



Local Funds and Finances

Municipal Modernization Act Implementation

Workshop C 2017

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Workshop C

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Discussion Questions

1. The Town of Bailey voted to accept the local option provision of G.L. c. 40, § 5B that allows municipalities to dedicate a particular fee, charge or other receipt to a stabilization fund. Bailey wants to dedicate funds to a tourism promotion stabilization fund. It is considering dedicating monies from the following sources:
 - 50% of local option hotel excise revenues (G.L. c. 64G, § 3A);
 - 33% of local option meals excise revenues (G.L. c. 64L, § 2(a));
 - 100% of boat excise revenues (G.L. c. 60B);
 - 10% of revenues from sales of commemorative plaques of the Town seal; and
 - 100% local option water infrastructure surcharge revenues (G.L. c. 40, § 39M).
 - A. What is the procedure for dedicating revenues to a stabilization fund?
 - B. Can the town dedicate these revenue streams to the tourism promotion stabilization fund?
 - C. If a year later, circumstances have changed and the town wants to use some of the revenues to support the annual operating budget, can the town do so? What is the process for revoking a dedication?

G.L. c. 40, § 5B

2. The City of Ridley's earth removal bylaw requires that an applicant seek a permit before certain earth removal activities and imposes a fee to be used by the Earth Removal Board to offset administrative expenses in processing the application and a separate fee to hire professional experts need for the Board to make its decision, Any amount unspent is returned to the applicant.
 - A. What options does Ridley have for accounting for the fees?

G.L. c. 44, § 53G.

3. On November 7, 2017, the treasurer for the Town of Greenwich sold permanent debt, issuing a 20-year bond, and received a considerable premium.
 - A. How is the premium treated?
 - B. What if the premium was received for refunding bonds?

G. L. c. 44, § 20

G. L. c. 44, § 21A

4. The City of Greenville wants to establish a number of revolving funds supporting various city departments. One of the funds would be a tourism revolving fund and the City would dedicate its local option hotel and meals excise collections to that fund.
- A. How does the City establish revolving funds for city departments?
 - B. What revenues may be used to fund a revolving fund?
 - C. What program expenses may be funded by a revolving fund?
 - D. What is the total cap on the annual spending for each departmental revolving fund and how is it established? For each fund?
 - E. What should the City consider in deciding whether to establish a revolving fund for any particular department?

The City established a Recycling Revolving Fund. The revenue source is proceeds from the sale of recycling bins. The City's Recycling Coordinator established a wildly successful recycling bin sales campaign, generating \$30,000 more than expected at the beginning of the year. The Recycling Coordinator now wishes to take the extra proceeds and purchase 1,000 rain barrels to be sold to residents for \$50 each.

- F. May the Recycling Coordinator's spend from the fund to purchase the rain barrels?

G. L. c. 44, §53E½

5. The selectboard of Wrightsville voted to assess betterments to property owners to improve and pave the dirt roads in the Brady Village section of town. G.L. c. 80, § 1. Residents of the Goodell neighborhood had fought against the Brady Village improvements voted by the board. Thwarted by the board, the Goodell residents are now seeking to divert revenues from the betterment reserve account set up by the Town to reserve betterment payments assessed to property owners. The Goodell residents are petitioning for a town meeting warrant article to appropriate monies from the betterment reserve to fund improvements to their neighborhood. The Goodell residents are also petitioning for a Town Meeting warrant article to appropriate interest monies generated by the Betterment Reserve to fund a local sports program.

- A. How and when is a betterment reserve established?
- B. May monies in the betterment reserve be appropriated for sports program?

G.L. c. 44, § 53J.

6. While fighting a building fire in the City of Shantyville, two City firefighters were injured in the line of duty. The City and the firefighters filed a lawsuit against the building owner claiming that the State Building Code violations in the building caused

the firefighters' injuries. The insurance company for the building owner has expressed a willingness to settle the lawsuit.

- A. What expenses may be compensated as part of the settlement and how are the proceeds accounted for?

G.L. c. 41, § 111F

- 7. The Town of Belicek Heights is presently negotiating a legal settlement for a civil rights claim brought by a town hall employee against a town department head. The town does not have a Settlement of Claims account in its budget. The FY2018 tax rate has not yet been set. The selectboard believes it is in the best interest of the Town to settle the case and raise the necessary amount in the FY2018 tax rate.

- A. Can the Town fund payment of the settlement by raising it in the FY2018 tax levy?
- B. What types of legal claims or expenses can be paid without appropriation and financed by raising the amount in the next tax levy?

G.L. c. 44, § 31

- 8. The Town of Sweetwater established a Surety Revolving Fund, in accordance with G.L. c. 44, § 53G½. The Town adopted the necessary by-law specifying types of financial guarantees required, treatment of investment earnings, standards for compliance, and use of monies in the event of a default on any obligations made. A local developer requested that the DPW Director give permission to close off a sidewalk in order to facilitate the developer's construction of a condominium complex abutting the sidewalk. The DPW Director informed the contractor about the surety bylaw and required that the contractor provide to the Town a monetary sum of \$100,000 to guarantee that the sidewalk would be restored to its prior condition.

- A. May the treasurer invest the surety funds in a stock investment pool he is considering?
- B. The DPW Director has not heard from the contractor in some time, and the contractor has not commenced any development work on the project. May the DPW Director purchase a street sweeper and snowplow truck with the monies?
- C. The developer eventually contacted the DPW Director. It could not obtain funding for the project. Does the Town have to return the financial guarantee? What is the procedure for doing so?

G.L. c. 44, § 53G½

9. The Town of Chadwick's part-time selectboard wants to designate the town administrator to approve vendor bills and payroll?

A. May the Board do so?

G.L. c. 41, § 52

G.L. c. 41, § 56

10. The City of Whoville's Conservation Commission has designated John Jones, a commission member, to sign bills and payrolls for the Commission's employees and expenses.

A. May the Commission designate an alternative in the event John Jones is unavailable?

B. What are the duties of the designee with respect to review of the bills and to the other members of the Commission?

G.L. c. 41, § 52

G.L. c. 41, § 56

STABILIZATION FUNDS; ESTABLISHMENT

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.

APPROVAL OF DEPARTMENTAL BILLS AND TREASURY WARRANTS

General Laws Chapter 41, §§ 52 and 56

Section 52. All accounts rendered to or kept in the departments of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against the city or town to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of

such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. The board of selectmen may designate any 1 of its members for the purpose of approving bills or payrolls under this section; provided, however, that the member shall make available to the board, at the first meeting following such action, a record of such actions. This provision shall not limit the responsibility of each member of the board of selectmen in the event of a noncompliance with this section. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive.

Section 56. The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. For purposes of this section, the board of selectmen and any other board, committee or head of department consisting of more than 1 member authorized to expend money, may designate any 1 of its members to approve all bills, drafts, orders and payrolls; provided, however, that the member shall make available to the board, committee or other department head, at the first meeting following such action, a record of such actions. This provision shall not limit the responsibility of each member of the board in the event of a noncompliance with this section. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83-560, as amended, before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

INJURED ON DUTY PAYMENTS

General Laws Chapter 41, § 111F

Section 111F. Whenever a police officer or fire fighter of a city, town, or fire or water district is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own, or a police officer or fire fighter assigned to special duty by his superior officer, whether or not he is paid for such special duty by the city or town, is so incapacitated because of

injuries so sustained, he shall be granted leave without loss of pay for the period of such incapacity; provided, that no such leave shall be granted for any period after such police officer or fire fighter has been retired or pensioned in accordance with law or for any period after a physician designated by the board or officer authorized to appoint police officers or fire fighters in such city, town or district determines that such incapacity no longer exists. All amounts payable under this section shall be paid at the same times and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such police officer or fire fighter. This section shall also apply to any member of a fire department who is subject to the provisions of chapter one hundred and fifty-two if he is injured at a fire and if he waives the provisions of said chapter. This section shall also apply to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, members of the Massachusetts military reservation fire department and members of the 104th fighter wing fire department and, for the purposes of this section, the Massachusetts Port Authority, the Massachusetts military reservation and the Barnes Air National Guard Base shall be fire districts.

Where the injury causing the incapacity of a firefighter or police officer for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section, was caused under circumstances creating a legal liability in some person to pay damages in respect thereof, either the person so injured or the city, town or fire or water district paying such compensation may proceed to enforce the liability of such person in any court of competent jurisdiction. The sum recovered shall be for the benefit of the city, town or fire or water district paying such compensation, unless the sum is greater than the compensation paid to the person so injured, in which event the excess shall be retained by or paid to the person so injured. For the purposes of this section, "excess" shall mean the amount by which the total sum received in payment for the injury, exclusive of interest and costs, exceeds the amount paid under this section as compensation to the person so injured. The party bringing the action shall be entitled to any costs recovered by him. Any interest received in such action shall be apportioned between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively, inclusive of interest and costs. The expense of any attorney's fees shall be divided between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively.

Whoever intentionally or negligently injures a firefighter or police officer for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section shall be liable in tort to the city, town or fire or water district paying such compensation for all costs incurred by such city, town or fire or water district in replacing such injured police officer or firefighter which are in excess of the amount of compensation so paid.

Notwithstanding the provisions of this section, section 100 or any other general or special law to the contrary, any city, town or district that accepts this paragraph may establish and appropriate amounts to a special injury leave indemnity fund for payment of injury leave compensation or medical bills incurred under this section or said section 100, and may deposit into such fund any amounts received from insurance proceeds or restitution for injuries to firefighters or police officers. The monies in the special fund may be expended, with the approval of the chief executive officer and without further appropriation, for paying expenses incurred under this section or said section 100, including, but not limited to, expenses associated with paying compensation other than salary to injured firefighters or police officers and providing replacement services for the injured firefighters or police officers, in lieu of or in addition to any amounts appropriated for the compensation of such replacements. Any balance in the fund shall

carry over from year to year, unless specific amounts are released to the general fund by the chief executive officer upon a finding that the amounts released are not immediately necessary for the purpose of the fund, and not required for expenses in the foreseeable future.

PROCEEDS FROM SALE OF BONDS; RESTRICTIONS ON USE; DISPOSITION OF 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.

REFUNDING BONDS; ISSUANCE; PRESENT VALUES

General Laws Chapter 44, § 21A

Section 21A. The city council of a city, the board of selectmen of a town and the prudential committee, if any, otherwise, the commissioners of a district, may authorize and provide for the issuance of refunding bonds or notes of the city, town or district for the purpose of paying or refunding all or any designated part of an issue of bonds or notes then outstanding, including the amount of any redemption premium thereon; provided, however, that no such refunding bonds or notes shall be payable over a period longer than the period during which the original bonds or notes so refunded must be paid pursuant to law; and provided, further, that, notwithstanding any

provision of any general or special law, city charter, city ordinance or city council rule or order to the contrary, any vote of the city council of a city authorizing and providing for the issuance of refunding bonds or notes of the city may be introduced and given final passage at 1 meeting of the city council, shall not be subject to any publication requirement, shall not be subject to any referendum provision, and shall be effective upon passage. The first annual payment of principal on account of an issue of refunding bonds or notes shall not be later than the last day of the fiscal year in which any of the bonds or notes being refunded would otherwise have been payable and the annual payments thereafter shall be arranged in accordance with the provisions of section 19; provided, however, that any annual payment earlier than the date on which the first annual payment is required to be made, may be in any amount. Except as otherwise provided in this section, the issuance of such refunding bonds or notes shall be governed by the applicable provisions of this chapter. Refunding bonds or notes issued under this section shall be subject to the same limit of indebtedness, if any, as the bonds or notes refunded by them; provided, however, that upon the issuance of such refunding bonds or notes, the bonds or notes refunded shall no longer be counted in determining any limit of indebtedness of the city, town or district under this chapter or any other applicable provision of law. If such refunding bonds or notes are issued prior to the maturity or redemption date of the original bonds or notes refunded, an amount of the proceeds of the refunding bonds or notes and other moneys then available or to become available to the city, town or district, which moneys may include income to be derived from the investment of such proceeds, sufficient to pay or provide for the payment of the principal, redemption premium, if any, and interest on the bonds or notes so refunded to the date fixed for their payment or redemption shall be held in a separate fund and in trust solely for the payment of such principal, redemption premium and interest. The funds so held may be invested pursuant to section 55 and the income derived from such investment may be expended by the treasurer to pay the principal, redemption premium, if any, and interest on the bonds or notes refunded until they are paid or redeemed; provided, however, that notwithstanding any limitations on the maturity of investments under section 55, any such investment may have a maturity not later than the date fixed for the payment or redemption of the bonds or notes refunded.

The present value of the principal and interest payments due on refunding bonds issued under this section shall not exceed the present value of the principal and interest payments to be paid on the bonds to be refunded, except as otherwise provided in this section. The city, town, or regional school district shall notify the department of education in the event that bonds or notes issued for an approved school project under chapter 645 of the acts of 1948 are refunded under this section and the amount of the state construction grant payable to the city, town, or regional school district shall not be affected by any increase in the amount of interest payable on the refunding bonds or notes, but shall be affected by any decrease in the amount of interest payable on the refunding bonds or notes for school building projects approved after July 1, 1995. Upon receipt of notification from a city, town or regional school district of a decrease in the amount of interest payable related to such projects, the department of education shall recalculate the amount of the state construction grant that is payable to such city, town or regional school district.

If the mayor or city manager in a city, the board of selectmen of a town or the prudential committee of a district determines that the issuance of refunding bonds is reasonable and necessary in order to maintain the tax-exempt status of outstanding bonds or notes of the city, town or district, the official, board or committee may authorize refunding bonds for that purpose, even if the present value of the principal and interest payments due on the refunding bonds exceeds the present value of the principal and interest payments otherwise payable on the bonds to be refunded.

LIABILITIES IN EXCESS OF APPROPRIATIONS FORBIDDEN; EXCEPTIONS

General Laws Chapter 44, § 31

Section 31. No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only upon a declaration by the governor of a state of emergency with respect to the disaster or by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments, awards or payments ordered or approved by a state or federal court or adjudicatory agency may, upon certification by the city solicitor or town council that no appeal can or will be taken and as required by municipal charter, ordinance or by-law, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant 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 aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen, and the district counsel in place of the city solicitor or town counsel.

DEPARTMENTAL REVOLVING FUNDS

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.

OUTSIDE CONSULTANT REVOLVING FUND

General Laws Chapter 44, § 53G

Section 53G. Notwithstanding section 53, any city or town that provides by rules promulgated under section 9 or 12 of chapter 40A, section 21 of chapter 40B, section 81Q of chapter 41 or section 31 of chapter 111, or by rules promulgated by a conservation commission established by a city or town under section 8C of chapter 40 when implementing the authority conferred under

said section 8C of said chapter 40, section 40 of chapter 131, or under any local wetlands ordinance or by-law, or by rules promulgated by any municipal permit or license granting officer or board when implementing authority conferred under any statute, ordinance or by-law, for the imposition of reasonable fees for the employment of outside consultants may deposit such fees in a special account. Such rules shall provide for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the municipality for their review. Said report shall be published in the city or town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.

SURETY REVOLVING FUNDS

General Laws Chapter 44, § 53G^{1/2}

Section 53G 1/2. Notwithstanding section 53, in a city or town that provides by by-law, ordinance, rule, regulation or contract for the deposit of cash, bonds, negotiable securities, sureties or other financial guarantees to secure the performance of any obligation by an applicant as a condition of a license, permit or other approval or authorization, the monies or other security received may be deposited in a special account. Such by-law, ordinance, rule or regulation shall specify: (1) the type of financial guarantees required; (2) the treatment of investment earnings, if any; (3) the performance required and standards for determining satisfactory completion or default; (4) the procedures the applicant must follow to obtain a return of the monies or other security; (5) the use of monies in the account upon default; and (6) any other conditions or rules as the city or town determines are reasonable to ensure compliance with the obligations. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. Monies in the special account may be expended by the authorized board, commission, department or officer, without further appropriation, to complete the work or perform the obligations, as provided in the by-law, ordinance, rule or regulation. This section shall not apply to deposits or other financial surety received under section 81U of chapter 41 or other general or special law.

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.

DEPARTMENT OF REVENUE MATERIALS

Additional Resources

DLS website - www.mass.gov/dls

Municipal Modernization FAQs

Informational Guideline Releases (IGRs)

- 17-14 Special Revolving Funds for Outside Consultant Fees (Supersedes IGR 03-208)
- 17-15 Proceeds from Rental of Municipal Real Estate (Supersedes 91-201)
- 17-16 Special Revolving Funds for Performance Surety Deposits
- 17-20 Stabilization Funds (Supersedes IGR 04-201)
- 17-21 Borrowing
- 17-22 Premiums and Surplus Proceeds for Proposition 2½ Excluded Debt (Supersedes Bulletin 2013-01B)
- 17-23 Overlay and Overlay Surplus (Supersedes IGR 16-104)

Flow Chart - Treatment of Net Premiums and Accrued Interest Received on Bonds or Notes Sold on or after November 7, 2016 - See IGR 17-21 and IGR 17-22

Under G.L. c. 44, § 20 (*after* the Municipal Modernization Act), net premiums and accrued interest on bonds or notes sold on or after 11/7/2016 are not general fund revenue. They must either be:

1. Applied to the costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount (only if the legislative body borrowing vote so authorizes); or
2. Reserved in separate fund for appropriation for capital projects:
 - Project must be one for which may borrow for equal or longer period than loan for which premium received
 - Premium arising from restricted funds project remains subject to restriction
 - If borrowing is the subject of an approved Proposition 2½ debt exclusion, there may be a reduction in the annual excluded amount because G.L. c. 44, s. 20 requires “[a]dditions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.”

FLOW CHART	
1	Was the borrowing a <u>refunding bond</u> issued under G.L. c. 44, § 21A? If yes, go to 7. If no, go to 2.
2	Was the borrowing a <u>single purpose borrowing</u> ? If yes, go to 3. If no, go to 8.
3	Did the legislative body vote that authorized the borrowing include authority to apply the net premium and any accrued interest to the costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount? If yes, go to 4. If no, go to 5.
4	Treasurer is to apply the net premium and any accrued interest to pay costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount.
5	<p>Net premium and accrued interest must be reserved for appropriation 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:</p> <ol style="list-style-type: none"> a. AND - If the borrowing was funded through <u>restricted funds</u>, e.g., community preservation funds or enterprise funds, the reserved net premium and accrued interest remain subject to relevant restriction. The funds may be appropriated for capital projects for which the restricted funds may be spent and for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received. If the original borrowing is financed with community preservation funds, a recommendation of the community preservation committee is also required for any appropriation of the reserved premiums; b. AND - If the borrowing was the <u>subject of an approved Proposition 2½ debt exclusion</u>, go to 6.

Flow Chart - Treatment of Net Premiums and Accrued Interest Received on Bonds or Notes Sold on or after November 7, 2016 - See IGR 17-21 and IGR 17-22

6	<p>When net premiums and accrued interest received on a borrowing subject to an approved Proposition 2 ½ debt exclusion are reserved for appropriation for capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received, then the amount of the annual debt exclusion will be reduced by a premium adjustment as follows:</p> <ol style="list-style-type: none"> a. When the total net premium and accrued interest received at the time of sale is \$50,000 or less, there will be no reduction in the annual excluded amount. (de minimis exception). b. When the total net premium and accrued interest received at the time of the sale is more than \$50,000, there will be a reduction in the excluded amount calculated as show in Exhibit A* below. <p>Note: Net premiums and accrued interest reserved for appropriation are <u>not</u> available for appropriation for the payment of annual debt service of the project.</p>
7	<p>Refunding Bonds - G.L. c. 44, § 21A governs premiums received on refunding bond and requires all “proceeds” of refunding bonds be used to pay off the bonds to be refunded. “Proceeds” of refunding bonds include premiums and accrued interest. Therefore, they must be used to pay off the bonds to be refunded.</p>
8	<p>Multi-Purpose Borrowings - For multi-purpose borrowings, the net premium and accrued interest are allocated to each individual borrowing based upon the proportion that the individual borrowing bears to the total amount borrowed. How a pro-rated premium is treated depends upon the borrowing to which it is allocated. If the borrowing is a refunding bond, see number 7 above for its treatment. For other borrowings, start with number 3 above and work your way through the flow chart.</p>

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)
Community Preservation Fund
Light Plant Receipts (Appropriated by Light Plant Board)

G.L. c. 44, § 53F½

G.L. c. 44B

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

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

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	<u>G.L. c. 60, § 3C</u>
Veteran Assistance Fund	<u>G.L. c. 60, § 3F</u>
Cemetery Perpetual Care Fund	<u>G.L. c. 114, § 25</u>

Examples of Agency Funds are:

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

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	<u>G.L. c. 40, § 5A (cities)</u>
	<u>G.L. c. 40, § 6 (towns)</u>
Stabilization Fund	<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>
Conservation Fund	<u>G.L. c. 40, § 8C</u>
Overlay	<u>G.L. c. 59, § 25</u>

SPECIAL PURPOSE FUNDS QUICK REFERENCE – NON-SCHOOL FUNDS

ENTERPRISE REVENUES

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

TEMPORARY FUNDS (EXPIRE AT YEAR'S END)

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

REVOLVING FUNDS (NO APPROPRIATION NEEDED)

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

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)	<u>G.L. c. 44, § 53</u>
Regional School Excess and Deficiency Funds (Must be certified by DOR)	<u>G.L. c. 71, § 16B½</u>

REVOLVING FUNDS (No Appropriation Needed)

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

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

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

MODEL
DEPARTMENTAL REVOLVING FUND BY-LAW/ORDINANCE
G.L. c. 44, § 53E½

Model should not be used without the advice of municipal counsel
Footnotes are not part of Model and are informational only

ARTICLE/ORDER. To see if the town/city will vote to amend the general by-laws/ordinances of the town/city by adding a new section to establish and authorize revolving funds for use by certain town/city departments, boards, committees, agencies or officers under Massachusetts General Laws Chapter 44, § 53E½, or take any other action relative thereto. **(Majority vote to adopt or amend general by-law/ordinance)**

VOTED: To amend the general by-laws/ordinances of the town/city by adding the following new section:

[ALL]

DEPARTMENTAL REVOLVING FUNDS

1. **Purpose.** This by-law/ordinance establishes and authorizes revolving funds for use by town/city departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.
2. **Expenditure Limitations.**¹ A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law/ordinance without appropriation subject to the following limitations:
 - A. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund [, except for those employed as school bus drivers²].
 - B. No liability shall be incurred in excess of the available balance of the fund.
 - C. The total amount spent during a fiscal year shall not exceed the amount authorized by town meeting/town/city council on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the selectboard and finance committee/mayor and city council.
3. **Interest.**³ Interest earned on monies credited to a revolving fund established by this by-law/ordinance shall be credited to the general fund.

¹ Expenditure limitations set by G.L. c. 44, § 53E½.

² Add exception set by G.L. c. 44, § 53E½ if authorizing a fund for non-mandated school bus service.

³ Interest treatment set by G.L. c. 44, § 53E½.

4. Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this by-law/ordinance, the laws, charter provisions, by-laws/ordinances, rules, regulations, policies or procedures that govern the receipt and custody of town/city monies and the expenditure and payment of town/city funds shall apply to the use of a revolving fund established and authorized by this by-law/ordinance. The town accountant/city auditor shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the town accountant/city auditor provides the department, board, committee, agency or officer on appropriations made for its use.

5. Authorized Revolving Funds.

[FORMAT 1 – Separate subsections establishing each fund]

5.1 _____ Revolving Fund.

5.1.1 Fund Name. There shall be a separate fund called the _____ Revolving Fund authorized for use by the _____ Department/Board/Committee/Agency/Officer.

5.1.2 Revenues.⁴ The town accountant/city auditor shall establish the _____ Revolving Fund as a separate account and credit to the fund all of the **(Insert list of specific fees, charges or other receipts to be credited to the fund)** charged and received by the Department/Board/Committee/Agency/Officer in connection with _____ **(Insert departmental program or activity generating the monies).**

5.1.3 Purposes and Expenditures.⁵ During each fiscal year, the _____ Department Head/Board/Committee/Agency/Officer may incur liabilities against and spend monies from the _____ Revolving Fund for **(Insert list of types of program or activity expenses that may be charged to the fund)** in connection with _____ **(Insert departmental program or activity generating the monies).**

(Insert any program or activity expenses that may not be charged to the fund, i.e., will be funded through a regular budget appropriation, require prior approval or are subject to some other limitation or condition).

5.1.4 Other Requirements/Reports. **(Insert any specific reporting or other requirements the town/city wants to apply to this fund).**

5.1.5 Fiscal Years. The _____ Revolving Fund shall operate for fiscal years that begin on or after July 1, _____. **(Insert any sunset or termination provision that the town/city wants to apply to this fund).**

⁴ G.L. c. 44, § 53E½ requires by-law/ordinance to specify fund revenues.

⁵ G.L. c. 44, § 53E½ requires by-law/ordinance to specify who is authorized to spend from fund and the expenses of the program or activity for which fund monies may be spent.

[FORMAT 2 – Table establishing each fund]

The Table establishes:

- A. Each revolving fund authorized for use by a town/city department, board, committee, agency or officer,
- B. The department or agency head, board, committee or officer authorized to spend from each fund,⁶
- C. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the town accountant/city auditor,⁷
- D. The expenses of the program or activity for which each fund may be used,⁸
- E. Any restrictions or conditions on expenditures from each fund;
- F. Any reporting or other requirements that apply to each fund, and
- G. The fiscal years each fund shall operate under this by-law/ordinance.

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>
Revolving Fund	Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	Fees, Charges or Other Receipts Credited to Fund	Program or Activity Expenses Payable from Fund	Restrictions or Conditions on Expenses Payable from Fund	Other Requirements/ Reports	Fiscal Years

⁶ G.L. c. 44, § 53E½ requires by-law/ordinance to specify who is authorized to spend from fund.

⁷ G.L. c. 44, § 53E½ requires by-law/ordinance to specify fund revenues.

⁸ G.L. c. 44, § 53E½ requires by-law/ordinance to specify the expenses of the program or activity for which fund monies may be spent.

EXAMPLE 1

[Ordinance using Separate Subsection Format]

DEPARTMENTAL REVOLVING FUNDS

1. **Purpose.** This ordinance establishes and authorizes revolving funds for use by city, departments, boards, committees, agencies and officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.
2. **Expenditure Limitations.** A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this ordinance without appropriation subject to the following limitations:
 - A. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
 - B. No liability shall be incurred in excess of the available balance of the fund.
 - C. The total amount spent during a fiscal year shall not exceed the amount authorized by the City Council on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the City Council and Mayor.
3. **Interest.** Interest earned on monies credited to a revolving fund established by this ordinance shall be credited to the general fund.
4. **Procedures and Reports.** Except as provided in General Laws Chapter 44, § 53E½ and this ordinance, the laws, charter provisions, ordinances, rules, regulations, policies or procedures that govern the receipt and custody of city monies and the expenditure and payment of city funds shall apply to the use of a revolving fund established and authorized by this ordinance. The City Auditor shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the City Auditor provides the department, board, committee, agency or officer on appropriations made for its use.
5. **Authorized Revolving Funds.**
 - 5.1 **Anycity Historic House Revolving Fund.**
 - 5.1.1 **Fund Name.** There shall be a separate fund called the Anycity Historic House Revolving Fund for the use of the Public Facilities Department.
 - 5.1.2 **Revenues.** The City Auditor shall establish the Anycity Historic House Revolving Fund as a separate account and credit to the fund all fees charged persons, organizations, or entities and received by the Public Facilities Department to rent or use the Anycity Historic House for conferences, programs, functions or other events.

5.1.3 Purposes and Expenditures. During each fiscal year, the Director of the Anycity Historic House within the Public Facilities Department may incur liabilities against and spend monies from the Anycity Historic House Revolving Fund for contractual services to operate and maintain the facility for use for conferences, programs, functions or other events.

Salaries or wages of employees shall be paid from the annual budget appropriation of the Public Facilities Department and shall not be paid from the fund.

5.1.4 Reports. Within 10 days of the end of each quarter of the fiscal year, the Director of the Anycity Historic must provide the Director of the Public Facilities Department with a report of the revenues and expenditures of the Health Services Revolving Fund during the month and fiscal year to date.

5.1.5 Fiscal Years. The Anycity Historic House Revolving Fund shall operate for fiscal years that begin on or after July 1, 2018.

5.2 Senior Citizen Bus Revolving Fund.

5.2.1 Fund Name. There shall be a separate fund called the Senior Citizen Bus Revolving Fund for the use of the Council on Aging.

5.2.2 Revenues. The City Auditor shall establish the Senior Citizen Bus Revolving Fund as a separate account and credit to the fund all fares, fees and other monies charged or received by the Council of Aging from operating a bus service for senior citizen housing developments.

5.2.3 Purposes and Expenditures. During each fiscal year, the Council on Aging may incur liabilities against and spend monies from the Senior Citizen Bus Revolving Fund for salaries or wages, expenses, lease payments and contractual services to operate a bus service to senior citizen housing developments.

Salaries and wages of not more than one full-time employee and the purchase of any equipment or capital item of \$1,000 or more shall not be paid from the fund.

5.2.4 Fiscal Years. The Senior Citizen Bus Revolving Fund shall operate for fiscal years that begin on or after July 1, 2018.

5.3 Health Services Revolving Fund.

5.3.1 Fund Name. There shall be a separate fund called the Health Services Revolving Fund for the use of the Board of Health.

5.3.2 Revenues. The City Auditor shall establish the Health Services Revolving Fund as a separate account and credit to the fund all fees charged by the Board of Health to provide vaccinations, flu shots or other health services and received by the Board from individuals receiving the services or their health insurance providers.

5.3.3 Purposes and Expenditures. During each fiscal year, the Health Director may incur liabilities against and spend monies from the Health Services Revolving Fund for supplies and equipment used to provide the vaccinations, flu shots or other health services and for educational programs and materials regarding those services.

5.3.4 Fiscal Years. The Health Services Revolving Fund shall operate for fiscal years that begin on or after July 1, 2018.

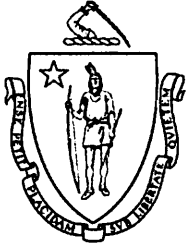
EXAMPLE 2

[By-law using Table Format]

DEPARTMENTAL REVOLVING FUNDS

1. Purpose. This by-law establishes and authorizes revolving funds for use by town, departments, boards, committees, agencies and officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.
2. Expenditure Limitations. A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law without appropriation subject to the following limitations:
 - A. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
 - B. No liability shall be incurred in excess of the available balance of the fund.
 - C. The total amount spent during a fiscal year shall not exceed the amount authorized by Annual Town Meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the Selectboard and Finance Committee.
3. Interest. Interest earned on monies credited to a revolving fund established by this by-law shall be credited to the general fund.
4. Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, charter provisions, by-laws, rules, regulations, policies or procedures that govern the receipt and custody of town monies and the expenditure and payment of town funds shall apply to the use of a revolving fund established and authorized by this by-law. The Town Accountant shall include a statement on the collections credited to the fund, the encumbrances and expenditures charged to each fund and the balance available for expenditure in the regular report the Town Accountant provides the department, board, committee, agency or officer on appropriations made for its use.
5. Authorized Revolving Funds. The Table establishes:
 - A. Each revolving fund authorized for use by a town department, board, committee, agency or officer,
 - B. The department or agency head, board, committee or officer authorized to spend from each fund,
 - C. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant,
 - D. The expenses of the program or activity for which each fund may be used,
 - E. Any restrictions or conditions on expenditures from each fund;
 - F. Any reporting or other requirements that apply to each fund, and
 - G. The fiscal years each fund shall operate under this by-law.

<u>A</u> Revolving Fund	<u>B</u> Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	<u>C</u> Fees, Charges or Other Receipts Credited to Fund	<u>D</u> Program or Activity Expenses Payable from Fund	<u>E</u> Restrictions or Conditions on Expenses Payable from Fund	<u>F</u> Other Requirements/ Reports	<u>G</u> Fiscal Years
Inspectional Services	Building Inspector	Fees charged and received by the Building Inspector for gas, electric and plumbing inspections	Salaries or wages of inspectors performing gas, electric and plumbing inspections and contractual services related to those inspections	Salaries or wages of full-time employees shall be paid from the annual budget appropriation of the Building Inspector and not from the Fund		Fiscal Year 2019 and subsequent years
Hazardous Materials	Fire Chief	Charges assessed to respond to incidents involving the spill or release of hazardous materials	Training, supplies and special equipment needed for fire department personnel to respond to hazardous materials incidents			Fiscal Year 2019 and subsequent years
Teen Center	Director of Teen Center within the Public Facilities Department	Teen center snack bar receipts, dance admission charges, center activity fees, charges and receipts	Expenses, supplies and contractual services to operate the Teen Center	Salary or wages of no more than one part-time employee shall be paid from the Fund Salary or wages of full-time director shall be paid from the annual budget appropriation of the Public Facilities Department and not from the Fund	Within 10 days of the end of month, the Director must provide a report on Fund revenues and expenditures during the month and fiscal year to date to the Director of the Public Facilities Department	Fiscal Year 2019 and subsequent years



MAURA HEALEY
ATTORNEY GENERAL

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July 21, 2017

Dolores Harasyko, Town Clerk
Town of Sandisfield
P.O. Box 163
Sandisfield, MA 01255

**RE: Sandisfield Annual Town Meeting of May 13, 2017 - Case # 8422
Warrant Article # 68 (General)**

Dear Ms. Harasyko:

Article 68 - We approve Article 68 from the May 13, 2017 Sandisfield Annual Town Meeting.

Article 68 amends the Town's general by-laws by inserting in Chapter IV a new Section 6, pertaining to revolving funds. General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." See G.L. c 44, § 53 and 53E ½. In addition, receipts reserved by law (for example betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance."

<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>

and an "Overview of Statutory Treatment of Municipal Revenues:"

<http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law created under Article 68. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from "fees, charges or other receipts" associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be "made not later than the beginning of the fiscal year in which the fund shall begin." The Town established these revolving funds by by-law at a vote of Town Meeting on May 13, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 68. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on the Town's revolving funds by-law.

1. Section F - Authorized Revolving Funds.

General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. A by-law adopted pursuant to G.L. c. 44, § 53E ½, must specify: "(1) the program 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...town may impose." (emphasis added).

The revolving funds established under Article 68 provide as follows:

Board of Health	Sanitary Inspector	Permits & inspections
Building Dept.	Plumbing Inspector	Permits & inspections
Building Dept.	Building Inspector	Permits & inspections
Building Dept.	Wiring Inspector	Permits & inspections
Building Dept.	Gas Inspector	Permits & inspections
Dog Licensing	Town Clerk	Fees & charges from dog licensing fees
Transfer Station	Board of Selectmen	Fees & charges from

Sticklers		transfer station sticker fees
Legal Ad Fees	Town Accountant	Fees & charges related to hearings

The by-law does not appear to include information about "the program or activities for which the revolving fund may be expended" as required by G.L. c. 44 § 53E ½. The Town should consult with Town Counsel to determine whether a future amendment of Article IV, Section 6 is needed to ensure compliance with the requirements of G.L. c 44, § 53E ½.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
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cc: Town Counsel Brian Maser



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August 3, 2017

Mary F. Watson, Town Clerk
Town of Monson
110 Main Street
Monson, MA 01057

**RE: Monson Annual Town Meeting of May 8, 2017 - Case # 8373
Warrant Article # 4 (General)**

Dear Ms. Watson:

Article 4 - We approve Article 4 from the May 8, 2017 Monson Annual Town Meeting.

Article 4 amends the Town's general by-laws to add a new Article 34, "Departmental Revolving Fund Bylaw." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." See G.L. c 44, §§ 53 and 53E ½. In addition, receipts reserved by law (for example, betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance."

<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>

and an “Overview of Statutory Treatment of Municipal Revenues:”

<http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law adopted under Article 4. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from “fees, charges or other receipts” associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be “made not later than the beginning of the fiscal year in which the fund shall begin.” The Town established these revolving funds by by-law at a vote of Town Meeting on May 8, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 4. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on certain revolving funds in the by-law.

1. Municipal Technology.

Pursuant to the provisions of G.L. c. 44, § 53E ½, the Town has established several departmental revolving funds, including the “Municipal Technology” fund. The revenue source for the Municipal Technology Fund is “100% of proceeds of the cable television licensing agreement.”

General Laws Chapter 44, Section 53E ½, prohibits the establishment of a revolving fund for receipts of “a cable television access service or facility.” According to DOR/DLS, monies received and spent for cable television public, educational and governmental (PEG) access facilities and operations may be deposited into either an Enterprise Fund (G.L. c. 44, § 53F ½) or a Receipts Reserve Fund (G.L. c. 44, § 55F ¾), which are local acceptance statutes. If neither option is accepted, the monies belong to the general fund. The DOR/DLS Informational Guideline Release (IGR) 2016-102 on this topic can be found here:

<http://www.mass.gov/dor/docs/dls/publ/igr/2016/igr16-102.pdf>

The DOR/DLS has extended the deadline for municipalities to comply with one of these options (or alternatively to credit the receipts to the general fund), until June 30, 2018. See page 3, <http://www.mass.gov/dor/docs/dls/publ/bull/2017/i-boa-2017-05b.pdf>. The Town should

consult with Town Counsel and DOR/DLS to ensure that cable receipts are accounted for properly.

2. COA Home Modification.

The by-law also establishes a "COA Home Modification" revolving fund, with funds to be expended by the Monson Council of Aging. The revenue source is "Town Meeting appropriation from Community Preservation Funds." The program or activity supported by the revolving fund is described as "[t]o pay expenses associated with providing home modifications to ensure safe and handicap accessible residences for our elderly and disabled town residents, who income qualify for grants."

As provided in more detail above, according to DOR/DLS, not all receipts may lawfully be placed in a revolving fund. General Laws Chapter 44, Section 53E ½, specifically prohibits "receipts reserved by law or as authorized by law for expenditure for a particular purpose" from being used as a revenue source for a revolving fund. Community preservation funds (G.L. c. 44B) constitute receipts authorized by law for expenditure for a particular purpose. Therefore, those funds cannot be placed in a departmental revolving fund. We encourage the Town to discuss this issue in more detail with Town Counsel and the DOR/DLS.

3. COA Memorial Garden.

The by-law also establishes a "COA Memorial Garden" fund. The revenue source for the COA Memorial Garden fund is "100% of gifts donated to the Monson Memorial Garden."

The by-law states that receipts from "gifts donated" will be deposited into this revolving fund. However, it is unclear whether the "gifts donated" are actually a "fee" for programs and services, or if the donation is a true "gift." General Laws Chapter 44, Section 53A, pertains to the acceptance and expenditure of grants and gifts, and requires:

An officer or department of any...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 towns with the approval of the board of selectmen...

Further, Section 53A provides that "[n]otwithstanding 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." The Town should consult with Town Counsel to ensure that any gifts or donations deposited in the "COA Memorial Garden" revolving fund comply with the requirements of G.L. c. 44, § 53A and § 53E ½.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

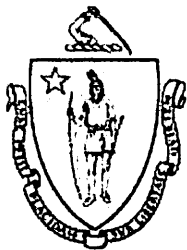
Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

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August 7, 2017

Patricia Dzuris, Town Clerk
Town of Chelmsford
50 Billerica Road
Chelmsford, MA 01824

Re: Chelmsford Annual Town Meeting of April 24, 2017 - Case # 8327
Warrant Article # 22 (Zoning)
Warrant Articles # 15, 25, 26, 27, and 28 (General)

Dear Ms. Dzuris:

Articles 15, 22, 25, 26, 27, and 28 - We approve Articles 15, 22, 25, 26, 27, and 28 from the Chelmsford April 24, 2017, Annual Town Meeting. Our comments on Article 15 are provided below.

Article 15 - Article 15 amends Chapter 35 of the Town's general by-laws by adding a new Section 35-6, "Departmental Revolving Funds." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." See G.L. c 44, §§ 53 and 53E ½. In addition, receipts reserved by law (for example, betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, community preservation funds under G.L. c.

44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance:"

<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>

and an "Overview of Statutory Treatment of Municipal Revenues:"

<http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law established under Article 15. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from "fees, charges or other receipts" associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be "made not later than the beginning of the fiscal year in which the fund shall begin." The Town established these revolving funds by by-law at a vote of Town Meeting on April 24, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 15. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on certain revolving funds.

A. Sale of Used Police and Fire Vehicles.

Pursuant to the provisions of G.L. c. 44, § 53E ½, the Town has established several departmental revolving funds, including "Police Cruiser" and "Fire Safety Equipment" revolving funds. The by-law states that the revenue source for these funds are revenue from the sale of used police vehicles and fire safety vehicles, respectively.

It appears that the Town intends to deposit proceeds from the sale of municipal property – used police and fire safety vehicles - into departmental revolving funds, rather than the Town's general fund. According to the DOR/DLS, the sale of municipal property is not properly categorized as a departmental "fee, charge or other receipt." See G.L. c. 44, § 53E ½. In addition, the sale of municipal property, in this case police and fire safety vehicles, is not properly categorized as a departmental program or activity. See G.L. c. 44, § 53E ½. Thus, the Town must ensure that revenue received from the sale of municipal property is deposited in the general fund, as required by G.L. c. 44, § 53. ("All moneys received by any...town...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...town...treasury.”) Finally, when selling municipal property, the Town must comply with the procedures of G.L. c. 30B (the Uniform Procurement Act) as well as any local by-laws of the Town pertaining to the sale or disposal of property. The Town should discuss these issues further with Town Counsel and DOR/DLS.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
Municipal Law Unit
Office of the Attorney General
Ten Mechanic Street, Suite 301
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cc: Town Counsel John W. Giorgio



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September 11, 2017

Carol A. Skerrett, Town Clerk
Town of Dunstable
511 Main Street
Dunstable, MA 01827

Re: Dunstable Annual Town Meeting of May 8, 2017 – Case # 8502
Warrant Articles # 32, 33, and 34 (Zoning)
Warrant Articles # 19, 28, 29, 30, 31, and 35 (General)

Dear Ms. Skerrett:

Articles 19, 28, 29, 30, 31, 32, 33, 34, and 35 - We approve Articles 19, 28, 29, 30, 31, 32, 33, 34, and 35 from the May 8, 2017, Dunstable Annual Town Meeting. Our comments on Articles 19, 28, and 35 are provided below.

Article 19 - Article 19 amends the Town's general by-laws by inserting a new "Departmental Revolving Funds Bylaw." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53 E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53 E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." See G.L. c 44, § 53 and 53E ½. In addition, receipts reserved by law (for example betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance:"

<http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf>

and an "Overview of Statutory Treatment of Municipal Revenues:"

<http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law created under Article 19. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from "fees, charges or other receipts" associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be "made not later than the beginning of the fiscal year in which the fund shall begin." The Town established these revolving funds by by-law at a vote of Town Meeting on May 8, 2017 apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 19. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on certain revolving funds in the by-laws.

A. Recreation and COA Transport Revolving Funds.

The Town established "Recreation" and "COA Transport" revolving funds that are funded in part by "donations." It is unclear whether the "donations" referred to are actually "fees" for programs and services, or if the donations are true "gifts." General Laws Chapter 44, Section 53A, pertains to the acceptance and expenditure of grants and gifts, and requires:

An officer or department of any...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 towns with the approval of the board of selectmen...

Further, Section 53A provides that "[n]otwithstanding 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.” The Town should consult with Town Counsel to ensure that any donations deposited in the Recreation and COA Transport revolving funds comply with the requirements of G.L. c. 44, § 53A and § 53E ½.

Article 28 - Article 28 amends the Town’s general by-laws by adding a new “Streets, Ways, and Driveways Bylaw.” The new by-law establishes uniform design and layout standards for new driveways and entrances. Our comments on the new by-law are provided below.

A. Section 3 “Rules and Regulations.”

Section 3 authorizes the Board of Road Commissioners, as the local official charged with administering, implementing, and enforcement the by-law, to adopt rules and regulations to effectuate the purposes of the by-law. Local officials, boards and committees cannot adopt rules or regulations that are inconsistent with state law. *See American Lithuanian Naturalization Club v. Board of Health of Athol*, 446 Mass. 310, 321 (2006). We suggest that the Town discuss with Town Counsel any proposed rules or regulations adopted pursuant to Section 3 to ensure that they comply with state law.

B. Section 5 “Performance Bond.”

Section 5 requires a bond to ensure that work completed under the by-law is satisfactory and that any public ways are replaced and restored. General Laws Chapter 44, Section 53, requires that performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town’s general fund (and subject to future appropriation), unless the Legislature has expressly made other provisions that are applicable to such receipt.

On August 9, 2016, the State adopted Chapter 218 of the Acts of 2016, “An Act Modernizing Municipal Finance and Government,” which took effect on November 7, 2016, unless otherwise noted in the Act. Among other amendments, Section 92 of the Act, amends G.L. c. 44 by inserting a new Section 53G ½, which provides as follows:

Notwithstanding section 53, in a...town that provides by by-law...rule, regulation or contract for the deposit of cash, bonds, negotiable securities, sureties or other financial guarantees to secure the performance of any obligation by an applicant as a condition of a license, permit or other approval or authorization, the monies or other security received may be deposited in a special account. Such by-law...rule or regulation shall specify: (1) the type of financial guarantees required; (2) the treatment of investment earnings, if any; (3) the performance required and standards for determining satisfactory completion or default; (4) the procedures the applicant must follow to obtain a return of the monies or other security; (5) the use of monies in the account upon default; and (6) any other conditions or rules as the...town determines are reasonable to ensure compliance with the obligations. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. Monies in the special account may be expended by the authorized board, commission, department or officer, without further appropriation, to complete the work or perform the obligations, as

provided in the by-law...rule or regulation. This section shall not apply to deposits or other financial surety received under section 81U of chapter 41 or other general or special law.

In order for the Town to deposit bond proceeds into a special account, the Town must comply with the requirements of G.L. c. 44, § 53G ½. In the absence of compliance with G.L. c. 44, § 53G ½, bond proceeds must be deposited with the Town Treasurer and made part of the Town's general fund, pursuant to G.L. c. 44, § 53. The Town should consult with Town Counsel on the proper application of Section 5.

C. Section 7 "Inspection and Fees."

Section 7 authorizes the Board of Road Commissioners to inspect a proposed work site before, during and after construction. Municipal officials do not have the authority to conduct non-emergency warrantless searches of private property without permission of the owner." Commonwealth v. John G. Grant & Sons Co., Inc., 403 Mass. 151, 159-60 (1988). The U.S. Supreme Court has held that warrants are required for non-emergency administrative inspections. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1966) (requiring warrant for health inspector non-emergency entry); See v. City of Seattle, 387 U.S. 541 (1966) (requiring warrant for non-emergency inspection by fire chief). "[A]dministrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure." See, 387 U.S. at 545. Massachusetts courts have similarly recognized that "statutes can no longer convey blanket powers of warrantless entries." Commonwealth v. Hurd, 51 Mass. App. Ct. 12, 17 (2001) (holding that G.L. c. 129, § 7, does not authorize warrantless searches for animal inspection). The Town should consult with Town Counsel to ensure that the Section 7 is applied in a manner that is consistent with state law and applicable constitutional requirements.

Article 35 - Article 35 adds a new Municipal Stormwater Discharge Bylaw to the Town's general by-laws. The stated intent of the by-law is to fulfill the Town's obligations under federal law and the Town's National Pollution Discharge Elimination System (NPDES) permit. *See* Section 1, "Purpose."

A. Law Applicable to Article 35.

Both the federal government and the Commonwealth of Massachusetts have enacted certain regulations relative to stormwater management by municipalities. For instance, the federal Environmental Protection Agency has enacted requirements pertaining to operators of municipal separate storm sewers. *See* 40 C.F.R. § 122.34. The Massachusetts Department of Environmental Protection (the Department) has promulgated regulations at 310 C.M.R. § 10.05 (6) (k)-(q) ("Stormwater Management Standards"), pursuant to G.L. c. 131, § 40. Furthermore, the Department has promulgated stormwater regulations at 314 C.M.R. §§ 3.04 and 5.04, pursuant to G.L. c. 21, §§ 26-53 (the Massachusetts Clean Waters Act). Any local regulation of stormwater management must be supplementary to and consistent with the regulation of such matters by the federal government and the Commonwealth of Massachusetts. Operators of municipal separate storm sewers are required to develop and implement a stormwater management plan that meets certain minimum measures. *See* 40 C.F.R. § 122.34.

The federal regulations suggest that municipalities adopt local laws or regulations as part of an effective stormwater management plan. *See, e.g.*, 40 C.F.R. § 122.34 (b) (3) (ii) (B); 40 C.F.R. § 122.34 (b) (4) (ii) (A); 40 C.F.R. § 122.34 (b) (5) (ii) (B). We understand the new by-law is part of Town's efforts to effectively manage stormwater.

B. Comments on Specific Sections of the Municipal Stormwater Discharge Bylaw.

1. Section 2 "Definitions."

Section 2 defines "Person" as:

[a]n individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

We approve the definition of "Person." However, the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). *See also* Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. *Cf. First Nat'l Bank v. Missouri*, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if "such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies"); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town's enforcement of the new by-law cannot impermissibly interfere with the operation of state or federal entities. The Town should discuss the proper application of this definition with Town Counsel.

2. Section 5 "Responsibilities For Administration."

Section 5.2 authorizes the Planning Board to adopt rules and regulations to administer the by-law. As provided in more detail above, local officials, boards and committees cannot adopt rules or regulations that are inconsistent with state law. We suggest that the Town discuss with Town Counsel any proposed rules or regulations adopted pursuant to Section 5.2 to ensure that they comply with state law.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and

(2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
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