute the tax levy as a financing source (raise and appropriate), which may be appropriated until the tax rate is set. Collections during the year above the estimates used to set the rate are not ordinarily available for appropriation until after the close of the fiscal year and certification by the Director of Accounts as part of the municipality's undesignated fund balance (free cash). [G.L. c. 59, § 23](#).

SPECIAL REVENUE FUNDS

Definition: **Particular** revenues **segregated** from the general fund into a **separate fund** and **earmarked for expenditure for specified purposes** by statute. Special revenue funds may be classified or categorized based on the availability of the funds for expenditure and need for a prior appropriation. Special revenue funds include annual revenue funds, receipts reserved for appropriation and revolving funds. They also include gifts and grants from governmental entities and private individuals and organizations. Special revenue funds must be established by statute.

Annual Revenue Funds (Estimated Receipts)

Definition: **Annual revenue streams** **segregated** from the general fund into a **separate fund** and available as a **separate financing source for services that generate, or for purposes supported by, those revenues**. These include the revenues of enterprise funds established for services typically financed and delivered in a manner similar to private enterprises for the purpose of accounting for all costs, direct or indirect, of providing the services. Anticipated fund revenues for the fiscal year may be appropriated until the tax rate is set.

Examples of Annual Revenue Funds are:

Enterprise Funds (Utility, Health Care, Recreational, Transportation, Cable Television Public Access Facility)	G.L. c. 44, § 53F½
Community Preservation Fund	G.L. c. 44B
Light Plant Receipts (Appropriated by Light Plant Board)	G.L. c. 164, § 57

Receipts Reserved for Appropriation (Actual Collections)

Definition: Receipts from a specific revenue source segregated from the general fund into a separate fund and earmarked for appropriation for specified purposes by statute. Appropriations from the fund are limited to actual collections on hand and available (i.e., the unappropriated balance of actual collections).

Examples of Receipts Reserved for Appropriation Funds are:

Ambulance Receipts	G.L. c. 40, § 5F
Waterways Improvement and Maintenance Fund	G.L. c. 60B, §§ 2(i) & 4
	G.L. c. 40, § 5G
Sale of Real Estate Proceeds	G.L. c. 44, § 63

Revolving Funds (Actual Collections)

Definition: Receipts from a specific revenue source segregated from the general fund into a separate fund and earmarked for expenditure without appropriation for specified purposes by statute to support the activity, program or service that generated the receipts. Typically, revolving funds are authorized for programs or services with expenses that (1) fluctuate with demand and (2) can be matched with the fees, charges or other revenues collected during the year. The board or officer operating the program is usually given spending authority, but can only incur liabilities and spend from the actual collections on hand and available (i.e., the unspent and unencumbered balance of actual collections).

Examples of Revolving Funds are:

Arts Lottery Council Monies	G.L. c. 10, § 58
Municipal (if voted)/School Property Lease/ Rental Proceeds	G.L. c. 40, § 3
Parks and Recreation Fees	G.L. c. 44, § 53D
Departmental Revolving Funds	G.L. c. 44, § 53E½
Outside Consultants Revolving Funds	G.L. c. 44, § 53G
Student Athletic and Activities Fund	G.L. c. 71, § 47

TRUST AND AGENCY FUNDS

Definition: Fiduciary funds segregated from the general fund to account for assets held in a trustee capacity or as an agent for individuals, private organizations, other governmental units, etc. These include expendable trust funds, non-expendable trust funds, pension trust funds and agency funds.

Examples of Trust Funds are:

Scholarship Fund	G.L. c. 60, § 3C
Veteran Assistance Fund	G.L. c. 60, § 3F
Cemetery Perpetual Care Fund	G.L. c. 114, § 25

Examples of Agency Funds are:

Fingerprinting Fees (portion held for state)	G.L. c. 6, § 172B½
Student Activity Agency Account (held for students)	G.L. c. 71, § 47
Sporting License Receipts (portion held for state)	G.L. c. 131, § 18

APPROPRIATED SPECIAL PURPOSE RESERVE FUNDS

Definition: Statutory funds to account for allocation of general revenues or other financing sources reserved by the appropriating authority for particular purposes.

Reserve Fund	G.L. c. 40, § 5A (cities)
	G.L. c. 40, § 6 (towns)
Stabilization Fund	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Conservation Fund	G.L. c. 40, § 8C
Overlay	G.L. c. 59, § 25

SPECIAL PURPOSE FUNDS QUICK REFERENCE – NON-SCHOOL FUNDS

ENTERPRISE REVENUES

Water Surplus	G.L. c. 41, § 69B
Landfill/Trash Collection Charges	G.L. c. 44, § 28C(f)
Landfill Closure Reserve	G.L. c. 44, § 28C(f)
Enterprise Funds (acceptance required)	G.L. c. 44, § 53F½
Light Plant Charges and Receipts	G.L. c. 164, § 57

TEMPORARY FUNDS (EXPIRE AT YEAR'S END)

Reserve Fund	G.L. c. 40, § 5A (cities) G.L. c. 40, § 6 (towns)
Insurance/Restitution Proceeds up to \$150,000 (6/30 or 120 days after receipt if later)	G.L. c. 44, § 53
Free Cash (Must be certified by DOR)	G.L. c. 59, § 23
Enterprise Retained Earnings (Must be certified by DOR)	G.L. c. 44, § 53F½
Overlay Surplus	G.L. c. 59, § 25

REVOLVING FUNDS (NO APPROPRIATION NEEDED)

Arts Lottery Council Monies	G.L. c. 10, § 58
Municipal (if voted) Lease/Rental Proceeds	G.L. c. 40, § 3
Centennial Celebration Receipts	G.L. c. 40, § 5H
Smart Growth Consultants Fees	G.L. c. 40R, § 11
Performance Bond Forfeitures (Up to \$100,000 acceptance required)	G.L. c. 41, § 81U
Expedited Permitting Fees (acceptance required)	G.L. c. 43D, § 6(b)
Special Detail Fees (appropriation not required)	G.L. c. 44, § 53C
Parks and Recreation Fund (acceptance required)	G.L. c. 44, § 53D
Departmental Revolving Funds	G.L. c. 44, § 53E½
Energy Revolving Loan Fund	G.L. c. 44, § 53E¾
Outside Consultant Fees	G.L. c. 44, § 53G
Performance/Surety Deposits	G.L. c. 44, § 53G½
Anniversary/Special Events Celebration Fund	G.L. c. 44, § 53I
Tax Title Revolving Fund (acceptance required)	G.L. c. 60 § 15B
Law Enforcement Trust	G.L. c. 94C, § 47
Wetlands Protection Fund	G.L. c. 131, § 40 St. 1997, c. 43, § 218 St. 1998, c. 194, § 349
Multi-community Yard Waste Program Fees	St. 1993, c. 179

OTHER SPECIAL PURPOSE FUNDS (Held-Over From Year To Year)

Fingerprinting Fees (local portion) Receipts Reserved	<u>G.L. c. 6, § 172B½</u>
Tax Credit Bond Proceeds	<u>G.L. c. 44, § 21B</u>
Self-Insurance Health Fund	<u>G.L. c. 32B, § 3A</u>
Other Post-employment Benefits (OPEB) Liability Trust Fund (acceptance required)	<u>G.L. c. 32B, § 20</u>
Stabilization Fund (acceptance of paragraph required to dedicate revenue source)	<u>G.L. c. 40, § 5B</u>
Pension Reserve Fund	<u>G.L. c. 40, § 5D</u>
Unemployment Compensation Fund	<u>G.L. c. 40, § 5E</u>
Ambulance Receipts Reserved; Beach and Pool Receipts Reserved; Golf Course Receipts Reserved; Skating Rink Receipts Reserved	<u>G.L. c. 40, § 5F</u>
Waterways Improvement and Maintenance Fund	<u>G.L. c. 40, § 5G</u>
Conservation Fund (acceptance required)	<u>G.L. c. 60B, § 2(i)</u>
Recycling Commission Fund	<u>G.L. c. 40, § 8C</u>
Building Insurance Fund (acceptance required)	<u>G.L. c. 40, § 8H</u>
Workmen's Compensation Fund (acceptance required)	<u>G.L. c. 40, § 13</u>
Parking Meter Fees Receipts Reserved (acceptance required)	<u>G.L. c. 40, § 13A</u>
Off-street Parking Receipts Reserved (acceptance required)	<u>G.L. c. 40, § 22A</u>
Commission on Disabilities Fund (acceptance of G.L. c. 40, § 8J required)	<u>G.L. c. 40, §§ 22B & 22C</u>
Compensated Absences Fund (acceptance required)	<u>G.L. c. 40, § 22G</u>
Municipal Water Infrastructure Investment Receipts Reserved Fund (acceptance required)	<u>G.L. c. 40, § 13D</u>
Injured on Duty Fund (acceptance of paragraph required)	<u>G.L. c. 40, § 39M</u>
Bond Proceeds and Premiums	<u>G.L. c. 41, § 111F</u>
State Highway and Water Pollution Funds	<u>G.L. c. 44, § 20</u>
Grants and Gifts (appropriation not required)	<u>G.L. c. 44, § 53</u>
Cable Public, Educational, Governmental Access Fees Receipts Reserved (acceptance required)	<u>G.L. c. 44, § 53A</u>
Affordable Housing Trust Fund (acceptance required)	<u>G.L. c. 71, § 37A</u>
Betterments Receipts Reserved	<u>G.L. c. 44, § 53F¾</u>
Sale of Real Estate Proceeds	<u>G.L. c. 44, § 55C</u>
Community Preservation Fund (acceptance required)	<u>G.L. c. 44, § 53J</u>
Overlay	<u>G.L. c. 44, § 63</u>
Low Income Seniors and Disabled Tax Relief Fund (acceptance required)	<u>G.L. c. 44B, § 7</u>
Veterans Assistance Fund (acceptance required)	<u>G.L. c. 59, §§ 25 & 70A</u>
Wastewater Disposal Receipts Reserved (acceptance required)	<u>G.L. c. 60, § 3D</u>
Estimated Sewer Betterments	<u>G.L. c. 60, § 3F</u>
Bicyclist Traffic Fines Receipts Reserved	<u>G.L. c. 83, § 1G</u>
Weight and Measure Fines Receipts Reserved	<u>G.L. c. 83, § 15B</u>
Cemetery Sale of Lots Fund	<u>G.L. c. 85, § 11E</u>
Cemetery Perpetual Care Funds	<u>G.L. c. 98, § 29A</u>
Spay and Neuter Deposit Receipts Reserved	<u>G.L. c. 114, § 15</u>
Building and Fire Code Enforcement Fines Receipts Reserved	<u>G.L. c. 114, § 25</u>
Extended Election Polling Hours (appropriation not required)	<u>G.L. c. 140, § 139A</u>
	<u>G.L. c. 148A, § 5</u>
	<u>St. 1983, c. 503, § 3</u>

SPECIAL PURPOSE FUNDS QUICK REFERENCE – SCHOOL FUNDS

TEMPORARY FUNDS (Expire At Year's End)

Insurance/Restitution Proceeds Up to \$150,000 (6/30 or 120 days after receipt if later)	G.L. c. 44, § 53
Regional School Excess and Deficiency Funds (Must be certified by DOR)	G.L. c. 71, § 16B½

REVOLVING FUNDS (No Appropriation Needed)

Surplus School Building and Space Lease/Rentals	G.L. c. 40, § 3
Non-resident Students' Tuition (Regional Schools)	G.L. c. 71, § 16D½
Culinary Arts Programs (acceptance required)	G.L. c. 71, § 17A
School Extended Programs	G.L. c. 71, § 26C
Student Athletic and Activities	G.L. c. 71, § 47
Student Activity Agency	G.L. c. 71, § 47
Community Schools Programs	G.L. c. 71, § 71C
Adult Continuing Education and Fitness Programs; Summer School and Enrichment Programs (acceptance required)	G.L. c. 71, § 71E
School Parking and Use of School Property Fees (acceptance required)	G.L. c. 71, § 71E
Non-resident Students' Tuition (acceptance required)	G.L. c. 71, § 71F
Vocational Education Programs (acceptance required)	G.L. c. 74, § 14B
School Choice	G.L. c. 76, § 12B(o)
School Bus Advertising	St. 2002, c. 184, § 197
School Lunch	St. 1948, c. 548, as amended by St. 1969, § 650

OTHER SPECIAL PURPOSE FUNDS (Held-Over From Year To Year)

Other Post-employment Benefits (OPEB) Liability Trust Fund (acceptance required)(Regional School)	G.L. c. 32B, § 20
Special Education Reserve Fund (acceptance required)	G.L. c. 40, § 13E
Lost School Books/Electronic Devices/Industrial Arts Supplies	G.L. c. 44, § 53
Grants and Gifts	G.L. c. 44, § 53A
	G.L. c. 71, § 37A
Local Education Fund (acceptance required)	G.L. c. 60, § 3C
Scholarship Fund (acceptance required)	G.L. c. 60, § 3C
Regional School Transportation Reimbursements (1 year carry over)	G.L. c. 71, § 16C
Regional School Stabilization Fund (acceptance required)	G.L. c. 71, § 16G½
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A



Local Finance Opinion

LFO-2018-3
September 24, 2018

TOPIC: Money from Marijuana Establishments and Medical Marijuana Treatment Centers

ISSUE: Accounting treatment of local option excises on retail sales of marijuana for adult use and impact fees and any other payments required or received from marijuana establishments and medical marijuana treatment centers in connection with their operation

This LFO addresses questions and provides guidance regarding the municipal finance law and accounting treatment of money from marijuana establishments and medical marijuana treatment centers. It does not address how payments by those establishments or treatment centers are treated for purposes of host community agreements.

1. What is the general rule about accounting for money received by a city, town or district officer or department?

All money received or collected by a city, town or district from any source is credited to its general fund and can only be spent after appropriation unless a general or special law provides for an exception and different treatment, *i.e.*, a general or special law expressly reserves the revenue stream for expenditure for a particular purpose or allows expenditure by a municipal or district department or officer without appropriation. [G.L. c. 44 § 53](#).

2. What money could a marijuana establishment or a medical marijuana treatment center generate for a municipality?

Municipalities may (1) impose a local excise on the retail sales of marijuana for adult use and (2) negotiate impact fees or other payments under a community host or other agreement with a marijuana establishment or medical marijuana treatment center in connection with its siting and operation in the municipality.

3. How does a municipality impose a local excise on retail sales of marijuana for adult use?

A city or town may impose a local excise on the retail sale of marijuana for adult use by accepting [G.L. c. 64N, § 3](#). Acceptance is by majority vote of the community's legislative body, subject to charter. The maximum excise rate communities may impose is 3%. If a city or town in which a marijuana retailer is located accepts G.L. c. 64N, § 3, all sales by the marijuana retailer that are subject to the state excise on marijuana retail sales will also be subject to the host community's local excise. The excise does not apply to the sale of marijuana or marijuana products by a medical marijuana treatment center. [G.L. c. 64N, § 4](#). See [Bulletin 2018-3, Local Excise on Retail Sales of Marijuana for Adult Use](#).

4. How does a municipality obtain impact fees or other payments from a marijuana establishment or medical marijuana treatment center?

A marijuana establishment or a medical marijuana treatment center that wants to operate or continue to operate in a municipality must execute a community host agreement with the municipality. [G.L. c. 94G, § 3\(d\)](#). The community host agreement must include, but is not limited to, all responsibilities of both parties with respect to the operation of the establishment or center within the municipality. The agreement may include payment of a community impact fee by the marijuana establishment or medical marijuana treatment center in order to mitigate the costs imposed upon the municipality by the operation of the establishment or treatment center within its borders. [G.L. c. 94G, § 3\(d\)](#).

5. Is there an exception to the general rule for money related to the operation of a marijuana establishment or medical marijuana treatment center?

No. There is no general law that establishes a different accounting treatment for (1) revenues generated by the local sales excise on retail sales of marijuana for adult use or (2) payments made under community host or other agreements with marijuana establishments or medical marijuana treatment centers. Therefore, the money belongs to the general fund and can only be spent by appropriation. [G.L. c. 44 § 53](#).

6. How do accounting officers treat money related to the operation of a marijuana establishment or medical marijuana treatment center?

Accounting officers must credit all of the following to the general fund:

1. Collections from local option excises on retail sales of marijuana for adult use and
2. Payments made by a marijuana establishment or medical marijuana treatment center regardless of the characterization of the payments by the parties.

State law governs the municipal finance and accounting treatment of payments made by a marijuana establishment or medical marijuana treatment center, not a host community or other agreement between the municipality and the establishment or treatment center. It is not within our regulatory purview to determine the nature of those payments for purposes of [G.L. c. 94G, § 3\(d\)](#). For municipal finance law purposes, however, payments made by an establishment or treatment center under a host community or other agreement in connection with, or to mitigate the costs imposed by, the location and operation of the establishment or treatment center within the municipality are in the nature of exactions or mitigation payments that belong to the general fund. They cannot be reserved in or credited to a separate gift or grant account, trust fund, revolving fund or other special revenue fund and cannot be spent without appropriation or appropriated as an available fund. They belong to the general fund because no general law establishes a different accounting treatment for money related to the operation of these establishments or treatment centers specifically or from exactions or mitigation payments generally.

We understand that some of these agreements have characterized all or some of the payments as gifts or gifts in the nature of trusts. However, 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 execution of a host agreement is a condition precedent to being able to operate or continue to operate as a licensed marijuana establishment or registered medical marijuana treatment center. It is doubtful that any payments the establishment or treatment center agree to make are for a purpose other than to obtain the necessary host agreement. "[T]he nature of a monetary exaction must be determined by its operation rather than its specially descriptive phrase." [Emerson College v. Boston](#), 391 Mass. 415, at 424 (1984), quoting [Thomson Electric Welding Company v. Commonwealth](#), 275 Mass. 426, at 429 (1931).

7. Is there a way under state law that a municipality may dedicate payments made by a marijuana establishment or medical marijuana treatment center for later appropriation for particular purposes?

Yes. A municipality may use a local acceptance option to dedicate all, or a portion of at least 25%, of the collections of the excise on retail sales of marijuana or payments from a community host and other agreement payments to a general or special purpose stabilization fund established under [G.L. c. 40 § 5B](#). For the procedure that must be followed to accept and use this local option, see Section II of [Informational Guideline Release \(IGR\) No. 17-20, Stabilization Funds](#). Under this option, these collections and payments may be dedicated to stabilization funds because they are not earmarked for a particular purpose under current state law. In addition, the excise on marijuana retail sales is not a locally assessed tax or excise specifically excluded from dedication.

8. How will the Bureau of Accounts treat balance sheet reservations of payments from a marijuana establishment or medical marijuana treatment center when certifying free cash?

The Bureau of Accounts will close balance sheet reservations of payments from marijuana establishments or medical marijuana treatment centers when calculating the available funds of a municipality (free cash). [G.L. c. 59, § 23](#). This is consistent with its policy with respect to similar payments made under host, development or other agreements with other private parties that also belong to the general fund.

9. What agency has regulatory jurisdiction over issues related to the operation of marijuana establishments or medical marijuana treatment centers?

The state's [Cannabis Control Commission](#) determines whether marijuana establishments or medical marijuana treatment centers meet licensing or registration standards required to operate. Questions regarding the interpretation of the statute, regulations and other guidance related to the implementation of marijuana for adult use or medical purposes should be directed to the Commission.



Kathleen Colleary, Chief
Bureau of Municipal Finance Law



Local Finance Opinion

LFO 2018-2
July 23, 2018

TOPIC: Insurance and Restitution Proceeds

ISSUE: Accounting treatment of fire or physical damage insurance policy proceeds or restitution received for damage to city, town or district property

This LFO addresses questions relating to (1) the accounting treatment of money received by a city, town or district under an insurance policy or as restitution for damage to its property and (2) the availability of the money for expenditure.

1. What is the general rule related to the receipt of money by a city, town or district officer or department?

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, *i.e.*, expressly restricts use for a particular purpose or allows expenditure without appropriation. [G.L. c. 44 § 53](#). Additionally, under ordinary municipal finance laws and accounting standards established by the Director of Accounts, the availability of any receipts or collections for appropriation depends in large measure on when they are received. [G.L. c. 59 § 23](#). If received between July 1 and the setting of the tax rate, they can be treated as estimated receipts to support an appropriation from the levy before the rate is set for the proposed purpose. If received later or not budgeted as part of the tax rate, they are not available for appropriation until after the close of the fiscal year and certification by the Director as free cash.

2. Is there an exception to the general rule for insurance or restitution proceeds?

Yes. Money received under the terms of a fire or physical damage insurance policy or received in restitution for damage done to city, town or district property may be spent by the department or officer having control of the property for its restoration or replacement with the approval of the chief executive officer of the municipality or district. No appropriation is required to spend the proceeds for that purpose. Restitution proceeds include, but are not limited to, court-ordered money or money received under relevant agreements or settlements. However, this exception only applies where the total amount received for the insurance claim or restitution is \$150,000 or less. Additionally, the department or officer must spend the proceeds to restore or replace the damaged property on or before June 30 of the fiscal year in which the proceeds are received, or 120 days after receipt, whichever is later. [G.L. c. 44 § 53](#). Upon receipt, the accounting officer must establish an account for the proceeds. If the department or officer does not spend the proceeds, *i.e.*, incur a contractual liability, for the restoration or replacement of the property within that time frame, the accounting officer must close any unspent or unencumbered balance to the general fund.

For example, a fire damages the town's Department of Public Works (DPW) storage shed and the insurance company pays the town \$25,000 on its claim for the damage. Because the amount of the fire insurance proceeds is \$150,000 or less, the DPW can spend the \$25,000, with the approval of the chief executive officer, to repair or replace the shed. No appropriation is needed, but the DPW can only spend the proceeds for this specific purpose and must do so on or before June 30 of the fiscal year the town received payment on its claim, or 120 days after receipt, whichever is later. Any unspent or unencumbered money at the end of that time period will close to the general fund.

Moneys received as reimbursement for economic loss do not receive similar preferential treatment under [G.L. c. 44 § 53](#). In addition, revenue cannot be credited to an appropriation. Therefore, if an existing appropriation was used to finance the repair or replacement of the property before the insurance or restitution proceeds were received, the proceeds are credited to the general fund.

3. How should accounting officers treat the receipt of insurance or restitution proceeds of more than \$150,000?

The Director of Accounts establishes accounting standards for municipalities and districts and determines available funds in accordance with those accounting standards. [G.L. c. 44, § 38](#); [G.L. c. 59, § 23](#). The Director has determined that where the total amount received for the insurance claim or restitution is more than \$150,000, the proceeds may be reserved for appropriation during the fiscal year received for the purpose of restoring or replacing the damaged property. These proceeds may be the only or a significant financing source for the repair or replacement of the damaged property. Depending on when received, however, the municipality or district might have to wait for a considerable period of time before it could repair or replace the damaged property. Because [G.L. c. 44 § 53](#) establishes insurance and restitution proceeds as a class of receipts that may be spent for a particular purpose without first being certified as free cash, the Director has determined that money received for an insurance claim or restitution in an amount greater than \$150,000 is available for appropriation for that restricted purpose until June 30. The accounting officer should establish a receipt reserved for appropriation account and credit the proceeds to that account. Any proceeds not appropriated by the legislative body by June 30 to repair or replace the damaged property close to the general fund. In the ordinary course, the proceeds would then become part of the free cash certified by the Director as of the following July 1 and once certified, may be appropriated for any lawful purpose.

Note, however, that if the proceeds are received on or before March 31, and the municipality or district wants to appropriate them for a purpose other than to repair or replace the damaged property, it may request that the Director update its free cash certified as of the previous July 1 to include the unappropriated proceeds and make them available for appropriation for the other purpose on or before June 30.



Kathleen Colleary, Chief
Bureau of Municipal Finance Law