Massachusetts Department of Revenue
Division of Local Services

SPECIAL FUNDS

Enterprise, Community Preservation and other Special Fund Issues

2013

Workshop B

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www.mass.gov/dls

SPECIAL FUNDS
Revolving, Community Preservation and Enterprise Funds

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Discussion Topics

SCHOOL DEPARTMENT RECEIPTS
CASE STUDY 1

Flatbroke's school department had its budget reduced for FY14. It anticipates receiving the following monies during the year and wants to retain them to supplement its budget:

- Medicaid reimbursements for medical services provided to low-income special needs students.
- Fees charged for drivers' education training.
- Fees charged for non-mandated bus service.
- Fees charged for pre-kindergarten and after school programs.
- Monies raised by the Class of 2014 from student run car washes, bike-a-thons and a variety of other student fundraisers.
- Monies received on a claim under the town's insurance policy for loss due to the theft of Class of 2014 student funds by a teacher serving as the class advisor.
- Monies left in the account for the Class of 2012.
- Fees charged for students to park in school parking lots.
- Lease payments received for the annual rental of a vacant wing of the elementary school.
- Fees charged to an informal basketball group that rents the gym on Monday nights.
- Monies raised by the Boosters Club to help defray the costs of various athletic and other programs, including proceeds from a raffle for the specific purpose of buying new boys and girls track equipment.

Questions:

1. Can the school committee retain and spend any of these revenues?

2. If so, how may they be used?

3. If not, by what process may they be spent and for what purposes?

COMMUNITY PRESERVATION FUND
CASE STUDY 2

Anytown accepted the CPA in 2010 by petition. A surcharge of 2% was adopted with exemptions for $100,000 of the value of each taxable parcel of residential real property. Anytown has a large number of buildings listed on the state register of historic places in need of rehabilitation. Mostly, they are owned by non-profits and private citizens. Anytown also has robust hotel and restaurant industries and receives substantial revenue from its local option meals and room occupancy taxes. The town held its annual town meeting in May and adopted its FY14 operating and CPA budgets. The town has not yet set its tax rate.

1. Due to 2012 CPA amendments that added the option under G.L. c. 44B, § 3(b½), some citizens want the town to increase its local contribution by "adding" some room occupancy and meals tax revenue to the community preservation fund.
   - Can Anytown automatically take advantage of the § 3(b½) option or is there some process it needs to follow first?
   - Assuming the town has done whatever is required to take advantage of §3(b½), can local room occupancy and meals taxes be "deposited" into the community preservation fund?
   - If so, how are the "deposits" accomplished?

2. Others in town, however, do not like the CPA and want to reduce the CPA surcharge to .1%, effective July 1st of the current fiscal year.
   - What process would be required?
   - When could the change become effective?
   - Would it matter if the town had outstanding debt for an open space acquisition?

3. The local Historical Society has proposed to the Community Preservation Committee that the town set up a departmental revolving fund for the deposit of CPA funds for a loan program to rehabilitate Anytown's historic buildings. The loan repayments would be paid back into the revolving fund to be re-loaned to rehabilitate other properties. A loan administrator would administer the funds, review loan applications, award the loans and monitor repayments and re-loan the funds when there is sufficient funds in the account.

   - Can the town award loans of CPA funds?
   - Can a revolving account be established for this purpose?
   - What issue(s) arise if the buildings are privately owned?
   - Who would approve the bills / payments for these projects?

ENTERPRISE FUND
CASE STUDY 3

The Town of Sunnydale has water and sewer enterprise funds. When it embarked upon construction of the new sewer extension, it assessed estimated sewer assessments. A few years later, once the final costs were determined, the town assessed the actual sewer assessments. Most taxpayers apportioned their actual assessments (net of estimated payments made) over 20 years. The town borrowed to pay for the construction of the sewer and is paying the debt service with enterprise funds. The fund is doing very well and receives "way more" than it needs to cover the costs of the enterprise. This has resulted in considerable retained earnings.

1. How should the revenue from the estimated sewer assessments be treated?

2. Can the revenue received from the actual assessments be reserved for the payment of the debt service on the sewer construction?

3. General fund revenues are not keeping pace with expenditures. To avoid a borrowing in advance of revenue, can the town borrow from the enterprise retained earnings if it repays the funds before the end of the fiscal year?

4. The town recently discovered that when the enterprise fund was established four years ago, several new water department trucks (not funded with enterprise funds) were "transferred" to the enterprise and have been used by the enterprise since that time. At that time, the town had a better cash flow and paid for the trucks with cash. Can the town repay itself now for the trucks with enterprise funds? With retained earnings?

5. Can other departments get paid for the services they provide to the enterprise? If so, how? Can the enterprise get paid for the services it provides to other municipal departments? If so, how?

6. The ratepayers are complaining about high water and sewer bills. What are the considerations?

DEPARTMENTAL REVOLVING FUND
Case Study 4

The town of Serenity has voted to set up two departmental revolving funds, both for the Council on Aging. One fund is for the Meals Program and the other is for the Council on Aging Transportation (Bus) Program. The bus revolving fund is new, but the meals revolving fund is not new – it has always "made money". The town also regularly receives gifts and grants for the meals program and expects the same with the new bus program.

1. How does the town "start up" the funding for the bus program?

   - Can the town appropriate $5000 from free cash into the revolving fund as "seed money" to start it out?
   - Can the town transfer funds from the meals revolving fund to the bus revolving fund?
   - Can gifts and grants be deposited into the revolving fund?
   - Can the town use funds other than the revolving fund to operate the bus program? If so, what are they?
   - If the town uses other funds to start up the program, can it pay those funds back once the program is up and running?

2. The town wants to hire bus drivers for the bus program and possibly other employees.

   - Can it use revolving funds to do so?
   - If so, are there any issues?

3. Other town departments provide services with regard to the revolving fund, including the town accountant. Can the revolving fund be charged for these services?

4. The Council on Aging Director forgot to submit the articles for the adoption of the bus revolving account and the renewal of the meals revolving account.

   - Can the articles be brought forward at the special town meeting in the fall?
   - What happens to the funds in the meals revolving account if it is not re-authorized?

5. The town has not accepted G.L. c. 40, § 22F regarding the setting of fees. Does this raise any issues regarding the fees it is charging for the meals and bus programs?

6. Is there any issue with the fact that the meals revolving fund "has always made money"?

STATUTORY TREATMENT OF MUNICIPAL REVENUES

GENERAL FUND REVENUES (Estimated Receipts)

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. Revenue belongs to the general fund unless otherwise provided by statute. G.L. c. 44, § 53.

Anticipated general fund revenues for the fiscal year may be appropriated as the tax levy (raise and appropriate) 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

Particular revenues segregated from the general fund into a separate fund and earmarked for expenditure for specified purposes by statute. Special revenue funds are classified 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)

Annual revenue streams segregated from the general fund into a separate fund to separately budget and account for services that generate, or for purposes supported by, those revenues. Includes enterprise funds for services financed and delivered in a manner similar to private enterprises in order to account for all costs, direct or indirect, of providing the goods or services.

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

Receipts Reserved for Appropriation (Actual Collections)

Receipts from a specific revenue source segregated from general fund into a separate fund and earmarked for appropriation for specified purposes by statute. Appropriations are limited to actual collections on hand and available.

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

Revolving Funds (Actual Collections)

Receipts from a specific revenue source segregated from 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 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 spend from actual collections on hand and available.

Arts Lottery Council Monies	G.L. c. 10, § 58
School Rental Receipts	G.L. c. 40, § 3
Parks and Recreation Fees	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Outside Consultants Revolving (Planning/Zoning/Health/Conservation)	G.L. c. 44, § 53G
Student Athletic and Activities	G.L. c. 71, § 47

TRUST AND AGENCY FUNDS

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

Examples of Trust Funds are:

Scholarship Fund	G.L. c. 60, § 3C
Local Education Fund	G.L. c. 60, § 3C
Cemetery Perpetual Care Fund	G.L. c. 114, § 25

Examples of Agency Funds are:

Police Outside Detail Fund	G.L. c. 44, § 53C
Student Activity Agency Account	G.L. c. 71, § 47
Sporting License Receipts	G.L. c. 131, § 18

APPROPRIATED SPECIAL PURPOSE RESERVE FUNDS

Statutory funds to account for allocation of general revenues reserved for particular purposes by the appropriating authority.

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

SPECIAL PURPOSE FUNDS QUICK REFERENCE

Enterprise Revenues

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

Temporary Funds (Expire At Year's End)

Reserve Fund	G.L. c. 40, § 5A (cities) G.L. c. 40, § 6 (towns)
Free Cash (Must be certified by DOR)	G.L. c. 59, § 23
Enterprise Retained Earnings (Must be certified by DOR)	G.L. c. 44, § 53F½ G.L. c. 59, § 23
Overlay Surplus	G.L. c. 59, § 25

Revolving Funds (No Appropriation Needed)

Arts Lottery Council Monies	G.L. c. 10, § 58
School Rental Receipts	G.L. c. 40, § 3
Centennial Celebration	G.L. c. 40, § 5H
Performance Bond Forfeitures (Up to $100,000 by local option)	G.L. c. 41, § 81U
Expedited Permitting Fees	G.L. c. 43D, § 6(b)
Special Detail Funds	G.L. c. 44, § 53C
Parks and Recreation Fund	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Energy Revolving Loan Fund	G.L. c. 44, § 53E¾
Outside Consultants Revolving Fund (Planning/Zoning/Health/Conservation)	G.L. c. 44, § 53G
Anniversary Celebration Fund	G.L. c. 44, § 53I
Affordable Housing Trust Fund	G.L. c. 44, § 55C
Educational TV Trust Fund	G.L. c. 71, § 13H
Culinary Arts Programs	G.L. c. 71, § 17A
School Day Care Receipts	G.L. c. 71, § 26C
Student Athletic and Activities	G.L. c. 71, § 47
Student Activity Agency	G.L. c. 71, § 47
Community Schools Programs	G.L. c. 71, § 71C
Adult Continuing Education	G.L. c. 71, § 71E
Use of School Property	G.L. c. 71, § 71E
Non-resident Students' Tuition	G.L. c. 71, § 71F
Vocational Education Programs	G.L. c. 74, § 14B
School Choice	G.L. c. 76, § 12B(O)
Law Enforcement Trust	G.L. c. 94C, § 47
Wetlands Protection Fund	G.L. c. 131, § 40 St. 1997, c. 43, § 218 St. 1998, c. 194, § 349
Multi-community Yard Waste Program	St. 1993, c. 179
School Bus Advertising Receipts	St. 2002, c. 184, § 197
Extended Election Polling Hours	St. 1983, c. 503
School Lunch Fund	St. 1948, c. 548

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

Fingerprinting Fees (local portion) Receipts Reserved	G.L. c. 6, § 172B½
Tax Credit Bond Proceeds	G.L. c. 44, § 21B
Self-Insurance Health Fund	G.L. c. 32B, § 3A
Other Post employment Benefits (OPEB) Liability Trust Fund	G.L. c. 32B, § 20
Stabilization Fund	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Ambulance Receipts Reserved	G.L. c. 40, § 5F
Beach and Pool Receipts Reserved	G.L. c. 40, § 5F
Golf Course Receipts Reserved	G.L. c. 40, § 5F
Skating Rink Receipts Reserved	G.L. c. 40, § 5F
Waterways Improvement Fund	G.L. c. 40, § 5G G.L. c. 60B, § 2(i)
Conservation Fund	G.L. c. 40, § 8C
Recycling Commission Fund	G.L. c. 40, § 8H
Building Insurance Fund	G.L. c. 40, § 13
Workmen's Compensation Fund	G.L. c. 40, § 13A
Parking Meter Fees Receipts Reserved	G.L. c. 40, § 22A
Off-street Parking Receipts Reserved	G.L. c. 40, §§ 22B & 22C
Commission on Disabilities Fund	G.L. c. 40, § 22G
Compensated Absences Fund	G.L. c. 40, § 13D
Bond Proceeds	G.L. c. 44, § 20
State Highway and Water Pollution Funds	G.L. c. 44, § 53
Insurance/Restitution Proceeds (Up to $20,000)	G.L. c. 44, § 53
Lost School Books/Industrial Arts Supplies	G.L. c. 44, § 53
Grants and Gifts	G.L. c. 44, § 53A G.L. c. 71, § 37A
Sale of Real Estate Proceeds	G.L. c. 44, § 63
Community Preservation Fund	G.L. c. 44B, § 7
Overlay	G.L. c. 59, §§ 25 & 70A
Local Education Fund	G.L. c. 60, § 3C
Scholarship Fund	G.L. c. 60, § 3C
Low Income Seniors and Disabled Tax Relief Fund	G.L. c. 60, § 3D
Wastewater Disposal Receipts Reserved	G.L. c. 83, § 1G
Estimated Sewer Betterments	G.L. c. 83, § 15B
Bicyclist Traffic Fines Receipts Reserved	G.L. c. 85, § 11E
Non-Resident Student Motor Vehicle Registration Fines Receipts Reserved	G.L. c. 90, § 3½
Weight and Measure Fines Receipts Reserved	G.L. c. 98, § 29A
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A
Cemetery Sale of Lots Fund	G.L. c. 114, § 15
Cemetery Perpetual Care Funds	G.L. c. 114, § 25
Spay and Neuter Deposits	G.L. c. 140, § 139A
Building and Fire Code Enforcement Fines Receipts Reserved	G.L. c. 148A, § 5

MODEL
MULTIPLE DEPARTMENTAL REVOLVING FUNDS ARTICLE AND VOTE

Article 5 - DEPARTMENTAL REVOLVING FUNDS AUTHORIZATION. To see if the town will vote to authorize revolving funds for certain town departments under Massachusetts General Laws Chapter 44, § 53E½ for the fiscal year beginning July 1, 2014, or take any other action relative thereto.

Motion – That the town establish revolving funds for certain town departments under Massachusetts General Laws Chapter 44, § 53E½ for the fiscal year beginning July 1, 2014, with the specific receipts credited to each fund, the purposes for which each fund may be spent and the maximum amount that may be spent from each fund for the fiscal year (if optional information included (shaded columns) then insert: the disposition of the balance of each fund at the end of the current fiscal year and restrictions on expenditures that may be made from each fund), as follows:

Revolving Fund	Authorized to Spend Fund	Revenue Source	Use of Fund	FY15 Spending Limit[1]	Disposition of FY14 Fund Balance (Optional)	Spending Restrictions or Comments (Optional)
Hazardous Materials	Fire Chief	Fees charged to persons spilling or releasing hazardous materials	Training and special equipment needed to respond to hazardous materials incidents	$15,000	New fund	
Title V Inspection	Board of Health	Septic system inspection fees	Salaries of inspectors or contractual services related to septic system inspections	$40,000	Balance available for expenditure	
Teen Center	Teen Center Director	Teen center snack bar receipts, dance admission charges, activity charges and receipts	Expenses, supplies and contractual services to operate Teen Center	$15,000	Balance available for expenditure	Fund may not be spent for salaries of more than one part-time employee. Full-time director salary funded in annual budget
Senior Citizens Bus	Council on Aging	Bus user fees	Salaries, expenses, contractual services to operate bus service to senior citizen housing developments and debt service on bus purchased for program	$50,000	$5,000 of balance available for expenditure, remainder to revert to General Fund	Fund may not be spent for salaries of more than two full-time employees, or any capital item over $500
TOTAL SPENDING[2]				$120,000		

[1] FY15 per department spending limit is $100,000 (1% of FY14 levy of $10,000,000)
[2] FY15 total spending limit is $1,000,000 (10% of FY14 levy of $10,000,000)

SAMPLE ENTERPRISE FUND VOTE

MOTION: I move that the Town appropriate **$467,000** from Water and Sewer Enterprise Revenues and **$50,000** from Water and Sewer Enterprise Retained Earnings to defray Water and Sewer direct costs, and that **$147,000**, as appropriated under Article X, be used for Water and Sewer indirect costs, all to fund the total costs of operations of the Water and Sewer Enterprise as follows:

WATER & SEWER DEPARTMENT	
Estimated Revenues	
User fees	$575,000
Betterments	25,000
Investment Income	14,000
Total Estimated Revenues	**$614,000**
Retained Earnings	50,000
Total Available for Appropriation	**$664,000**
Budget (Appropriated this Article)	
Personal Services	$254,000
Expenses	8,000
Debt Service*	125,000
Capital Outlay*	45,000
Extraordinary/Unforeseen Expenses	10,000
Budgeted Reserve	75,000
Total Direct Costs - to be appropriated	**$517,000**

Water & Sewer Indirect Costs to be appropriated in General Budget - Article X (*Informational only)*	
Health Insurance	$61,000
FICA	$3,000
Pensions	$29,000
Accounting Dept.	$15,000
Collecting Dept.	$32,000
Treasury Dept.	$7,000
Total Indirect Costs	***$147,000***

TOTAL ENTERPRISE COSTS $664,000

**Note: May be budgeted as direct or indirect costs.*

SAMPLE
COMMUNITY PRESERVATION ACT SURCHARGE AMENDMENT
G.L. c. 44B, § 16(a)

Legislative Body Vote

To amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from __ per cent to __ percent of the taxes assessed annually on real property, effective for fiscal years beginning on or after July 1, _____.

OR

To adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for (type exemption), effective for fiscal years beginning on or after July 1, _____.

OR

To amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from ___percent to ____(not less than 1) percent and approve appropriation to the Community Preservation Fund of additional municipal revenues pursuant to Section 3(b½) of Chapter 44B up to ____ (not more than 2) _____ percent of the taxes assessed annually on real property, effective for fiscal years beginning on or after July 1, _____.

Ballot Question – Amendments (Please refer to Elections Division Website)

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

FAIR AND CONCISE SUMMARY

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

SAMPLE
COMMUNITY PRESERVATION ACT REVOCATION
Must Follow Same Process as Acceptance
G.L. c. 44B, § 16(b)

Legislative Body Vote/Petition Article

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

OR

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

Ballot Question - Revocation

Shall the (city or town) revoke its acceptance of sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body/proposed by a petition signed by at least five percent of the registered voters of this (city or town), a summary of which appears below?

FAIR AND CONCISE SUMMARY

A fair and concise summary of the revocation proposal must appear underneath the question on the election ballot. The summary is to be prepared by the community's city solicitor or town counsel. It should include the details of the proposal, including the effective date of the revocation and any other relevant information.

ANTI-AID AMENDMENT
Mass. Const. Amend. Article 46, § 2, as amended by Article 103

Section 2. No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

TOWN PROPERTY – LEASE OF SURPLUS SCHOOLS
General Laws Chapter 40, § 3

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

Notwithstanding the provisions of this section, a city or town, with the approval of the school committee, may rent or lease any school building not in actual use and, with the approval of the commissioner of education, surplus space in a school building in actual use to any one or more public or private profit-making businesses or nonprofit organizations; provided, however, that joint occupancy of a school building in actual use as such shall not interfere with educational programs being conducted in said building. The terms of any such rental or lease shall be as approved by the school committee;

provided, however, that no school building not in actual use shall be rented or leased for an initial term longer than ten years, but with renewal options if approved by the school committee.

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

SETTING USER OR REGULATORY FEES
G.L. c. 40, § 22F

Section 22F. Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing city or town, and may fix reasonable charges to be paid for any services rendered or work performed by the city or town or any department thereof, for any person or class of persons; provided, however, that in the case of a board or officer appointed by an elected board, the fixing of such fee shall be subject to the review and approval of such elected board.

A fee or charge imposed pursuant to this section shall supersede fees or charges already in effect, or any limitations on amounts placed thereon for the same service, work, license, permit or certificate; provided, however, that this section shall not supersede the provisions of sections 31 to 77, inclusive, of chapter 6A, chapter 80, chapter 83, chapter 138, sections 121 to 131N, inclusive, of chapter 140 or section 10A of chapter 148. The provisions of this section shall not apply to any certificate, service or work required by chapters fifty to fifty-six, inclusive, or by chapter sixty-six. The fee or charge being collected immediately prior to acceptance of this section for any license, permit, certificate service or work will be utilized until a new fee or charge is fixed under this section.

The provisions of this section may be accepted in a city by a vote of the city council, with the approval of the mayor if so required by law, and in a town by vote of the town meeting, or by vote of the town council in towns with no town meeting.

INTERFUND BORROWING
General Laws Chapter 44, § 20A

Section 20A. Cities, towns and districts that have duly authorized the issuance of serial bonds, notes or certificates of indebtedness may make expenditures for the purposes for which such serial bonds, notes or certificates of indebtedness were authorized from any available revenue funds in advance and in anticipation of such issuance. Cities, towns and districts that have been allotted a grant by the commonwealth or the federal government may make expenditures for the purposes of such grant from any available revenue funds in advance and in anticipation of receipt of reimbursements from such grant, to such maximum amount and subject to such limitations as may be provided in the rules, regulations and guidelines promulgated by the director. For purposes of this section, available revenue funds shall not include revenue cash the use of which is restricted to purposes other than current maintenance expenses. Such advances shall be made by the treasurer with the approval of the officer or officers authorized to issue the bonds or notes. Prior to making any such advance, the treasurer shall determine that the issuance of such serial bonds, notes or certificates of indebtedness has been duly authorized in accordance with law. Such cities, towns or districts shall reimburse the account or accounts from which the advance was made from the proceeds of bonds, notes, including notes in anticipation of the serial loan, or certificates of indebtedness issued during the fiscal year in which the advance was made. Advances made under authority of this section shall be subject to rules, regulations or guidelines promulgated by the director.

TREATMENT OF MUNICIPAL REVENUES
General Laws Chapter 44, § 53

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

TREATMENT OF GIFTS AND GRANTS
General Laws Chapter 44, § 53A

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

DEPARTMENTAL REVOLVING FUND
General Laws Chapter 44, § 53E½

Section 53E½. Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all

other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such 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 nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

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 pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such 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 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 such wages or salaries 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 established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine.

Notwithstanding the provisions of 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.

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 selectmen and finance committee, if any, in a town; provided, however, that the one percent limit established by clause (4) of the third paragraph is not exceeded.

The board, department or officer having charge of such revolving fund shall report to the annual town meeting or to the city council and the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the legislative body and the chief administrative or executive officer, the total amount of receipts and expenditures for each revolving fund under its control for the prior fiscal year and for the current fiscal year through December thirty-first, or such later date as the town meeting or city council may, by vote determine, and the amount of any increases in spending authority granted during the prior and current fiscal years, together with such other information as the town meeting or city council may by vote require.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which a city or town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the annual town meeting or the city council and mayor or city manager in a Plan E city and in any other city or town the legislative body vote to transfer such balance to another revolving fund established under this section.

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

ENTERPRISE FUND
General Laws Chapter 44, § 53F½

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

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

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

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

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

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

MEDICAID REIMBURSEMENTS
General Laws Chapter 44, § 72

Section 72. Notwithstanding the provisions of any general or special law to the contrary, any local government entity may receive federal funds for reimbursable medical services where all conditions set forth in this section are met. Federal payments under Title XIX of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) with regard to federal payments that are attributable to reimbursable medical services provided to students who are in residential special education programs pursuant to the provisions of chapter 71B, (a) 50 per cent of such payments shall be returned to the local government entity, and (b) 50 per cent of such payments shall be deposited into the general fund; (2) with regard to federal payments that are attributable to any other reimbursable medical service, 100 per cent of such payments shall be returned to the local government entity, except that, for the purpose of paying the contingency fee due to a commonwealth contractor for obtaining federal payments attributable to such non-education-related services, the comptroller shall retain from such a local government entity payments in an amount equal to such contingency fee. For purposes of this section, "commonwealth contractor" shall mean any party with whom the commonwealth has entered into a contingency agreement for the purpose of assisting the local government entity in obtaining federal reimbursement. Federal payments under Title XXI of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) any federal payment amount in excess of 50 per cent of the expenditure amount claimed by the division of medical assistance on the federal claim form shall be deposited into the Children's and Seniors' Health Care Assistance Fund established by section 2FF of chapter 29; and (2) the remaining federal payment amount shall be distributed in the manner described in the preceding sentence. Any funds received by a local government entity pursuant to the provisions of this section shall be considered unrestricted revenue

of the local government entity and may be spent in accordance with any general or special law governing the expenditure of the entity's revenues. Before incurring any cost or providing any service for which it intends to claim federal payments under this section, the local government entity shall obtain the approval of the division, but the division, in its sole discretion, may waive this requirement where it determines that such a waiver would be in the best interests of the commonwealth. To receive any amounts under this section, the local government entity shall enter into a written agreement with the division directly or indirectly through an agency or other political subdivision, which agreement shall contain all provisions that the division deems suitable or necessary to support any claim for federal payments under this section. In addition, any local government entity that has entered into a written agreement with the division shall provide to the division, on such forms and at such times as the division may require, any information that the division deems suitable or necessary to support any claim for federal payments under this section. The division shall have the sole discretion to approve or disapprove any local government entity's proposal to claim federal payments. No action or failure to act by the division under this section shall be subject to any administrative or judicial review. The parent or guardian of any child who receives any service for which a local government entity is responsible under this section and which otherwise would be a reimbursable medical service shall, upon request, disclose to such local government entity the child's member identification number established by the division. For the purposes of this section, "federal payments" shall mean amounts received by the commonwealth as reimbursement for the federal share of payments for services described herein. For the purposes of this section, "local government entity" shall mean any city or town, public health commission, charter school or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for payment of the state share for services described herein. Such state share shall consist exclusively of public funds. Any local or regional school district or committee and the department of education may also contribute to the state share for any such services that are provided under the auspices of said department. For the purposes of this section, "reimbursable medical services" shall mean services, including administrative activities related to such services, that are medically necessary and for which federal payment otherwise is available under the programs of medical care and assistance established under chapter 118E and policies, procedures and criteria established by the division. For the purposes of this section, "state share" shall mean amounts which the commonwealth is obligated to assume in order to claim federal payment for reimbursable medical services.

COMMUNITY PRESERVATION FUND (Excerpts)
General Laws Chapter 44B

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

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

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

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

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

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

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

"Community preservation committee", the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.
"Community Preservation Fund", the municipal fund established under section 7.

"CP", community preservation.

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

"Legislative body", the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled as a city council, board of aldermen, town council, town meeting or by any other title.

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

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

"Maintenance", incidental repairs which neither materially add to the value of the property or appreciably prolong the property's life, but keep the property in a condition of fitness, efficiency or readiness.

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

"Open space", shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

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

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

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

"Recreational use", active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. "Recreational use" shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

"Rehabilitation", capital improvements, or the making of extraordinary repairs to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended uses, including but not limited to improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes; provided, that with respect to historic resources, "rehabilitation" shall comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68; and provided further, that with respect to land for recreational use, "rehabilitation" shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use.

"Support of Community housing", shall include, but not be limited to, programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for

community housing, or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable.

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

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

(b½) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property, and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal revenue, including, but not limited to, hotel excise taxes pursuant to chapter 64G, linkage fee and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, gifts received from private sources for community preservation purposes, and provided further that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

...

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

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

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

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

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

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

...

Section 5. (a) A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members. The ordinance or by-law shall determine the composition of the committee, the length of its term and the method of selecting its members, whether by election or appointment or by a combination thereof. The committee shall include, but not be limited to, one member of the conservation commission established under section 8C of chapter 40 as designated by the commission, one member of the historical commission established under section 8D of said chapter 40 as designated by the commission, one member of the planning board established under section 81A of chapter 41 as designated by the board, one member of the board of park commissioners established under section 2 of chapter 45 as designated by the board and one member of the housing authority established under section 3 of chapter 121B as designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

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

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the

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

(3) The community preservation committee may include in its recommendation to the legislative body a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

...

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

...

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

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years; provided, however, that funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any

city or town. The community preservation funds shall not replace existing operating funds, only augment them.

...

Section 7. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts sections 3 to 7, inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to, the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

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

...

Section 16. (a) At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter, including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b½) of section 3.

(b) At any time after the expiration of five years after the date on which sections 3 to 1, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

SCHOOL DAY CARE REVOLVING FUND
General Laws Chapter 71, §§ 26A-26C

Section 26A. If the school committee of a town determines that sufficient need exists therein for extended school services for children, between three and fourteen years of age, of parents who are employed, and whose employment is determined by said committee to be necessary for the welfare of their families, said school committee, subject to section twenty-six B, and with the approval of the city council or selectmen may establish and maintain such services.

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

Section 26C. The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of sections twenty-six A to twenty-six F, inclusive. The school committee of any town may receive contributions in the form of money, material, quarters or services for the purposes of said sections from organizations, employers and other individuals. Such contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such town and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

STUDENT ATHLETIC AND ACTIVITIES REVOLVING FUND
STUDENT ACTIVITY AGENCY FUND
General Laws Chapter 71, § 47

Section 47. The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools. Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies,

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

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

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in such amount as the treasurer shall determine to secure the principal's faithful

performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

USE OF SCHOOL PROPERTY
General Laws Chapter 71, § 71

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

USE OF SCHOOL PROPERTY FUND
General Laws Chapter 71, § 71E

Section 71E. In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or

town may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.

ESTIMATED SEWER ASSESSMENTS
G.L. c. 83, § 15B

Section 15B. A city or town may assess and collect estimated sewer assessments in connection with the construction of water pollution collection, pumping, treatment and disposal facilities. The total amount of such estimated sewer assessments shall not exceed one-half of the municipality's liability under all contracts it has entered into for the construction of such facilities, and the total of such estimated assessments shall be allocated by the same method to be used for the allocation of the actual assessments upon the completion of the work.

When the final costs of construction of the facilities has been determined, the city or town may assess and collect actual sewer assessments. The provisions of chapter eighty relative to the apportionment, division, interest and collection of assessments shall apply to estimated assessments under this section, but the provisions of chapter eighty relating to abatements shall not apply to estimated assessments under this section.

Revenues from estimated assessments under this section shall be dedicated to the payment of the costs of constructing the facilities or to paying the principal and interest on any debt issued in connection with the construction of the facilities, until all such costs and debt service obligations have been paid in full.

November 22, 2005

Richard Howarth
Town Accountant
Town Hall
150 Concord St.
Framingham, MA 01702

Re: Use Of School Property Revolving Fund – GL Ch.71 §71E
Our File No. 2005-445

Dear Mr. Howarth:

This is in reply to your questions about the use of school property revolving fund authorized under GL Ch.71 §71E.

Your first question concerned the propriety of a $50,000 charge to the revolving fund for a payment under a lease-purchase contract for the acquisition of a school modular building. GL Ch.71 §71 gives school committees the right "consistently and without interference with the use of the premises for school purposes " to allow the use of school property for "such educational, recreational, social, civic, philanthropic and like purposes as [the school committee] deems for the interest of the community." Eligible uses would typically be on weekends and after regular school hours.

If the municipality has accepted §71E, money such as rental payments received in connection with the use of school property under GL Ch.71 §71 is deposited in the revolving fund, and may be used to pay "expenses incurred in making school property available for such use." It is difficult to see how the costs of payments under the lease-purchase agreement can be said to have been incurred in making school property available for the uses authorized under §71. Even if the revenue in the account were generated solely by the leased modular building (which we understand is not the case), we do not see how the lease payments could be charged to the revolving fund, since those payments would be due whether or not there were the community uses under §71. We believe that the costs for which the revolving fund may be expended are the incremental costs for such things as janitors' overtime or additional utility costs for heating and lighting the building, that is, costs that would not have arisen if the premises had been used only for school purposes.

We find ourselves unable to offer much specific advice in response to your second question, asking whether we could recommend a method of allocating allowable expenses between the regular budget and the revolving fund. We know of no legal basis other than "reasonableness" for making such allocations. For costs such as janitors' overtime, it may

not be necessary to use an allocation method; it may be feasible simply to keep track of the overtime hours janitors work on account of such after-school uses of school buildings. But where no direct measure of costs is possible, some allocation formula is necessary. What is a reasonable method of allocating costs between the revolving fund and the regular school appropriation depends on both the nature of the costs and the type and quality of the information available. There some examples of cost allocations that may be helpful in the Technical Assistance Bureau's workbook and case study *Costing Municipal Services*, which is available on the web at http://www.dls.state.ma.us/publ/misc/costing.pdf.

We hope this information is helpful.

Very truly yours,

Kathleen Colleary, Chief
Property Tax Bureau

KC/CH

Massachusetts Department of Revenue *Division of Local Services*
Amy A. Pitter, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

January 30, 2012

Juliana deHaan Rice, Esq.
Town Counsel
Town of Arlington
50 Pleasant Street
Arlington, MA 02476

Re: User Fees for High School Athletics
Our File No. 2011-226

Dear Ms. Rice:

You inquired whether fees adopted by the Arlington Public Schools for high school athletics are susceptible to a challenge that they are unauthorized taxes. As you know, Massachusetts cities and towns have no power to impose taxes, but may charge fees for various services. Those fees must meet certain basic legal standards. However, since municipal fees are not within our regulatory jurisdiction or areas of expertise, any comments we make must necessarily be tentative.

In considering whether a monetary exaction is a fee or an unlawful tax, the Supreme Judicial Court has generally observed that fees are charged for a particular governmental service, are paid by choice, and ". . . the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." Emerson College v. City of Boston, 391 Mass. 415, 424-425 (1984). In your situation, the fees charged for some high school athletic activities generate a surplus that apparently is used to subsidize other high school athletic activities. Therefore, you are concerned with the third characteristic, i.e., if the user charge exceeds the cost of providing the service, the town will be vulnerable to a challenge that the charges are taxes. You wish to know whether the town is required to charge user fees set to recover the exact cost of providing a service to each individual user.

Fees must be calculated and used to offset the overall costs or expenses of providing the service and not to produce a surplus. See Emerson College v. City of Boston, 391 Mass. 415 (1985). The nature of user fees or program charges is compensatory. Fees must reasonably be set to compensate the municipality for its anticipated expenses. See Southview Co-op Housing Corporation v. Rent Control Board of Cambridge, 396 Mass. 395, 402-404 (1985). They are not intended to serve as a resource for the augmentation of general revenues.

However, the fact that a monetary exaction may result in producing revenue in excess of costs is not determinative of whether it is an unlawful tax. For a fee to pass muster, "[i]t is sufficient that the revenue collected is not significantly and consistently in excess of the cost of providing the services." Commonwealth v. Caldwell, 25 Mass. App. Ct. 91, 97 (1987). Therefore, we have long advised that fee schedules need not be perfectly tailored to the circumstances of each individual user of a program or service.

All that is necessary is for the fee schedule to meet the general test of reasonable compensation, which may include other considerations than purely direct costs. With respect to regulatory fees, relevant expenses include not only the expense of direct regulation, but also all indirect and incidental expenditures. Baker v. Department of Environmental Protection, 39 Mass. App. Ct. 444 (1995)(where the court stated in regard to regulatory fees that a governmental entity "may charge fees that offset general agency expenses, as well as the specific costs of the service in relation to each person charged a fee. [citations omitted] We look not at each specific service provided and the corresponding fee charged to that service, but rather 'with a view to reimbursing the [governmental agency] for all expenses imposed upon it by the business sought to be regulated.' Emerson College v. Boston, 391 Mass. at 425 n. 16 (citations omitted). Nuclear Metals, Inc., [421 Mass. 196 (19950] supra at 207." We think this principle applies to user fees as well. In that regard, we have advised that the overall costs of a service or program that charges a user fee may include all reasonable expenses incident to providing that service or program and all associated costs. For example, in setting mooring fees, we have advised that consideration may be given to all the activities involved in regulating the waterways, even limiting demand.[1] In that situation, we suggested that setting mooring fees at a rate higher than needed to recover actual costs might be justified as a way to reduce traffic and safety issues that lower fees might entail in the use of a municipal boat ramp.

The question here is whether a fee structure that is not uniform, but is set to ensure the availability of a wide range of extracurricular high school athletic programs, meets the test of reasonable compensation. We think the answer is yes. As noted above, we have advised that a fee higher than needed to recover costs can be justified as a way to avoid issues that a lower fee might entail. Further, we have advised that, in joining two contracts for two separate sewer systems into one, a town could charge users of the debt-less system for the long term debt of the other.[2] In that situation, we stated that "a town may charge all users for the aggregate cost of providing a particular service provided that revenues may not be substantially in excess of providing the service." And finally, we also have advised in the context of a park and recreational program's revolving fund that each individual activity or program need not be entirely self-supporting.[3] There, we stated that, if the full package of activities and programs may generally be considered self-supporting, and each generates a reasonable fee intended to offset its expense, it would be permissible to subsidize special trips by way of surplus in the revolving fund provided a reasonable and realistic fee is charged for participation. In the case of school athletic programs, we doubt the unit of analysis to gauge reasonableness of cost recovery must be parsed into particular sports when a fee is charged for all student athletic activities. There is educational value in offering a range of athletic activities for student participation, and that consideration would be undermined if reasonableness focused just on the costs of each particular sport.

Since a town may charge for the aggregate cost of providing a service, we believe that the fee schedule at issue here satisfies the criteria set forth in Emerson, 391 Mass. at 425, n. 16. The fees are set to reimburse the school department for all costs incurred in providing a wide range of high school athletic programs. The higher costs imposed on some users offset the indirect costs associated with providing such a wide range of programs. Further, a municipality has some degree of flexibility in structuring the funding

[1] See Opinion No. 2004-258, June 30, 2004, Senator Michael W. Morrissey.

[2] See Opinion No. 2000-92, March 30, 2000, Clarksburg Town Accountant.

[3] See Opinion No. 91-592., October 16, 1999, Northfield Recreation Commission

of its services and programs. "[R]easonable latitude must be given to the agency in fixing charges to cover its anticipated expenses in connection with the services to be rendered." Southview Co-op Housing Corporation, 396 Mass. at 402-403. Even if the relationship between fee revenue and cost of service is not exact, the collection of some incidental revenue does not invalidate a charge that otherwise operates as a fee. See Opinion of the Justices, 250 Mass. 591 (1924). In this situation, the amounts received by the school department do not appear to exceed the school department's collective costs in offering and administering a wide range of extracurricular high school athletic programs. The fees have been calculated and used to offset these costs and not to produce a surplus that is diverted to unrelated programs or services. Thus, we believe that the fee schedule passes muster under the relevant case law.

We hope that this information is of assistance.

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/mcm

From: Colleary, Kathleen
Sent: Monday, April 09, 2012 2:53 PM
To: 'Turkington, Frederic'
Cc: 'mjlanza@comcast.net'
Subject: 2012-205 Wayland CPA surcharge amendment

Dear Mr. Turkington:

This is in reply to your email regarding a proposal to amend the Community Preservation Act (CPA) surcharge being considered by Wayland's 2012 annual town meeting for submission to voters at the state biennial election in November.

At the outset, we note that the proposal would reduce the 1.5% CPA surcharge rate to 0.1%. According to our records, Wayland accepted the CPA with the 1.5% rate in 2002 using the petition process. G.L. c. 44B, § 3(h). Arguably, if the town accepts such a de minimis rate, it would as a practical matter effectively implement a revocation without following the statutory procedure required by G.L. c. 44B, § 16(b). Although the statute does not establish a minimum surcharge rate, we doubt the legislature intended for cities and towns to use the amendment process as an alternative to that procedure.

On the timing of the election, we defer to the Elections Division of the Secretary of State to provide the definitive answer. It has been our understanding, however, that a CPA referendum must go on the ballot of the next regularly scheduled municipal or state election held more than 35 days after written notice to the town clerk (if a municipal election is next) or 60 days after written notice to the secretary of state (if a state election is next). G.L. c. 44B, § 3(f), (g) and (h). Also see G.L. c. 50, § 1 definition of state election. According to the town's website your 2012 annual town meeting will be held in early April 2012 shortly after your 2012 annual election. If town meeting acts favorably on the reduction article, then the next election would be a 2012 state election and it would be held in more than the 60 days needed to provide the requisite notice to the secretary of state.

With respect to when any change in the surcharge rate accepted by the voters takes effect, the CPA is silent about when any acceptance, revocation or amendment takes effect. Compare other local option taxes available to cities and towns. See, for example, G.L. c. 64G, § 3A (room occupancy excise), G.L. c. 64L, § 2(c) (meals excise). There are also many local acceptance statutes relating to locally assessed taxes and exemptions and issues often arise with respect to when those provisions can be implemented as well.

We do not think an amendment of the CPA surcharge is analogous to setting the annual property tax rate. In accepting the CPA, the city or town fixes the rate at which it will annually assess the surcharge. G.L. c. 44B, § 3(b). That is the rate unless amended in accordance with the statutory procedure. With respect to property taxes, however, state law provides for a rate of taxation to be determined annually based on the budgetary requirements, assessed valuations and tax classification decisions of the city or town for that fiscal year. G.L. c. 40, § 56; c. 59, §§ 2A, 23 and 38. There is no statutory requirement that the annual tax rate be set by any particular date during the fiscal year.

The general rule is that changes in laws apply prospectively, and more specifically, changes in tax laws apply prospectively as of the next tax period after the effective date of the amendment, unless otherwise clearly intended by the legislature. Magee v. Commissioner of Corporations & Taxation, 256 Mass. 512, 517 (1926); United States Trust Co. v. Commissioner of Corporations and Taxation, 299 Mass. 296, 299 (1938); Squantum Gardens, Inc. v. Assessors of Quincy, 335 Mass. 440, 452 (1957). As a property tax, the CPA surcharge is assessed as of January 1. Under the general rule, that would mean a change in CPA taxation would apply as of the next January 1 assessment date, i.e., as of January 1, 2013 for fiscal year beginning on July 1, 2013 (FY2014). See Squantum Gardens cited above.

The issue presented here is whether a city or town may make a permitted change in

this locally assessed tax take effect earlier, i.e. retroactive to an earlier tax period, which in this case would be January 1, 2012 for the fiscal year beginning July 1, 2012 (FY2013). There is no question that the legislature may do so within certain constitutional limits. A tax having a retroactive effect is constitutional "unless the retroactive feature ... is arbitrary and burdensome". Trustees of Boston University v. Board of Assessors of Brookline, 11 Mass. App. 325, 332 (1981) quoting 2 Sands, Sutherland Statutory Construction § 41.10, at 286 (4th ed. (1973). (In the Boston University case, the Supreme Judicial Court reviewed legislation removing the tax exempt status of certain property owned by educational institutions. The legislation was enacted in August 1974 after both the fiscal year 1975 assessment date and fiscal year began, but before taxes were due and payable for that fiscal year. It contained a provision stating that it would apply to taxes assessed for fiscal year 1975 and thereafter. The court held that the taxpayer had not acquired any "vested right" to the exemption for fiscal year 1975 and that the retroactive adjustment in taxes for the year in which the statute became effective was reasonable and constitutional.)

The issue arises because as you know, cities and towns do not have the power to tax under the home rule amendment. Mass. Const. Amend. 89 § 7. They may only impose those taxes authorized by the legislature and must do so only in the manner expressly provided by statute. ("Because the Legislature has preempted the field of taxation, its approval is required. 'The laws established by it cannot be waived or changed by municipalities or their officers. Such laws are and must be general in their operation. When the Legislature has covered the whole subject, there is no room for the exercise of authority by local officers. The town has no power to make a contract concerning that subject.' " Saugus v. Refuse Energy Systems Co., 388 Mass. 822, 826-827 (1983), quoting Southborough v. Boston & Worcester St. Ry., 250 Mass. 234, 239 (1924).)

The courts have not addressed the issue of whether cities and towns may make locally accepted tax laws retroactive. Given the preemptive nature of local taxation, the better view is that they may do so only where authorized by the legislature.

To the extent, however, that the courts could conclude that cities and towns can make such retroactive changes, it seems to us that cities and towns would have to make their intent clear, as the legislature is required to do. In addition, they would have to make the changes in a manner consistent with the overall framework established by the legislature for local taxation under G.L. c. 59.

With respect to a CPA surcharge rate amendment, that would mean:
1. The legislative body vote would have to expressly state the fiscal year in which the change will take effect if the referendum is successful;
2. That fiscal year could not be earlier than the year in which the referendum takes place; and
3. The referendum would have to occur before the city or town sets its property tax rate for that fiscal year. See G.L. c. 59, § 23, which requires that in setting the tax rate, the assessors are to report the tax and other revenues the community anticipates receiving during the year from all sources. If the amendment is successful, the community's tax rate recapitulation for the year would have to reflect the amended estimate of annual revenues from the surcharge.

It should be noted that taking the position that cities and towns have the power to retroactively reduce the surcharge means they have the power to so increase it as well.

As you also know, although the CPA permits surcharge amendments and revocation, it does not provide a format for a ballot question for those actions. Below is a suggested question form for surcharge amendments that was reviewed by the Elections Division.

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

A fair and concise summary of the amendment proposal must appear underneath the question on the election ballot. The summary is prepared by town counsel and would include the details of the proposal, such as the rate change and fiscal year it would take effect.

We assume you will continue to consult with town counsel about the best course of action in regards to this matter.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
617-626-2400
DLSLAW@dor.state.ma.us

From: Colleary, Kathleen
Sent: Thursday, March 08, 2012 4:58 PM
To: 'Barbara Barry'
Subject: RE: revoking CPA surcharge

Hi Barbara,

If the CPA is revoked, the accounting officer must determine the liabilities of the fund, which includes the debt service, and the amount of uncommitted fund monies available to meet them. Those monies must then be reserved so they are available for appropriation to meet the obligations as they become due. (The debt may not be callable and able to be retired immediately). See Sections I-F, III-A-10 and VIII-L of IGR 00-209, as amended.
http://www.mass.gov/dor/docs/dls/publ/igr/2000/00-209amended.pdf. If there are insufficient uncommitted monies, then the surcharge must continue to be assessed until sufficient revenues are raised. In our view, the surcharge is only being assessed at that time to wrap up the fund, which means there is no longer an obligation to allocate 10% of each of those year's revenues to the 3 CPA spending purposes. Remaining uncommitted monies, or balances in other reserves, are available for appropriation for CPA purposes.

As an example, Dana revokes the CPA while it has $1m in CPA debt outstanding, all of which was issued to fund open space acquisitions. It has $300,000 in fund balance, $250,000 in the Community Housing reserve and $200,000 in the Historic Resources reserve. Dana will get a state trust fund distribution next FY (because it assessed a surcharge this year), which it estimates will be about $75,000. Therefore, it has $375,000 available to reserve for appropriation for the debt service as it becomes due in future years since the historic and housing reserves can only be used for those purposes. (Those reserves continue to be available for appropriation for eligible projects at any time until exhausted.) Consequently, Dana will have to assess a surcharge for 1 or more years in order to accumulate the other $625,000 needed to cover the debt service. Any extra monies left after it has enough additional revenues from surcharges (plus trust fund distributions and investment earnings it receives while it winds down the fund) can be appropriated for any CPA purpose.

Hope this answers the question.

Kathleen

Kathleen Colleary, Chief
Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
617-626-2400
DLSLAW@dor.state.ma.us <mailto:DLSLAW@dor.state.ma.us>

From: Barbara Barry [mailto:bbarry@town.sturbridge.ma.us]
Sent: Thursday, March 08, 2012 9:02 AM

Massachusetts Department of Revenue *Division of Local Services*
Amy A. Pitter, Commissioner *Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs*

October 23, 2012

Nina Pickering-Cook
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

Re: Use of CPA Funds for Historic Preservation Loan
Our File No. 2012-86

Dear Ms. Pickering-Cook:

You asked whether Acton can use Community Preservation Act (CPA) funds for a revolving loan program to encourage residents of the Town to "preserve or restore exterior architectural features of historic residences or commercial buildings in Acton." Rehabilitation or restoration of historic properties is an allowable CPA expense. We think that a loan program could be an allowable CPA initiative depending on how it is administered.

The CPA allows CPA funds to be used "for the acquisition, preservation, rehabilitation and restoration of historic resources." G.L. c. 44B, § 5(b)(2). The CPA defines "historic resources" as "a building, structure, vessel, real property, document or artifact that is listed or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town." G.L. c. 44B, § 2, as amended by St. 2012, c. 139, § 70. Preservation is narrowly defined as the "protection of ... real property from injury, harm or destruction." G.L. c. 44B, § 2, as amended by St. 2012, c. 139, § 72. Rehabilitation, however, includes capital improvements and extraordinary repairs to make historic resources functional for their intended uses and comply with Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68. G.L. c. 44B, § 2, as amended by St. 2012, c. 139, § 73.

The CPA does not expressly grant municipalities the power to loan money to further its objectives, but local by-laws may omit or modify powers listed in the statute, or grant additional powers consistent with the statute. Therefore, Acton could adopt a by-law to provide for such a loan program. Moreover, there is nothing in the CPA that prohibits the use of funds for rehabilitation or restoration of historic resources on privately-owned properties. Under the Anti-Aid Amendment of the Massachusetts State Constitution, however, public funds cannot be given or loaned to private individuals or organizations for their private purposes. Mass. Const. Amend. Article 42, § 2, as amended by Article 103. Therefore, any expenditure must be made to advance a public purpose.

The rehabilitation and restoration of historic assets is generally understood to have some legitimate public purposes. Both the federal and state governments, for example, have various historic grant programs that include grants to non-profit organizations. Typically, these programs result in public acquisition of an historic preservation restriction or receipt of some other benefit to ensure that the grant is for public, as opposed to private, purposes. For example, in an Anti-Aid case involving

the allocation of state funds to a non-profit group to rehabilitate the U.S.S. Massachusetts for use as a memorial and museum, the Supreme Judicial Court found the expenditure to be a public purpose, since the property would be open to the public as a place to contemplate and honor those who died in the service of their country and to educate school children, who were admitted free of charge, about history. *Helmes v. Commonwealth*, 406 Mass. 873, 876-878 (1990).

As town counsel, your firm is best situated to navigate the restrictions the Anti-Aid Amendment imposes on your client's proposed outlays of municipal funds and to recommend safeguards, such as property restrictions, that ensure loan recipients use the funds for public purposes and in strict accordance with the CPA. We would assume, however, that there would be a written loan agreement between the town and the loan recipient that details the work to be completed with the CPA funds, the inspections and other procedures the town will use to ensure all work complies with those specifications and appropriate remedies and protections for the town to be able to collect the loan and protect its investment.

As part of the program, Acton proposes to use a revolving fund to be credited with loan payments and used as a funding source for further loans. A revolving fund is a special revenue fund into which receipts from a specific revenue source are credited and earmarked for expenditure without appropriation for specified purposes to support the activity, program or service that generated the receipts. Ordinarily, under G.L. c. 44, § 53, all monies received by a municipal officer belong to the general fund and may only be spent by appropriation. As you know, however, the CPA credits certain monies received in connection with CPA purposes to the CPA rather than the general fund, but still requires that those monies be spent by appropriation." G.L. c. 44B, §§ 5, 6 and 7. Monies credited to the CPA fund include "(iii) all funds received from ... any other source for such purposes," G.L. c. 44B, § 7. We think that includes monies received as repayments of CPA loans. Therefore, the repayments would be credited to the CPA fund, but could not be spent for other loans or CPA purposes without Community Preservation Committee recommendation and legislative body appropriation. Since the receipts in question belong to the CPA fund under G.L. c. 44B, § 7, there is no other authority in the general laws for establishing a revolving fund. The departmental revolving fund statute, G.L c. 44, § 53E½, applies "[n]otwithstanding the provisions of section 53," i.e., it only authorizes by an annual vote the segregation of certain general fund departmental receipts into a revolving fund to spend without appropriation during that fiscal year.

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

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:JGG

Massachusetts Department of Revenue *Division of Local Services*
Amy A. Pitter, Commissioner *Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs*

September 9, 2013

Anthony C. Savastano, Esq.
Dartmouth Town Counsel
The Joseph Arthur Beauvais House
404 County Street
New Bedford, MA 02740-4936

Re: Community Preservation Fund - Community Farm Building Rehabilitation
Our File No. 2013-271

Dear Mr. Savastano:

You asked for an opinion about the proposed use of Community Preservation Act (CPA) funds for renovation of a building owned by the Dartmouth YMCA (Y). The following recitation of facts is based on information you supplied in your request, as well as the Y's "Application for Community Preservation Funding" and a March 8, 2013 letter from the Chair of the Dartmouth Community Preservation Commission (DCPC). You also emailed correspondence between the DCPC and the state Community Preservation Coalition (CPC) during the period January 6, 2013 to January 10, 2013 and the conservation restriction on the adjacent property. In addition, we obtained some information regarding the property from on-line assessor and registry of deeds records. Your questions relate to the recreational use of the building, as you state that it has no historical significance.

Based on this information, we understand that the building to be renovated is located on land shown as lot 5 on Assessor's Map 35, which contains about 4 acres of land. The Y's "Sharing the Harvest Community Farm" (Farm) is located on the adjacent lot also owned by the Y. The adjacent lot, lot 3 on Assessors Map 35, is approximately 57 acres and is subject to a conservation restriction (CR) held by a non-profit conservation organization, the Dartmouth Natural Resources Trust (Trust), for the purpose of maintaining the land, in perpetuity, in a predominately natural, scenic and undeveloped condition. The restriction permits certain agricultural, educational and outdoor passive recreational uses to the extent they are compatible with maintaining the property in a natural condition.

The Farm is operated by the Y and relies to a large extent on volunteers to supply the labor. It is used to educate the public about agriculture and provides significant amounts of produce each year for donation to another non-profit entity, the Hunger Commission of the United Way of Greater New Bedford. There are no individual plots, membership fees or rules and regulations, and members of the public cannot obtain membership in the Farm, use the Farm for personal use or otherwise obtain a portion of the crops produced in exchange for their volunteer labor. The produce is used to feed low income persons, a traditional charitable purpose. The major objectives for "Sharing the Harvest" program, as stated in the Y's application, are to alleviate hunger, promote volunteerism and teach volunteers about agriculture.

Post Office Box 9569 Boston, MA 02114-9569, Tel: 617-626-2300; Fax: 617-626-2330

The proposed use of CPA funds for the renovation of the building raises three issues:

(1) Is the Farm a "community garden" within the CPA definition of "recreational use?"
(2) Does the proposed rehabilitation of the building qualify as "rehabilitation" of "land for recreational use" under the CPA?
(3) Does the Anti-aid Amendment to the Massachusetts Constitution preclude the funding of renovations to property owned by the Y, which is a private, non-profit organization?

We respond below to these questions and, as explained in this opinion, we conclude that no CPA funds can be used for the renovation of the building.

CPA Definitions and Allowable Spending Purposes

Monies in the CPA fund may be used "for the acquisition, creation and preservation of open space; ... for the acquisition, creation, preservation, rehabilitation and restoration of *land* for recreational use; ... and for the rehabilitation or restoration of open space ...that is acquired or created" under the act. (Emphasis supplied). G.L. c. 44B, § 5(b)(2).

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

> "Open space", shall include, but not be limited to, *land* to protect existing and future well fields, aquifers and recharge areas, watershed *land*, agricultural *land*, grass*lands*, fields, forest *land*, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal *lands*, *lands* to protect scenic vistas, *land* for wildlife or nature preserve and *land* for recreational use. (Emphasis supplied.)
>
> "Recreational use", active or passive recreational use including, but not limited to, the use of *land* for community gardens, trails, and noncommercial youth and adult sports, and the use of *land* as a park, playground or athletic field. "Recreational use" shall not include horse or dog racing or the use of *land* for a stadium, gymnasium or similar structure. (Emphasis supplied.)
>
> "Rehabilitation", capital improvements, or the making of extraordinary repairs, to ... *lands* for recreational use ... for the purpose of making such ... *lands* for recreational use ... functional for their intended uses ... and provided further, that with respect to *land* for recreational use, "rehabilitation" shall include the replacement of playground equipment and other capital improvements to the *land* or the facilities thereon which make the *land* or the related facilities more functional for the intended recreational use. (Emphasis supplied.)

A "capital improvement" to land for recreational use or related facilities on the land is a more or less permanent reconstruction or alteration that "materially adds value" or "appreciably prolongs the useful life" of the land or facilities. G.L. c. 44B, § 2.

Community Garden

You asked whether the Farm is a "community garden" within the definition of "recreational use." Clearly, the building where the renovations are proposed is not itself a community garden. As we understand it, the DCPC proposes funding a portion of the renovations of that building on the grounds that those features will support or facilitate the use of the cultivated area as a recreational site. If the Farm is not a community garden, however, then it is agricultural land and since it was not acquired with CPA funds, rehabilitation is not an allowable CPA purpose. G.L. c. 44B, § 5(b)(2).

The term "community garden" is not defined in the CPA or as best we can determine, elsewhere in the general laws. We are also not aware of any cases that construe the meaning of "community garden" generally or specifically with respect to the CPA. One must conclude, however, through its inclusion in the definition of "recreational use" that the legislature considered land used as a "community garden" as distinguishable from agricultural land. In the absence of a statutory definition, we look to the usual and generally understood meaning of the phrase from sources known to the legislature such as use in other legal contexts and dictionary definitions. See *Seideman v. Newton*, 452 Mass. 472, 477-478 (2008).

You have cited three cases in your letter that include references to "community gardens" that are instructive. In the case of *Lovering v. Beaudette*, 30 Mass. App. Ct. 665, 666 (1991), the court referred to land used by a college campus for "community gardens, i.e., small plots gardened by community residents, the produce to be for their use only, not for commercial sale." In the case of *Commonwealth v. Robinson*, 444 Mass. 102, 103 (2005), the court noted that one of the incidents occurred at the victim's plot at the community gardens. In the superior court case of *Graney v. Metropolitan District Commission*, 13 Mass. L. Rep. 492 (2001), the court described a local active and passive recreation park as including various amenities, including 180 community garden plots.

We also reviewed G.L. c. 128, §§ 7A-7F, which authorize the Department of Food and Agriculture to grant permits or leases for use of available vacant public land and vacant land owned by private parties for garden, arbor or farm purposes, and the Department's implementation regulations. 330 CMR 18.01(*Farm Land*) and 18.02 (*Community Gardens*).[1] Community garden" is not defined in the statute or regulations. However, the statute defines a farm as "a body of land devoted to agriculture" and a garden as a "piece of land appropriate for cultivation of herbs, fruits, flowers and vegetables." G.L. c. 128, § 7A. The *Community Gardens* regulations allow the use of the vacant public and private land by civic groups or groups of individuals organized for gardening purposes. The group must elect a person within the group to act as coordinator; prepare a garden plan showing plots, paths, access and parking; make provisions for fencing and security as necessary; provide for water, composting of organic waste and disposal of non-organic waste. Priority is given in the allotment of land for gardening purposes to elderly persons of low income, families of low income and children between the ages of 7 and 16. G.L. c. 128, § 7C. Other applicants for plots are eligible after the priority groups. In the allotment of plots, food production is encouraged over other gardening.

[1] These regulations were issued under G.L. c. 20, § 18 to implement the program authorized in 1974 to encourage the use of vacant land by members of the public for gardening or farming under G.L. c. 20, §§ 13-18. See St. 1974, c. 654, § 2. Those sections were repealed, but reenacted as G.L. c. 128, §§ 7A-7F. See St. 2003, c. 26, §§ 60 and 377.

Although the sale of the products grown in the gardens is prohibited, G.L. c. 128, § 7C, free distribution of the products is not. The *Farm Land* regulations, on the other hand, are directed at persons or groups of persons raising agricultural or horticultural products for sale, i.e., for the commercial production of farm products.

Looking to other sources, we note that the term "community garden" does not appear in the Merriam-Webster online dictionary, but Dictionary.com provides two main entries for it. The first defines community garden as "a piece of land cultivated by members of a community, esp. in an urban area" and the second as "a piece of land gardened by a cooperative group of people living in the area." Another online dictionary, thefreedictionary.com, defines a community garden as "a garden project actively maintained by members of a community." It further expands on the basic definition in significant detail as follows:

> ...*[M]ost community gardens* are *open to the public*, and *provide* green space in urban areas, along with *opportunities for social gatherings*, beautification, education and *recreation.* However, in a key difference, community gardens are *managed and maintained with the active participation of the gardeners themselves*, rather than tended only by a professional staff. A second difference is food production: Unlike parks, where plantings are ornamental (or more recently ecological), *community gardens often encourage food production* by providing gardeners a place to grow vegetables and other crops. To facilitate this, a community garden may be divided into individual plots. *However, you'll find a wide diversity in successful community gardens - not all grow food; and not all are organized into plots*!
>
> ...There are many different organizational models in use for community gardens. Some elect boards in a democratic fashion, while others can be run by appointed officials. *Some are managed by Non-profit organizations, such as a community gardening association, a church, or other land-owner*; others by a city's recreation or parks department, a school or University. ..."

The American Community Garden Association also provides a broad definition of "community garden" at www.communitygarden.org/learn:

> Any piece of land gardened by a group of people.... It can be urban, suburban, or rural. It can grow flowers, vegetables or community. It can be one community plot, or can be many individual plots. It can be at a school, hospital, or in a neighborhood. It can also be a series of plots dedicated to "urban agriculture" where the produce is grown for a market.

From these cases, statutes, regulations and other sources, we believe that the most commonly understood feature of a "community garden" individual plots of land available to members of the community for gardening purposes. In addition, the gardeners generally choose what to grow, retain what is produced for their personal use and collectively operate and manage the community garden.

In that regard, the attributes of the Y's operation make it less like a "community garden" and more like a "community farm." You submit the Northampton Community Farm as an example of a "community farm" and we found other examples of such farms in Massachusetts using the same or a

similar model. See, e.g., Waltham Fields Community Farm, www.communityfarms.org ; Fletcher Community Farm, www.fletchercommunityfarm.com ; Heirloom Harvest Community Farm, www.heirloomharvestcsa.com. The Northampton Community Farm provides agricultural education, leases large acreage areas to commercial farms and promotes community supported agriculture (CSA) where a person or entity supports a farmer's operation by pre-buying a share of the produce from the farm. It has also set aside a portion of its land for a "community garden" that will be divided into individual plots for gardening by individual members of the public. Generally, "community farms" promote local agriculture and food access, provide opportunities for volunteers to work at the farm, provide education and outreach programs and sell CSA memberships in the farm. They are single operations and not divided into individual plots, although as in the Northampton model, they may also set aside some land for such purposes. Their primary purpose is the commercial production of farm products for sale to the public through retailers, farmers markets, food cooperatives or other means, although all or a part of it may be produced for other non-personal use such as donation to charity.

The Y itself refers to its operation as the "Sharing the Harvest Community Farm." No land is set aside for individual plots available to gardeners. The Y operates and manages the Farm and retains all the food produced through the work of the volunteers, albeit for charitable distribution. It appears that the Y directs the volunteers' activities, chooses what is grown and determines where the produce is sent. Its stated purposes also include providing education about agriculture. Those features of its operation are consistent with a farming or agricultural operation. Consequently, we do not believe that the Farm is a "community garden" for CPA purposes.

Building Rehabilitation

As you point out, in our previous Opinion 2007-292 (copy enclosed), we concluded that the statutory definition of "recreational use" indicates that the legislature intended for the CPA "to promote outdoor recreational pursuits which take place on open land in a relatively natural state." The issue in that opinion was whether improvements to be constructed with non-CPA funds and used for a commercial kayak rental and storage operation could be placed on land acquired in part with CPA funding for a water based park. We stated that they could be so placed as their use and function was consistent with and enhanced the outdoor recreational use of the land. We did not address whether CPA funds could be used to construct them.

In that regard, the CPA specifically permits funding for "building" construction for historic preservation and community housing purposes. The definition of "historic resources" includes historic "buildings" which may be rehabilitated with CPA funds. G.L. c. 44B, § 2; G.L. c. 44B, § 5(b)(2). With respect to "community housing," construction and re-use of "buildings" for community housing is also specifically permitted. G.L. c. 44B, § 5(b)(2). There are no similar statutory references, however, regarding the construction or rehabilitation of buildings on open space or recreational land. The emphasis with regard to "open space" throughout the CPA is on the "*land.*" It is found in the definition of "open space," which includes "*land* for recreational use." The definition of "recreational use" is also *land*-based: "active or passive recreational use including, but not limited to, the use of *land* for community gardens, trails, and noncommercial youth and adult sports, and the use of *land* as a park, playground or athletic field. "Recreational use" shall not include horse or dog racing or the use

of *land* for a stadium, gymnasium or similar structure." Where the definition does reference a building (a gymnasium), the building is prohibited. We do not think that means the CPA bars spending funds on structures or improvements when creating or rehabilitating open space or recreational land. Given the statutory definitions of those assets and rehabilitation, however, we believe those structures or improvements must be used in a manner that is directly related to and congruent with the open space or recreational use of the land, i.e., they must support and enhance the use of the land in its natural condition or for its outdoor recreational activities.

The CPA defines "rehabilitation" as:

> "capital improvements, or the making of extraordinary repairs...to open spaces, lands for recreational use ...for the purpose of making such... open spaces, lands for recreational use...functional for their intended uses ...; and provided further, that with respect to land for recreational use, "rehabilitation" shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use. (Emphasis supplied.)

Thus, with respect to rehabilitation, CPA funds may be used for improvements to "land for recreational use" or related facilities on that land that are necessary and related to making them functional for the intended outdoor recreational use. Some examples of such improvements would be a hiking path or boardwalk, outdoor tennis and basketball courts, athletic fields, a golf course, water lines and pathways in a community garden.

This project, however, does not involve the rehabilitation of any land for recreational use or even a building on such land. Instead, it proposes to rehabilitate an existing building located on a lot adjacent to the land on which the purported recreational use takes place, the Farm. Even if the Farm is a community garden and the land on which the building is located is also considered to be "land for recreational use," the building being renovated will be used by the Y mostly for multiple indoor activities unrelated to the particular recreational use of the land. Specifically, the Y's application states that it seeks to "renew and further develop an existing building located on the property into a community supported agricultural center. This project would include the development of a dedicated space for community supported agriculture activities which would be provided to residents as a form of recreation at no cost. The project would include the renovation of an existing building to provide space for community supported agricultural education, community meeting space, community kitchen space, and volunteer engagement opportunities." The CPA funding is requested to: complete site work; fully enclose building and provide adequate siding and insulation; construct addition to accommodate nutritional innovation center/commercial kitchen; install overhead doors and operational entrances and exits; construct a 20 x 67 foot glass, climate and irrigation controlled greenhouse; provide adequate plumbing and HVAC needs; install new partitions, classrooms, offices and restrooms; provide doors, windows and construction needs; and install and upgrade electrical needs and life safety devices.

The DCPC reviewed the Y's project expenses and determined that only the following work items directly support the Farm/community garden: the greenhouse, the equipment storage area, the cold storage area and the restrooms. The outdoor recreational aspects of a community garden involve

the gardener's work outdoors in the soil with an opportunity to interact with other gardeners. In our opinion, the improvements identified by the DCPC do not enhance or make the outdoor recreational aspects of a community garden more functional for those uses. The primary use of the greenhouse, equipment storage area and cold storage area will be for the food distribution purposes of the Farm, i.e., its production, harvesting and distribution operation. In many cases, an equipment storage shed placed at a community garden, or a restroom installed at an outdoor recreational site, would be a facility or amenity related to the recreational use for which CPA funds could be used. Here, however, the storage area and restrooms, along with the other items identified by the DCPC, are not distinct improvements to the land. They are essential components of a renovation project intended to create an indoor "community supported agricultural center" that will mostly house non-CPA programs and activities sponsored or conducted by the Y, including educational and nutritional programs, Y office and commercial kitchen operations and community meetings. The main purpose of the building, and therefore, of the improvements, is to serve these other functions.

Therefore, we conclude that renovation of the building does not constitute rehabilitation of land for recreational use or related facilities under G.L. c. 44B, § 5(b)(2). The building is an indoor facility that will primarily be used for indoor activities that do not directly support or enhance community gardening or other outdoor recreational activities.

Anti-Aid Amendment

Although we do not believe the proposed building rehabilitation can be funded with CPA funds, we also address the "Anti-Aid Amendment" issue on the assumption that some or all of the proposed expenditures are for allowable CPA purposes. Because the property being rehabilitated is owned by a private non-profit organization, the project squarely poses the question of whether the expenditures are prohibited by the Anti-Aid Amendment to the Massachusetts Constitution. Mass. Const. Amend. Article 46, § 2, as amended by Article 103. That amendment provides, in relevant part:

> No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both.... (Emphasis supplied.)

The amendment bars expenditures of public funds for the purpose of supporting or assisting private organizations or institutions in carrying out their essential missions and operations, or otherwise providing them with a substantial benefit, in a way that is unfair, economically or politically. See *Bloom v. School Committee of Springfield*, 376 Mass. 35 (1978)(Loan of textbooks purchased with public funds to students attending private schools violates the Amendment because it aids the schools in carrying out their essential mission); *Commonwealth v. School Committee of Springfield*, 382 Mass. 665 (1981)(Public funds appropriated for contracts with private schools providing special education to students for which no public school programs are available does not violate the Amendment because it aids public schools to provide and children to obtain required special education services in an economically feasible manner).

Therefore, a city or town may not generally make a grant or donation of public funds to a charitable organization under the Anti-aid Amendment unless it advances a public purpose. A decision of the Supreme Judicial Court on this issue is instructive. In *Helmes v. Commonwealth*, 406 Mass. 873 (1990), the Commonwealth entered into a contract with a non-profit corporation, the U.S.S. Massachusetts Memorial Committee, to rehabilitate an historic battleship donated to the Committee by the United States Navy in the mid-1960s. Under the contract, the Commonwealth agreed to fund the costs of rehabilitating the ship which had been open to the public for no charge since its acquisition by the Committee and used as a memorial to World War II veterans and operated as an educational facility for the general public. The contract was challenged in part based on a claim it resulted in a violation of the Anti-aid Amendment. The Supreme Judicial Court concluded that the use of state funds for a public war memorial open to the general public for educational purposes was for a public purpose and resulted in a public benefit and was not a violation of the Amendment. In that case, the court stated the purpose of the expenditure was not to aid the private organization as "[t]he...public funds must be used for the designated public purpose, and, once repaired, the ship must be used to further public purposes." *Helmes* at 877.

To the extent a community provides public funds to a private organization, we believe (1) the funds must be used for a designated public purpose and (2) the benefits of that expenditure must continue to accrue to the public, not the private organization. In the *Helmes* case, the public funds were provided to rehabilitate the ship which itself was used and would continue to be used as a public war memorial open to the general public. In this case, however, the funds are going to rehabilitate portions of a privately-owned and controlled building which is not open to the public and will be used for the Y's private offices and programs. The primary benefit of the public funding inures to the private organization; any benefit that may inure to the general public is incidental and secondary. We doubt a court would determine that the funding in this case is for a public purpose. This does not mean that the project is not a worthy one; the issue is whether public taxpayer dollars may fund it.

If all other requirements of the CPA were satisfied and a public purpose were determined to exist, the second requirement of the *Helmes* case would need to be satisfied - ensuring the continuation of the designated public purpose after the funding. In this case, the funding purports to be for "rehabilitation" of "land for recreational use," with the recreational use being located at the Farm/community garden. However, the benefits of the Farm are not available to the general public, nor is there any requirement or guarantee that the Farm/community garden will continue to be operated for recreational purposes. Because it is owned and controlled by a private entity, the use of the property can be changed as the entity so determines. To ensure the continuing recreational use and benefits of the Farm/community garden and that they be for public recreation, a restriction or easement for public use or other binding commitment would be required. In addition, because the funding is for building rehabilitation, a similar restriction, easement or other binding legal commitment would be required regarding the portions of the building (and access thereto) that were rehabilitated with public funds to ensure the continuation of the designated public benefit. These restrictions would be required notwithstanding that the Farm is subject to a CR held by a third party. The existing CR does not ensure the continued use of the Farm/community garden or the rehabilitated building components for the designated CPA purpose and in a manner that advances the public purpose.

For the reasons set forth above, we do not believe that CPA funds may be used to fund, in whole or in part, the proposed renovation project.

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

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:GAB/PFH
CC: David Cressman, Town Administrator
Enclosure: Opinion 2007-292

Massachusetts Department of Revenue *Division of Local Services*
Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

March 30, 2010

Cranberry Valley Golf Course Committee
Town of Harwich
183 Oak Street
Harwich, MA 02645

Re: Golf Course Revenues
Our File No. 2010-56

Dear Committee Members:

This is in reply to your letter regarding golf course revenues. You claim "excess earnings" are being used by the town for non-golf course purposes. We understand that the town currently budgets all course revenues in the general fund so that the committee's annual operating appropriation is made from the levy ("raise and appropriate"). By excess earnings, we assume you mean the estimated revenue from fees and other receipts generated by the course that exceed the course's annual appropriations.

You requested that the Department of Revenue direct the town to cease its current practice of accounting for golf course revenues. We are not aware of any law that prohibits the town from accounting for golf course fees and other revenues in the general fund. On the contrary, the revenues belong to the general fund, G.L. c. 44, § 53, unless the town has opted to use one of several special revenue funds that allow it to segregate and separately account for them. See, e.g., G.L. c. 40, § 5F; c. 44, §§ 53D, 53E; 53E½ and 53F½.

With respect to the town practice of setting golf course fees to recover a payment in lieu of taxes, the Department of Revenue does not have any regulatory authority over municipal fees and therefore, we cannot direct the town to cease this practice either. Under state law, cities and towns have broad authority to impose fees. In most cases, as here, communities may set and collect a particular fee without approval of any state agency. Those aggrieved by the imposition of the fee would have to bring a legal action to challenge its validity.

You noted that one of the characteristics of a fee that distinguishes it from a tax is that it is collected to compensate the governmental entity for its costs, not to raise revenue generally. *Emerson College v. City of Boston*, 391 Mass. 415 (1984). However, depositing a charge in a municipality's general fund instead of a special purpose fund is not decisive in determining whether the charge meets that legal standard. The courts look at whether the charge is reasonably designed to compensate the municipality for its anticipated costs in providing the service. *Silva v. Attleboro*, 454 Mass. 165 (2009). In that regard, the municipality may set fees to recover all anticipated direct and indirect costs, not just those found in any particular annual budget of the department responsible for the service. From an accounting perspective, a payment in lieu of taxes is considered a proper expense for a municipal proprietary service, such as operating a golf course. The appropriate amount depends on the type and amount of property used to provide the service. As a legal matter, however, it is not yet known whether the courts would regard such a payment as part of the cost of providing the service.

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

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC

March 12, 2013

George E. Lane, Jr., Esq.
Town Solicitor
87 Broad Street
P.O. Box 29
Weymouth, MA 02188

Re: Southfield Education Payments
Our File No. 2013-84

Dear Mr. Lane:

You asked about the treatment of "tuition" payments Weymouth expects to receive from the South Shore Tri-town Development Corporation (Southfield) for the education of school-age children living within Southfield. Southfield's enabling act makes it responsible for the public education of those children "whereby such children shall be deemed to be residents of the town of Weymouth for those purposes" and provides that in educating those children, Weymouth is not "deemed to have accepted or adopted any school choice program." St. 1998, c. 301, § 6(pp), as amended by St. 2008, c. 303, § 37.

As you know, the treatment of municipal revenue is governed by G.L. c. 44, § 53, which provides that all monies received by municipal departments and officials belong to the general fund and may only be spent by appropriation. Therefore, absent some statutory exception, any payments made to and received by Weymouth would be general fund revenue.

As you know, counsel for the Weymouth school committee provided us with several proposals for crediting the payments from Southfield into a "revolving" fund instead and cited G.L. c. 76, § 12B(o) or c. 44, § 53E½ as providing statutory authority to do so. A revolving fund generally refers to a special revenue fund established by a general law or special act that separately accounts for fees, charges or other receipts generated by specified activities and authorizes a board or officer to spend them without appropriation for those activities. Typically, these funds are authorized for programs or services for which participation or user fees are charged. The program expenses fluctuate with demand, are easily segregated from other departmental expenses and match the revenue stream from the fees or charges collected and on hand in the fund during the fiscal year.

We do not believe the fund established by subsection (o) of G.L. c. 76, § 12B applies in this case. That fund is established in connection with the inter-district school choice program authorized by § 12B. Under that statute, school choice tuition charges for non-resident students attending school in another district (the receiving district) are assessed to their home district (the sending district) and paid over to the receiving districts by the Commonwealth through adjustments in their quarterly local aid distributions. Those are the payments credited to the revolving fund and are generally intended to cover additional out-of-pocket expenses associated with educating students enrolled under the choice program. See Department of Elementary and Secondary Education (DESE) February 17, 2004 *Advisory Memorandum on Financial Administration of the School Choice Program* (http://finance1.doe.mass.edu/schoice/choicead.html).

The school committee supports its position that this fund is applicable by reference to the Town of Harvard, which provides educational services to students living within the Devens Regional Enterprise Zone under a contractual arrangement. Like Southfield, Devens must provide for a public education of students within its boundaries. Devens' enabling legislation, however, states that it will initially provide that education by contracting with any of the towns located within Devens, or any other municipality or school district, and enables it to later operate its own public school system or become a member of a regional school district. St. 1993, c. 498, § 26, as amended by St. 1994, c. 224, § 24. We have no record of being asked to address the treatment of monies received by Harvard. According to DESE (http://finance1.doe.mass.edu/schoice/choice_tuition13_dec.xls), Harvard, unlike Weymouth, is currently a school choice receiving district, but Devens' school choice assessment is for students attending a different system. In any event, as noted above, Southfield's enabling statute specifically states that in educating Southfield students, Weymouth will not be deemed to participate in the school choice program. Moreover, there is no indication from the information provided to us that the Commonwealth will assess Southfield for the tuitions and pay them over to Weymouth under the school choice program.

The tuition payments do not appear to fall squarely within the revenue that may be credited to the revolving fund authorized by G.L. c. 71, § 71F either. That statute, which must be accepted by a city or town, establishes a revolving fund for "tuition payments for nonresident students" (emphasis added). Since Southfield's enabling statute expressly provides that the children are "deemed to be residents of" Weymouth for public education purposes, we do not see how payments made for their education can also be said to be payments for nonresidents solely for purposes of the fund.

The school committee also suggests use of a so-called departmental revolving fund under G.L. c. 44, § 53E½ to account for the payments. Under that statute, a city or town may annually authorize revolving funds for one or more departments for "departmental receipts received in connection with the programs supported by [the] revolving fund." (Emphasis added). The requirements for the annual authorization make it akin to a separate line item appropriation for the program funded by the receipts in that it provides spending authority for the year up to a voted amount of collections. It must be authorized by vote of the legislative body, upon a recommendation by the chief executive body or officer, and must take place before the July 1 start of the fiscal year. The vote must specify the receipts to be credited to the fund, purposes for which they may be spent, the board or officer that may spend them and the maximum that may be spent from the fund. That spending authority cannot be more than one percent of the prior year's tax levy. Spending authority for all departmental revolving funds cannot be more than 10 percent of the prior year's tax levy. Given these parameters and the prohibition on establishing funds for such fee based enterprises as water and sewer service, our view generally has been that the statute establishes an alternative means of annually budgeting for modest departmental programs and services that are more or less self-supporting from charging and receiving fees from program users and with expenses that can be segregated and paid from collections during the year.

Thus, we have not viewed the statute as providing a vehicle for earmarking any receipt and in particular for earmarking intergovernmental payments or transfers of tax revenues for non-discretionary or essential municipal functions such as proposed here. In our view, those revenues are not departmental receipts within the meaning of the statute. They are not paid voluntarily by members of the public in exchange for receiving a particularized benefit, service or privilege from the department. Moreover, public education is not a self-supporting program. It benefits the public at large, must be performed regardless of demand, here the number of school age children enrolled in public school, and is financed by taxes.

In addition, monies in a departmental revolving fund can only be spent for expenses of the program that generated them. In this case, that would mean identifying the expenses incurred in connection with educating the Southfield children and if they include salaries of full-time employees, charging the salaries and employee benefits to the fund. As is the case with other non-discretionary or essential municipal functions such as police and fire protection, the operating expenses associated with providing public education, such as teacher and administrative staff salaries and benefits, utilities and other fixed costs, must be paid at specific intervals during the year regardless of the flow of receipts. The expenses are embedded in ongoing departmental operations and any particular or additional expenses incurred would not appear to be clearly identifiable for purposes of charging a separate revenue fund.

Finally, the school committee suggests seeking special legislation to establish a revolving fund for the Southfield payments. We make no comment as that is a local decision.

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC
CC: Paul R. DeRensis, Esq., Deutsch, Williams, Brooks, DeRensis & Holland, P.C.

October 4, 2005

John McVeigh
Board of Health Agent/Director
Town of Randolph
1 Turner Lane
Randolph MA 02368

Re: Recycling Departmental Revolving Fund
Our File No. 2005-317

Dear Mr. McVeigh:

This is in response to your letter about amending an annual town meeting vote authorizing a departmental revolving fund for the board of health at a special town meeting this fall. The vote stated that the fund was to be credited with "sales of bins, recycling grants" and up to $50,000 could be spent by the board for recycling. Apparently, the board of health wants to amend the vote to allow further receipts to be credited to the fund for fiscal year 2006.

We do not believe that a departmental revolving fund authorization can be amended after annual town meeting to include other receipts. The reason is that the departmental revolving fund statute, G.L. Ch. 44 §53E½, sets out very specific authorization procedures. These procedures require annual town meeting to authorize a fund for eligible departmental receipts for any given fiscal year before the July 1 start of that year. Moreover, to be valid, that authorization vote must also specify: (1) the board, department or officer authorized to spend the fund, (2) the departmental receipts to be credited to the fund, (3) the programs and purposes for which fund monies may be spent, and (4) the maximum amount that may be spent from the fund during the fiscal year. The only deviation allowed from this authorization procedure is where a town department begins a new fee-based program or service, or begins charging a fee for an existing program or service, after annual town meeting. In that case, the town may authorize a fund for that initial year at a later town meeting so long as the accounting officer certifies that the new revenues were not used in determining the tax rate if set. If a fund is properly authorized, there is also a procedure for adjusting the spending limit during the year.

In this case, however, the fund was for existing revenues that the vote identified. For this fiscal year, the fund is limited to those receipts. Any other receipts, even if related to recycling, belong to the general fund. G.L. c. 44 §53.

Please note that we do not believe that grants given to the board for recycling can be credited to a departmental revolving fund. The treatment of grants is governed by G.L. c. 44 §53A and they must be accounted for separately.

For the future, we think a revolving fund for the recycling program could include the charges the board imposes for various stickers or compost bins for the purpose of promoting recycling. As a general rule, we believe that the receipts eligible to be credited to a departmental revolving fund are primarily those charged to members of the public for the purpose of making a particular program or service provided by the department more or less self-supporting. Typically, that means user or participation fees, and in some limited circumstances, regulatory fees charged members of the public in return for a particular or special privilege, such as a license or permit. This is consistent with the purpose of a revolving fund generally. A revolving fund is particularly suitable as an alternative financing mechanism for those fee-based programs or activities with expenses that fluctuate with demand. Typically, the expenses are easily segregated from other departmental expenses and can be supported with revenues received and on hand during the fiscal year.

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

Very truly yours,

Daniel J. Murphy

Daniel J. Murphy
Chief, Property Tax Bureau

DJM/KC

March 16, 2004

Bruce L. Vogel
City Council, City Hall
60 Pleasant St.
Newburyport, MA 01950

Re: Appropriation from Revolving Fund under GL Ch.44 §53E½
Our File No. 2003-422

Dear Mr. Vogel:

This is in reply to your letter raising several issues concerning a recreational services revolving fund established under GL Ch.44 §53E½. The mayor had sought city council approval for a transfer of part of the revolving fund balance to pay for a shortfall in an appropriation for the skateboard park account, which we understand was for the construction of the skateboard facility.

Irrespective of whether costs of the skateboard park were within the scope of the recreational services revolving fund, we believe that the mayor and council can appropriate an unencumbered balance in a revolving fund established under §53E½ for any lawful purpose. We think the restrictions on the expenditure purposes of the fund established by the vote to create it are binding on the department that has charge of the fund, but not on the municipal appropriating authority (in this case, the mayor and council acting together). In the absence of the appropriating body's vote to create the fund, the fund's receipts would be general fund revenues that could be appropriated for any municipal purpose. If the fund were not renewed, any balance would close out to the general fund at the end of the fiscal year, and become part of the city's free cash. We see no basis in the statutory language of §53E½ itself or the scheme of municipal finance generally why the appropriating authority should not be able to revoke the spending authority delegated to a department by the creation of a revolving fund under that section.

You also asked whether there were a problem with a cross-subsidy between different activities that were within the scope of a single revolving fund. We do not believe that §53E½ mandates an exact penny-for-penny accounting for, and segregation of, the revenues and expenditures of each activity within the scope of the fund. To the extent that the appropriating body wishes to insure that each activity is financially self-supporting, it can create distinct revolving funds for each activity. How much latitude a municipality or one of its departments has in establishing different fees and charges for different classes of participants in an activity is a matter on which we decline to comment. It is too remote

from our regulatory interest in the proper authorization of and accounting for revolving funds.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,

Daniel J. Murphy

Daniel J. Murphy, Chief
Property Tax Bureau

DJM/CH

Massachusetts Department of Revenue *Division of Local Services*
Navjeet K. Bal, Commissioner *Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs*

January 27, 2010

Curt T. Bellavance, Director
Community Development Division
1600 Osgood Street
North Andover, MA 01845

Re: Application Fees
Our File No. 2009-792

Dear Mr. Bellavance:

This is in reply to your letter asking our opinion about the extent of the authority of municipal regulatory boards, such as the planning board, zoning board of appeals and board of health, to set or waive application fees where the town has not accepted G.L. c. 40, § 22F. That statute permits department heads to set fees for services rendered or work performed for individuals or for certain licenses, permits or certificates. We have also received a related inquiry from the chairman of the town's zoning board of appeals.

Although we come across issues concerning various municipal fees and charges in the course of reviewing and overseeing municipalities' fiscal situations, the Department of Revenue has regulatory responsibility only for municipal taxes and excises, and for accounting and borrowing. We have no supervisory role over the boards you mentioned, or over their fees. Our comments in response to your letter must therefore be general with respect to the various boards, and strictly advisory.

As far as the general laws are concerned, local regulatory bodies may have inherent power to impose reasonable application fees to cover the administrative cost of processing applications, even in the absence of a statute or by-law authorizing those fees. See *Southview Co-operative Housing Corporation & others vs. Rent Control Board of Cambridge,* 396 Mass. 395. The general law that authorizes a revolving fund for fees charged to pay outside consultants to review certain applications, G.L. c. 44, § 53G, refers to fees set by planning boards, zoning boards, boards of health, and conservation commissions acting under particular statutes. The language of § 53G seems to assume that the specified statutes authorize the imposition of the fees. It is clear, however, that § 53G itself does not authorize those fees. It authorizes only the use of a revolving fund to account for and spend the fees, exempting them from the otherwise applicable requirement of G.L. c. 44, § 53 that they be credited to the general fund and spent only by appropriation.

We are not aware of any general law that addresses the issue of waivers or exemptions from regulatory application fees, or what limitations may apply to such waivers and exemptions in a fee schedule promulgated by a regulatory board. We also venture no opinion on whether town meeting, the board of selectmen, or other town officials or boards may have a role in setting or approving such fees under the town charter or by-laws. These matters should be discussed with town counsel.

With respect to accounting for the application fees, a regulatory board must turn over the fees to the treasurer "upon their receipt." G.L. c. 44, § 53. As a general rule, this means promptly and in most towns, departments are expected to make turnovers at least once a week. Any waiver or abatement of a fee already paid would generate a refund, which would be charged against the receipts of the fiscal year in which the refund is paid, irrespective of the fiscal year in which the fee was originally paid to the town. This is how motor vehicle excise and other abatements are handled, except for abatements of property taxes for which an overlay account is established by statute. See G.L. c. 59, §§ 25 and 70A.

We hope this information proves helpful.

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: CH
CC: Albert P. Manzi, III, ZBA Chairman
Carol McGravey, Town Counsel