

Massachusetts Department of Revenue Division of Local Services

Amy A. Pitter, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



Community Preservation Fund

Frequently Asked Questions -

Borrowing, Accounting and Spending

Prepared for Community Preservation Coalition Workshop – December 2012

COMMUNITY PRESERVATION FUND

Frequently Asked Questions

A. BORROWING

1. If the community chooses to borrow for a land acquisition, what is the limit on the term of the bond? Who decides the term? The CPC or Treasurer?
2. If the community authorizes a CPA borrowing, does the debt service have to be funded from CPA funds? If the CPC does not make an annual recommendation to fund the debt service, can the municipality appropriate from CPA funds anyway?
3. Can we use CPA fund monies to cover the remaining debt service payments on a borrowing for an allowable CPA purpose that was authorized before the CPA was adopted? After the CPA was adopted and not intended to be funded with CPA monies? What about a project that is on the town's capital plan, but has not yet been funded?
4. Can the community reduce or revoke the CPA surcharge if there is debt outstanding? Can the surcharge be collected for one purpose once the CPA is revoked to fulfill the debt obligation only?

B. EXPENDITURE PURPOSES

Recreational

1. The parks and recreation department wants the CPC to recommend using fund monies for a number of projects on the department's wish list. Can CPA monies be used for any of these projects? The projects include:
 - Purchasing land to create an athletic field and park.

- Exercising the town's option to purchase a private golf course currently classified under G.L. Ch. 61B that is being sold for development and using it as a municipal course. If allowed, can the course then be leased to a commercial operator?
 - Converting a parcel of vacant land donated to the town several years ago into soccer fields.
 - Installing new drainage at an existing athletic field that has a flooding problem.
 - Fixing a leaking roof at the town skating rink.
 - Adding or replacing lights, fencing, playground equipment or other amenities at three town recreational sites.
 - Buying dilapidated soccer fields from a non-profit organization and restoring them. As an alternative to town ownership and operation of the site, giving monies to the organization to help it restore the fields.
 - Buying an indoor swimming pool from a non-profit organization and rehabilitating the facility. As an alternative to having the town own and then have to operate the site, giving monies to the organization to help it rehabilitate the facility.
2. Can the community establish a separate reserve account solely for recreation? Can a CPC choose to fund recreational projects from the existing 10% open space reserve account, even if the account contains funds from past years?
 3. Can CPA funds be used to fund a project that involves artificial turf on an athletic field? Can any portion of this project be paid for with CPA funds?
 4. What activities with regard to recreational assets are maintenance (not allowed) and rehabilitation (allowed)?

5. Can CPA funds be used for planning, engineering, design, permitting and legal costs for an allowable CPA recreational rehabilitation project?

6. Can CPA funds be used to pay municipal staff, such as the DPW, to perform capital improvements on town recreational assets?

Community Housing

7. What types of activities are allowed under “support” in the community housing category?

8. Can communities rehabilitate existing community housing that was not acquired or created with CPA funds? If no, why can’t we call such projects “support” of community housing and fund them? Would replacement of a roof on existing community housing qualify as “preservation” of the housing?

9. Can communities build any market rate housing units in a mixed income development on land acquired 100% with CPA funds? Can communities build a structure with retail on the first floor and community housing on the second floor if the land was acquired 100% with CPA funds?

C. IMPLEMENTATION PROCEDURES

1. Can a community planning to purchase property using CPA funds use assessed value instead of an appraisal? Can a community appropriate more than appraised value from their CPA funds to buy the interest? If not, can they use other funds (general fund monies, private donations) to pay for the amount above appraised value?

2. As part of an acquisition, can a community appropriate CPA funding to a non-profit land trust to hold a restriction on land acquired with CPA funds? What about returning to the legislative body to appropriate funds for such a restriction on a purchase that was completed long ago with CPA funds, but a separate restriction was never recorded?

3. If a community pays for an open space land acquisition with CPA funds, and before the restriction being placed on the parcel, it decides to build a municipal building on it, can the town “reimburse” the CPA fund for the purchase and use the land for a municipal building?

**Chart 1
COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)**

	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
DEFINITIONS (G.L. c. 44B, § 2)	Land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field Does <u>not</u> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.	Housing for low and moderate income individuals and families, including low or moderate income seniors Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
ACQUISITION Obtain property interest by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
CREATION To bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes	X	Yes	Yes
PRESERVATION Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
SUPPORT Provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to entity that owns, operates or manages such housing, for the purpose of making housing affordable	X	X	X	Yes, includes funding for community's affordable housing trust
REHABILITATION AND RESTORATION Make capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes if acquired or created with CP funds	Yes	Yes	Yes if acquired or created with CP funds

Chart 2 COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES	ALTERNATIVE ANNUAL FINANCING SOURCES	FUND BALANCE	BUDGETED RESERVES	BORROWING
Definition	Annual recurring revenues	Other financing sources dedicated by appropriation to the fund (G.L. c. 44B, § 3(b½))	Unspent funds generated by favorable operations during the previous FY that are available for appropriation	Funds designated by the legislative body for later appropriation for any CPA purpose during the fiscal year <u>and/or</u> for one of the following specific CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing	Debt repaid with future fund revenues
Source	<p>Surcharges assessed for FY</p> <p>State trust fund distribution received during FY (beginning in 2nd year of fund operation)</p>	Appropriations to the fund made from the tax levy (general fund) before the tax rate set, or from available funds until 6/30	<p>Appropriation turn-backs, including unappropriated balance from any annual budgeted reserve</p> <p>Actual receipts in excess of budgeted revenues</p> <p>Investment interest</p> <p>Miscellaneous non-recurring revenues, <i>e.g.</i>, proceeds from sale of community preservation fund acquisitions, damages and fines related to the acquisitions, or public/private gifts/grants for the community preservation fund</p>	Appropriations from annual fund revenues or fund balance	Proceeds from notes, bonds or other debt obligations issued for a CPA purpose
Limitations	<p>Legislative body <i>must</i> appropriate or place in budgeted special purpose reserves at least 10% of each year's annual revenues for each of following CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing</p> <p>Cannot spend from appropriations until FY begins (<i>i.e.</i>, 7/1)</p>	<p>Appropriations require legislative body vote that states the specific dollar amount being dedicated from general or available fund</p> <p>Appropriations from other financing sources may not exceed 2% of the year's tax levy</p> <p>Other financing sources are considered annual revenues for purposes of meeting the annual 10% appropriation or reservation requirement (see "Annual Fund Revenues")</p>	May be appropriated by legislative body for any CPA purpose	<p>Appropriations <i>to</i> a particular reserve require legislative body vote that states the specific dollar amount and source being reserved</p> <p>Appropriations <i>from</i> the annual budgeted reserve may be made for any CPA purpose during the FY only and any unappropriated balance at year-end closes to fund balance</p> <p>Appropriations <i>from</i> a particular special purpose reserve limited to that CPA purpose</p>	<p>Legislative body <i>must</i> specifically authorize borrowing under CPA (G.L. c. 44B)</p> <p>Borrowing limited in amount to debt service payable from estimated surcharge revenues over term</p> <p>Borrowing limited to purposes and terms applicable to municipal borrowing generally under G.L. c. 44 §§7 and 8</p> <p>Appropriations <i>from</i> proceeds remaining after purpose completed or abandoned restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan</p>

	ANNUAL FUND REVENUES	ALTERNATIVE ANNUAL FINANCING SOURCES	FUND BALANCE	BUDGETED RESERVES	BORROWING
Available to Appropriate	Until tax rate set for FY. Once rate set, only budgeted reserves, fund balance or borrowing may be used as financing source.	Any time after appropriation into fund (or after 7/1 for new appropriations from general fund revenues)	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY	Annual budgeted reserve during FY (<i>i.e.</i> 7/1 to 6/30) Special purpose reserves any time (or after 7/1 for new reservations from annual revenues)	Anytime
Similarity	General fund annual tax levy (taxes, state aid, receipts) Enterprise fund annual revenues (user charges and fees)	General fund and available funds appropriated to special purpose funds	Free cash Enterprise fund free cash (retained earnings)	Stabilization fund (<i>i.e.</i> , general fund monies reserved for later appropriation for municipal purpose) Enterprise fund budgeted surplus	Other municipal debt

Chart 3

SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES

<u>SOURCE</u>	<u>VOTE</u>
Annual revenues	<ul style="list-style-type: none"> • To appropriate \$10,000 from FY2013 Community Preservation Fund revenues for _____. • To reserve \$250,000 from FY2013 Community Preservation Fund revenues for FY2013 Community Preservation Fund purposes (FY2013 Budgeted Reserve) • To reserve \$100,000 from FY2013 Community Preservation Fund revenues for Open Space.
Fund Balance	<ul style="list-style-type: none"> • To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.
Annual Budgeted Reserve	<ul style="list-style-type: none"> • To appropriate/transfer \$75,000 from FY2013 Community Preservation Budgeted Reserve to _____.
Special Purpose Reserves	<ul style="list-style-type: none"> • To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.
Excess Bond Proceeds	<ul style="list-style-type: none"> • To appropriate/transfer \$10,000 from Community Preservation – Parcel X Land Acquisition Loan balance to _____.

SAMPLE COMMUNITY PRESERVATION PROGRAM APPROPRIATION VOTE

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

MOTION: I move that the town authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for open space purposes under the Community Preservation Act and to fund such acquisition, that \$5,000,000 be appropriated with \$400,000 to be appropriated from FY2013 Community Preservation Fund revenues, \$100,000 to be transferred from the Community Preservation Fund Open Space Reserve, \$1,000,000 to be transferred from the Community Preservation Fund balance and that \$3,500,000 be borrowed by the treasurer, who is authorized with the approval of the selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B, § 11, or any other general or special law, for a period not to exceed **the maximum number of years authorized by law.**

Chart 4

SAMPLE VOTES TO COMMUNITY PRESERVATION FUND FROM ALTERNATIVE FINANCING SOURCES

<u>SOURCE</u>	<u>VOTE</u>
Annual General Fund revenues	<ul style="list-style-type: none">• To raise and appropriate (or appropriate from the levy) \$100,000 and thereby dedicate \$100,000 of FY2013 meals excise revenues to the Community Preservation Fund.
Available Fund	<ul style="list-style-type: none">• To appropriate/transfer \$75,000 from the Sale of Real Estate Fund to the Community Preservation Fund.

**SAMPLE LANGUAGE
COMMUNITY PRESERVATION ACT REVOCATION OR SURCHARGE AMENDMENT**

**SURCHARGE RATE OR EXEMPTION 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, _____.

Ballot Question

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

**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

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

FAIR AND CONCISE SUMMARY

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

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

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. [69]

“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 or eligible for listing [70] 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”, ~~the upkeep of real or personal property~~ 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. [71]

“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; but not including maintenance. [72]

“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 the remodeling, ~~reconstruction and 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~~ with respect to historic resources, “rehabilitation” shall ~~have the additional meaning of work to~~ 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. [73]

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. [74]

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

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

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

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

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

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

(4) for \$100,000 of the value of each taxable parcel of class 3, commercial property, and class four, industrial property as defined in section 2A of said chapter 59. [75]

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

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

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

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

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

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed

with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

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

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

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

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

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

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

(b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation, including the consideration of regional projects for community preservation. [76] 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, and 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, land for recreational use 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. [77]

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

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

(d) After receiving such recommendations from the community preservation committee, the legislative body shall then take such action and approve such appropriations from the Community Preservation Fund as set forth in section 78, 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. [78]

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

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

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

Section 6. In ~~every~~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, ~~but not including land for recreational use,~~ 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 ~~such~~ appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, ~~but the 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. [79]

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years, ~~but;~~ 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 ~~in the commonwealth~~. 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: **(ai)** 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;** **(biii)** all funds received from the commonwealth or any other source for such purposes; and **(eiv)** 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. 180

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

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

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

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

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

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

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

(b) The commissioner shall multiply the amount remaining in the fund after any disbursements for operating and administrative expenses pursuant to subsection (c) of section 9 by 80 percent. This amount distributed in the first round distribution shall be

known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town and if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b ½) of section 3. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

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

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

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

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

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.

decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.
decile 10	50 per cent of the base figure.

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

(gf) Notwithstanding any other provision of this section, the total state contribution for each city ~~and~~ town shall not exceed the actual amount raised by the city or town'smunicipality's surcharge on its real property levy and, if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b ½) of section 3.

(hg) When there are monies remaining in the Massachusetts Community Preservation ~~Trust~~ ~~Fund~~ after the first and second round distributions, and any necessary administrative expenses have been paid in accordance with section ~~69~~, the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted sections 3 to 7, inclusivethis chapter. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

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

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

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

(j) After distributing the Massachusetts Community Preservation ~~Trust~~ ~~Fund~~ in accordance with this section, the commissioner ~~shall~~ ~~may~~ keep any remaining funds in the trust for distribution in the following year. [81]

Section 11. A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation

Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

Section 12. (a) A real property interest that is ~~acquired~~purchased with monies from the Community Preservation Fund shall be bound by a permanent ~~deed~~ restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The ~~permanent~~deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The ~~deed~~permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on said property. [82]

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

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

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

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

provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

Section 15. (a) A person who, without permission, knowingly carries away or steals, mutilates, destroys, damages, causes to be damaged or cuts any tree, shrub, grass or any other portion of real property purchased by a city or town with funds derived from this chapter shall be liable to the city or town in tort for such actions.

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

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

Section 16. (a) At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter, including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b¹/₂) of section 3. [83]

(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.

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

St. 2012, c. 139, § 155

SECTION 155. (a) Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2013 in the following order to the extent that funds are available: (i) transfer \$25,000,000 to the Massachusetts Community Preservation Trust Fund, established by section 9 of chapter 44B of the General Laws; and (ii) transfer the remaining balance from the General Fund to the Commonwealth Stabilization Fund.

(b) All transfers pursuant to this section shall be made from the undesignated fund balance in the budgetary funds proportionally from the undesignated fund balances; provided, however, that no such transfers shall cause a deficit in any of the funds.

St. 2012, c. 139, § 218, as amended by St. 2012, c. 239 § 48

SECTION 218. Sections 69 to 83, inclusive, shall apply to all Community Preservation Fund appropriations approved by a city or town's legislative body on or after the effective date of acceptance of sections 3 to 7, inclusive, of chapter 44B of the General Laws in any such city or town.