

# MUNICIPAL AFFORDABLE HOUSING TRUST FUND OPERATIONS MANUAL

How to effectively operate  
your local trust



**Massachusetts  
Housing Partnership**  
Moving affordable housing forward

**August 2023**

## CREDITS

---

### **Principal Author**

Jennifer Goldson  
*JM Goldson, Community Preservation +  
Planning*

### **Supervising editors** for this update

Shelly Goehring  
*Massachusetts Housing Partnership*

Callie Clark  
*Massachusetts Housing Partnership*

### **Publication Partners**

Citizens' Housing and Planning  
Association

Community Preservation Coalition

### **Special thanks**

Rita Farrell, Connie Kruger, Rus Lodi,  
Katherine Roth, Kathleen O'Donnell,  
Jennifer Raitt, Dina Vargo, and Ann Verrilli

### **Cover photo**

Noquochoke Village, Westport  
*Photo by Greig Cranna*

# TABLE OF CONTENTS

<b>Introduction .....</b>	<b>1</b>	<b>V Undertaking Initiatives .....</b>	<b>32</b>
Responding to a need		Identifying priorities	
<b>I Getting Started.....</b>	<b>2</b>	Soliciting proposals	
Step 1: Submit housing trust bylaw		Initiating projects and programs	
Step 2: Establish Board of Trustees		<b>VI Funding Projects.....</b>	<b>37</b>
Step 3: Record Declaration of Trust		Board vote	
Step 4: Set up the trust fund account		Award letter	
Step 5: Ensure transparency		Require affordability restriction	
Step 6: Identify priorities		Terms of funding award	
Step 7: Set a budget		Issuing payments	
Step 8: Determine operating approach		Tracking expenditures & conditions	
<b>II Legal Considerations.....</b>	<b>12</b>	<b>VII Profiles.....</b>	<b>40</b>
<b>III Sources of Revenue.....</b>	<b>17</b>	Development	
Community Preservation Act		Chelsea	
Inclusionary zoning		Medway	
Special bylaws		Programs	
Voluntary developer payments		Homeownership “buy-down”	
Municipal/tax title property		Rehabilitation	
Private donations		Rental assistance	
Cell tower payments		Administrative	
Tax override		Staff and professional support	
Municipal bond		Collaborative housing efforts	
Resale of affordable units		<b>Appendix A.....</b>	<b>44</b>
Other Municipal Funds		Municipal Affordable Housing Trust	
<b>IV Eligible Initiatives .....</b>	<b>22</b>	Fund Law (MGL c.44, sec.55C)	
Purpose		<b>Appendix B.....</b>	<b>47</b>
Board powers & responsibilities		Inspector General Procurement Charts	
Low/moderate income			
Subsidized Housing Inventory (SHI)			
Community Preservation Act (CPA)			
compliance			
Creation			
Preservation			
Support			

# INTRODUCTION

## Responding to a need

### *Operations manual aimed at helping communities run effective municipal housing trusts*

Roughly 140 Massachusetts communities have established Municipal Affordable Housing Trusts (MAHT)<sup>1</sup>. The interest in housing trusts is largely due to the availability of local funding sources, especially Community Preservation Act (CPA) funds, and local recognition of the importance of addressing affordable housing needs. Recognizing this need, the state legislature passed the Municipal Affordable Housing Trust Fund Law (MGL c.44 §.55C) in 2005, which simplified the process of establishing a local housing trust fund. The 2005 statute enabled municipalities to adopt local housing trust funds by majority vote of the local legislative body.<sup>2</sup>

This publication is a companion to MHP's Municipal Affordable Housing Trust guidebook (released in 2009 and updated in 2013 and 2018) and is intended to help municipal officials delve into the details of how to operate new or established housing trusts. Through various training sessions and other technical assistance for housing trust communities, MHP's Community Assistance team identified a need to provide more information to help officials operate housing trusts most effectively. The Community Assistance team also saw a need for more thorough understanding of legal considerations especially issues involving CPA funds, MA Open Meeting Law, Procurement laws, the Anti-Aid Amendment, and Conflict of Interest Law.

Housing trust communities wanted more information on sources of revenue, how to more effectively use trust funds, and how to troubleshoot management and communication issues. Some communities needed more capital for the trust fund while others had plenty of capital but needed help identifying how to put it to use.

This publication provides factual information, tips for best practices, sample documents, and highlights successful trust-funded initiatives. Woven throughout the publication is a central message:

**The most effective housing trusts are operated with transparency, strong communication, clear and strategic priorities, and professional capacity.**

<sup>1</sup> This figure is based on the results of a survey completed by MHP in 2015 and our continuing work with trusts.

<sup>2</sup> In Massachusetts, the term "local legislative body" refers to a municipality's city/town council or town meeting, depending on the form of government.

# GETTING STARTED

## Basic steps to help ensure that a trust will operate effectively

*When a community adopts a Municipal Affordable Housing Trust (housing trust) there are multiple required and recommended steps to make the housing trust official, functional, and effective. This section describes the basics of getting started, including how to establish an effective board of Trustees (board), identify funding priorities, and develop a framework to operate effectively.*

This section describes the following steps to get started:

**Step 1:** Submit housing trust bylaw to Attorney General

**Step 2:** Establish the Board of Trustees

**Step 3:** Record a Declaration of Trust

**Step 4:** Set up the trust fund account

**Step 5:** Ensure transparency

**Step 6:** Identify priorities

**Step 7:** Set a budget

**Step 8:** Determine operating approach

### STEP 1 - Submit housing trust bylaw to Attorney General<sup>3</sup>

Once a vote is taken to adopt the trust, the municipal clerk must certify the housing trust bylaw and submit it to the Attorney General of Massachusetts (AG) within 30 days of adjournment of the local legislative body. The AG is statutorily required to approve the bylaw for consistency with state law within 90 days from the clerk's request for approval. (Cities are not required to submit adopted ordinances to the AG.)

More information from the office of the Attorney General [here](#).

For more information on gaining support for and establishing a Municipal Affordable Housing Trust in your community, check out [MHP's 2018 Guidebook](#):

## STEP 2- Establish a Board of Trustees

After the AG approves the housing trust bylaw, the municipality may appoint the Board of Trustees (board). The municipality's chief executive officer (i.e., select board, mayor or town manager) is required by statute to appoint the members of the board per the requirements adopted through the local bylaw. The board has fiduciary responsibility for overseeing the use and management of the housing trust.

The board must include a minimum of five board members (trustees) with voting power, including the chief executive officer. Where the municipality's chief executive officer is a multi-member board, such as a select board, it must designate a minimum of one member to serve as a trustee. In the case of Plan D or Plan E municipalities, the mayor or city manager shall appoint trustees, subject to confirmation by the city/town council. Select boards shall appoint trustees in towns. The town manager or municipal administrator can be appointed to serve as trustee with or without the power to vote.

The trustees can serve terms of up to two years. Municipalities often stagger the initial terms to avoid abrupt transitions of membership. Terms are outlined in the housing trust bylaw.

Once appointed, one of the first official duties that the board will undertake is to elect officers including chair, clerk, and treasurer. Some boards also elect a vice chair.

**BEST PRACTICES TIP: Membership composition is important because trust boards are "working boards." Trustees must be actively engaged to support identifying, and achieving, board goals.**

One key to establishing a strong and effective board is to include broad representation from both the public and private sectors, such as appointing representatives from other local board or commissions, community representation, and residents with professional and lived expertise.

Membership requirements for board composition beyond the minimum statutory requirements can be included in the housing trust bylaw. For example, Ayer's bylaw suggests experience that members should have and recommends boards to be represented (see below).

### Ayer Affordable Housing Trust Bylaw Section 3 | Board of Trustees

There shall be a Board of Trustees, which shall consist of seven (7) Trustees, to be appointed by the Select Board, in consultation with the Ayer Affordable Housing Committee, for terms not to exceed two (2) years, but may be reappointed at the discretion of the Select Board for succeeding terms, with no limits on the number of terms that a Trustee can serve. To the extent possible, the Board of Trustees should include members with experience in banking, real estate, real estate law, and residential development. Trustees must be residents of the Town. At least one member of the Board of Trustees shall be a member of the Select Board. It is recommended that the Board of Trustees include a member of the Ayer Affordable Housing Committee, a member of the Ayer Community Preservation Committee (CPC), and/or a member of the Ayer Planning Board. In order to stagger the terms of the Trustees, the first three Trustees appointed shall have terms of one year, and the remaining four shall have terms of two years. Thereafter, all Trustees shall be appointed for two (2) year terms.

Many communities have found it helpful to include a member of the Community Preservation Committee (CPC) and the housing partnership (or affordable housing committee) on the board. Doing so can help increase communications with local bodies, which is important for furthering transparency and collaboration.

The initial care given to create a strong board with balanced membership is also required when replacing members so that the board remains strong and effective through membership transitions. Keep in mind that the more prescriptive a community is in directing board membership the more challenging it may be to fill board seats in the long run.

Trustees should be knowledgeable in key areas to perform their duties effectively and responsibly. To equip the trustees with the information they need, new trustees should be provided with a comprehensive orientation packet that includes the following information, as relevant:

- MA Open Meeting Law
- MA Procurement laws
- MA Conflict of Interest Law
- MA Anti-Aid Amendment
- Information on Fair Housing laws
  - [Mass Fair Housing, Federal and State Fair Housing Laws](#)
  - [MA Analysis of Impediments to Fair Housing Choice](#)
- Local housing trust bylaw
- Local Affordable Housing Plan or related housing element of a Master Plan
- Local Community Preservation Plan and application
- Information on local affordable housing initiatives

See Chapter II, Legal Considerations, for additional information including the MA Open Meeting Law, Procurement Laws, the Anti-Aid Amendment, and the Conflict of Interest Law.

## STEP 3 - Record Declaration of Trust

A Declaration of Trust (declaration) establishes the board's authority, rules, and regulations. A recorded declaration provides notice of the establishment of the housing trust and the board's powers and authority to hold and convey title to real estate. A declaration is required when a housing trust acquires any interest in real property, by deed, restriction or mortgage.

Note that a declaration will not be accepted by the Land Court Registry District unless the declaration is filed with the deed to a specific piece of property. However, the Registry of Deeds will accept a declaration as a stand-alone document, which is why many boards record the declaration at the Registry of Deeds shortly after board appointment. The city solicitor/town counsel or an attorney engaged by the board may draft the declaration. If prepared by outside counsel, the city solicitor/town counsel should review the declaration prior to registering it.

## STEP 4- Set-up the trust fund account

The board must work with municipal officials, particularly the municipal treasurer, to set up the trust fund account. While some boards have considered setting up a separate account through a bank, it is more common to set up an account as a municipal account through the municipal treasurer. However, unlike other municipal funds, all moneys in the trust fund at the end of the year, whether or not committed by the board, remain trust property. It is important to track funds by revenue source (e.g., CPA funds and Inclusionary Zoning payments) to assure that any restrictions on uses are followed. As of 2016, trusts are now required to track CPA income and expenditures separately to expedite an annual report of allocations to the CPC.

## STEP 5- Ensure transparency

Transparency and visibility through strong public communications can greatly enhance the effectiveness of the board. The primary ways to ensure transparency and visibility are through regular reporting, publicizing milestones, and maintaining an up-to-date online presence.

### REPORT REGULARLY

Reporting to municipal entities is critical to maintaining public understanding of trust goals and initiatives. Boards will typically report annually to the local legislative body and may be included in the community's annual report. If housing trust revenue includes CPA funds, the board must also report regularly to the community preservation committee. The trust must annually report to the CPC how it has allocated CPA resources, ideally in time for the CPC to include this information in its yearly CP-3 report to the state in September. In addition, boards may benefit from making regular presentations to the Chief Executive Officer (e.g., select board).

If the municipality also has an affordable housing committee or housing partnership, it can be helpful to hold joint meetings or present updates at regularly scheduled meetings of these entities to facilitate coordination.

### PUBLICIZE MILESTONES

The board can increase visibility by hosting events that celebrate project milestones, issuing press releases, flyers, and town Facebook and web announcements. Events and milestones to mark can include applications round deadlines, project awards, and groundbreaking/ribbon cutting events.

### MAINTAIN AN ONLINE PRESENCE

**Webpage:** As a municipal entity, the board should establish a webpage as part of the municipal website. Minimally, the webpage would describe the background and purpose of the housing trust, include a list of trustees and contact information. The webpage can be most helpful when it also includes information about the housing trust's priorities, funded initiatives, as well as agendas, minutes and meeting schedules. It can be used as a public filing



cabinet for all public documents related to the housing trust, including the Declaration of Trust, trust bylaw, applications for funding, and the like.

The webpage can also include links to other housing resources, such as how the Town of Easton's [housing trust's page](#) provides resources for renters, homeowners, seniors, as well as households facing foreclosure, people with disabilities and households seeking other assistance with housing costs. In Easton, the board utilized trust funds to hire a housing coordinator whose duties include creating a website and [brochure](#) regarding other housing funds and assistance that could benefit low/moderate-income residents.



In addition, websites can include an email subscription options where residents can voluntarily sign up for email alerts when the webpage is updated.

**BEST PRACTICES TIP:** Keep the webpage up to date by designating the responsibility and making it part of the calendar of annual events.

Municipal webpages often become out of date. The board chair or housing trust staff may be able to secure municipal permission to have direct access to the webpage to ensure the site is updated regularly with agendas, minutes and other documents. Alternatively, the board may create a private website that is linked to the official municipal website to enable direct access to keep the site updated.

**Social media** Some communities effectively utilize social media tools like Facebook and Twitter to keep the public informed. The board can also use social media to communicate with the public regarding the board's meeting schedule, trust fund allocations, application process and deadlines, events, announcements, and links to media coverage. Boards can also collaborate with other municipal entities such as the housing partnership/affordable housing committee, planning department, housing authority, or community preservation committee to coordinate social media efforts.

For example, the Town of Bridgewater's Community Preservation Committee uses Facebook regularly as one of multiple ways to keep the public informed including announcements of meetings, links to local news coverage, and event invitations.

**Examples of Municipal Facebook and Twitter accounts:**

[Bridgewater CPC Facebook](#)

[City of Chelsea Facebook](#)

[Town of Reading X](#)

## STEP 6- Identify priorities

The housing trust statute allows trusts “to provide for the creation and preservation of affordable housing in municipalities for the benefit of low- and moderate-income households and for the funding of community housing, as defined in and in accordance with the provisions of chapter 44B.” Within this purpose many different types of initiatives could be funded that serve local and regional housing needs.

It will be important for the board to understand the community’s housing needs, environmental considerations, and regulatory constraints to identify priority housing initiatives. Some housing trusts have hired a consultant to help identify priorities through strategic planning, resulting in a housing trust action plan or strategic visioning plan, like [Amherst](#). Other communities have accomplished prioritization more informally, such as [Brewster](#).

### DETERMINING NEEDS & PRIORITIES

Your community may have a current affordable housing plan, housing production plan or housing element of a master plan that documents the local and regional housing needs and recommends housing initiatives for the community to undertake. If there are no such current documents, the board should identify housing needs and priority initiatives. To accomplish this, the board could commission a housing plan or undertake the analysis internally.



A helpful tool to begin understanding housing needs is MHP’s resource, [DataTown](#).

### BEST PRACTICES TIP: Engage with the community to identify priorities.

To guide the board in the identification of priority initiatives for the housing trust fund, the board will benefit from engaging community members and other public and private stakeholders. This type of engagement can be accomplished through meetings, interactive workshops, and/or surveys. Engagement is most effective with an educational component to describe the local and regional affordable housing needs and development constraints in addition to generating and prioritizing ideas for housing trust initiatives.

Through the outreach process, the housing trust can directly engage other housing advocates and community partners by attending their meetings or conducting interviews. Critical local stakeholders can include the housing partnership/affordable housing committee, housing authority, planning board, community preservation committee, select board/mayor, town administrator, school committee, finance committee, other municipal officials, regional non-profit agencies, regional planning agency, real-estate agency/brokers, and housing developers.

Holding community meetings or workshops can also be useful for discussing ideas and priorities with town officials, stakeholders, and other community members. For example, in the process of developing an action plan, Easton, Medway, and Westport held workshops to get ideas for trust-funded housing projects and programs and to prioritize options. This was instrumental in assisting the board with its next step – budgeting.

Through such strategic planning, boards can establish benchmarks for allocating trust funds for different activities, target populations or housing types. After a planning process in 2008, Somerville’s board adopted income criteria for the allocation of trust funds where at least 20 percent of the funds serve households below 50 percent of the area median income (AMI), 20 percent serve incomes between 51 percent and 80 percent AMI and at least 10 percent serve incomes between 81 and 110 percent AMI. Furthermore, the board sets benchmarks to allocate funds by program activity, most recently allocating 65 percent of its annual budget for development project loans.

## STEP 7 - Set a budget

Although this manual portrays steps in neat categories, setting priorities and a budget is often a fluid process. Initial priorities will often be greater than a reasonable budget would accommodate, which necessitates further prioritization.

When budgeting for priority initiatives, it will be important to develop an estimate of potential funding. Knowing the likely funding sources and approximate level of funding will be helpful at this stage. For example, if seeking CPA funds, identifying the balance of the CPA housing reserve could be important information for setting a proposed housing trust budget. It is important to note that the CPA housing reserve is the minimum amount of funds available for affordable housing initiatives and that some communities allocate a greater share of CPA funds to housing trusts or separately fund housing initiatives.

Housing trust budgets often depict multiple years, with the caveat that future budgets are likely to change. The budget indicates estimated revenue as well as expenditures by initiative. The trust’s budget should accomplish two things: track the money it uses in a clear, concise way and convey work the trust is supporting. A sample budget on the following page uses notes and tracks money by source to help track use restrictions that often come with different sources.

**BEST PRACTICES TIP:** It is often critical to affordable housing development success that housing trust funds are the first dollars committed.

In creating a housing trust budget, recognize that the trust resources are typically one of multiple funding sources for any given development and will be helpful as the first dollars committed to demonstrate local support and enable leveraging of other public and private funds.

**Mainville Municipal Affordable Housing Trust Fund  
Financial summary\***

Sources	FY 2022	FY 2023	FY 2024 projected	
<b>Carry forward – CPA</b>	\$ 75,000	\$ 63,000	\$288,000	
<b>Carry forward – other</b>	2,654	39,803	34,877	
<b>CPA</b>				
Town meeting vote 4/12/21 – Hillside project	1,343,000			
Town meeting vote 4/14/22 – general housing support		250,000		
Planned town meeting ask (Wilson School & general)			300,000	
<b>Fee revenue</b>				
Hillside Lottery		43,500		
<b>Other revenue (interest, etc.)</b>				
Interest	7,090	3,074	4,230	
Inclusionary Zoning payment** (9/1/22)	\$30,059			
<b>Sub-total</b>	<b>\$1,457,803</b>	<b>\$399,377</b>	<b>\$627,107</b>	
Uses	FY 2022	FY 2023	FY 2024 projected	Outcomes
<b>CPA</b>				
Support Hillside Street rental housing	\$1,343,000			38 family units affordable from 60 to 100% AMI
Housing Production Plan (ABC Associates)	12,000			
Site analysis & feasibility for Wilson School (1-2-3 Co.)		\$ 25,000		
Wilson School affordable rental housing			\$500,000	support the school conversion to rental housing
<b>Fee revenue</b>				
Hillside Lottery expenses (including staff time)		18,000		
<b>Other revenue</b>				
Development consultant for Wilson School (XYZ Co.)		8,000	12,000	
<b>Sub-total</b>	<b>1,355,000</b>	<b>51,000</b>	<b>512,000</b>	
<b>NET</b>	<b>\$ 102,803</b>	<b>\$348,377</b>	<b>\$115,107</b>	
<b>Sub-totals by sources</b>				
CPA	\$ 63,000	\$288,000	\$ 88,000	
Fee revenue		25,500	25,500	
Other	39,803	34,877	27,107	

\*Previous year budgets can be found on our web page at [www.townofmainville.com/trust](http://www.townofmainville.com/trust)

\*\*Money must be used to support housing at or below 80 percent AMI (payment from Main St. condo project)

## STEP 8- Determine operating approach

The board of trustees will operate in one of three ways:

1. as a funding entity that solicits project ideas to consider for funding
2. an active initiator of projects and programs, or
3. a hybrid of both. Most boards operate with a hybrid approach - both soliciting and initiating projects.

A board that acts as a funding entity would solicit proposals either by announcing a funding round and providing an application form or by issuing a Notice of Funds Available (NOFA). Whereas a board that is an active initiator of projects may initiate a housing assistance program or affordable housing development on trust-acquired property.

Beverly and Yarmouth are examples of trusts that have acted as funding entities. After establishing a trust, Beverly completed a housing plan and developed guidelines for the trust, along with an application process: [Beverly Affordable Housing Trust Fund](#). The trust then released a [NOFA](#) to solicit housing development proposals for funding.

Examples where the board initiates projects include the trusts in Norwell, Orleans and Westport. These boards acquired property for affordable housing development and, in some cases, funded predevelopment activities before issuing an RFP for development.

Boards have also initiated housing programs, such as Norfolk's Buy Down Program, which creates affordable units through the acquisition and rehabilitation of market rate units. During the COVID-19 pandemic, trusts were often the local entity that initiated emergency rental assistance (ERA) programs as in Amherst, Brewster, Stow and Westborough.



*Anchor Point, Beverly, MA*

## LEGAL CONSIDERATIONS

### What to be familiar with when operating a trust

*At minimum, board members should be familiar with laws and contracts with which they much comply.*

#### BYLAW

Trustees should become familiar with the local bylaw that directs the work of the trust since many communities provide additional guidance beyond the state statute. Ideally this is easily accessible on the trust's municipal webpage.

#### GRANT AGREEMENT

Grant agreements (sometimes referred to as “award letters”) are used when allocating public resources. They should spell out the funding amount, the intended use of the funds and provide parameters for funds being returned to the trust if a project is not completed. Additionally, grant agreements between community preservation committees (CPC) and trusts typically state that the trust will use the CPA funds in accordance with eligible activities in the CPA statute. The Community Preservation Coalition's website is an excellent resource for more information. Sample grant agreements can be found [here](#).

#### ANTI-AID AMENDMENT

The Anti-Aid Amendment to the Massachusetts Constitution (Mass. Const. Amend. Article 46, §2, as amended by Article 103) generally prohibits the granting of public funds to private organizations except when the funds are used for a designated public purpose and the benefits accrue to the public. To comply with the law, all trust funded projects or programs should include some type of affordability restriction recorded through a deed restriction, mortgage or contract that is commensurate with the assistance provided. For example, many down payment assistance programs offer forgivable second mortgages. A trust may provide \$10,000 for down payment assistance to a first-time homebuyer, with 20 percent forgiven annually over five years and a requirement that a portion of those funds be repaid if the property is sold before the term of the restriction.

#### OPEN MEETING LAW

Commonly known as the “Open Meeting Law,” M.G.L. c.30A §§.18-25 requires that meetings of public bodies be held in public. Within two weeks of appointment, all members of public bodies must complete a Certificate of Receipt of Open Meeting Law Materials, acknowledging the statutory requirements.

All meetings of a public body, with certain exceptions, must be open to the public, properly noticed, and recorded. The Open Meeting Law provides for particular circumstances under which a meeting may be held in executive session including consideration of purchasing, leasing or value of real property if an open session may have a detrimental effect on the negotiating position.

Note that a public meeting includes a deliberation involving a quorum of the public body. Thus, it is important to avoid communicating by email or phone, for example, with a quorum of the board on substantive matters. Even an expression of opinion on matters within the body's jurisdiction to a quorum of the public body is a deliberation even if no other public body member responds.

[For more information](#) including "The Open Meeting Law Guide".

### PROCUREMENT LAWS

The state Procurement laws are multiple state statutes that deal with various aspects of municipal procurement including building and public works construction, design and other services, supplies, and real property. In addition, prevailing wage laws apply for construction projects undertaken by public entities in the state as well as some limited services provided to them.

Paragraph (j) of the Municipal Affordable Housing Trust statute, states the following:

*The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments, and public instrumentalities of the city or town shall be exempt from said chapter 30B.*

Note that Section 15A of chapter 40, referred to in the excerpt above, specifies that to transfer municipally owned land from custody of one municipal board to another (including the Board of Trustees), the legislative body of the municipality must approve the transfer with a two-thirds vote. In municipalities that have accepted the provisions of Section 15A, a land transfer for the purpose of constructing low- and moderate-income housing requires only a majority vote of the legislative body.

The key procurement areas that apply to housing trust activities consist of the following:

- Capital construction or improvement projects;
- Acquisition, disposition, or lease of real property;
- Contracting for professional services.

Note that prevailing wage may apply even in the case of a discounted or donated service.

### Construction or capital improvement projects

From time to time, the board may undertake construction or capital improvement activities. For example, if the board acquires an existing building to resell as affordable housing and undertakes rehabilitation of the building, then the board would be subject to the public construction and bidding requirements of M.G.L. c.149 §44A-M and c.30 §39M including prevailing wage requirements.

**Real property disposition, lease, or acquisition**

In exercising its power to acquire, lease, or dispose of real property, the board must comply with the provisions of M.G.L. c.30B §16 (more detail on M.G.L. c. 30B below). Section 16 includes various requirements pertaining to the acquisition, leasing, and disposition of real property including public notice, solicitation of proposals, property value determination, and disclosures. M.G.L. c.30B requires a fair and competitive process.

The CPA statute, M.G.L. c.44B §5, exempts acquisition of real property or an interest therein from the 30B Procurement Law. Based on consultation with the Inspector General's Office, this exception to M.G.L. c.30B §16 extends to trusts solely using CPA funds to acquire real property. However, we strongly recommend that trusts consult municipal counsel for a final determination as to the applicability of M.G.L. c.30B or any other state statutes.

In addition, CPA funded projects carried out by municipalities are exempt from the requirements of M.G.L. c.40 §14, which would otherwise prohibit cities from acquiring land for a price more than 25 percent above its "average assessed valuation during the previous three years." Instead, while using CPA funds, trusts are bound by the requirement in M.G.L. c.44B §5(f) that the acquisition price of real property cannot exceed the value of the property as determined through procedures customarily accepted as valid by the appraising profession.

CPA eligibility is described further in Section IV under "Eligible initiatives."

**Contracting professional services**

Contracting professional services includes hiring housing consultants, planners, appraisers, landscape architects, engineers, etc. There may be situations where the board will want to contract for professional services. For example:

- The preparation of an action plan, budget, and/or application packet;
- Predevelopment activities (e.g., soil testing, appraisals, preliminary design, surveys);
- To assist with disposition or acquisition of property.

There are two key areas of the law regarding procurement of professional services. The first, M.G.L. c.7 §.28A.5-38O, known as the Designer Selection Law, applies when procuring design services for public building projects. The second, M.G.L. c.30B, applies to other professional services and establishes three monetary thresholds that trigger different selection and procurement procedures, with the most latitude established for contract amounts under \$10,000. For contracts between \$10,000 and \$50,000, three written quotes must be solicited. For contracts at and over \$50,000, sealed bids or proposals through a request for proposal process are required.

The Inspector General provides guidance on the Procurement laws and makes available a Chapter 30B Attorney of the Day at (617) 722-8838. The Inspector General has published "The Chapter 30B Manual" and the "Designing and Constructing Public Facilities" manual as well as other helpful publications available on its [website](#).

See Appendix B for the Inspector General's procurement charts covering building and public works construction, construction material procurement, design services, and procurement of supplies and services.



### CONFLICT OF INTEREST LAW

M.G.L. Chapter 268A, also known as the Conflict of Interest Law, covers all municipal employees, whether elected or appointed, full or part-time, paid or unpaid. The law provides a general code of ethics for all public employees and prohibits using or attempting to use an official position to secure an unwarranted privilege or from giving the impression that you can be improperly influenced in the performance of your official duties.

The law prohibits trust members from disclosing confidential information obtained on the job and from accepting outside employment that will impair independence of judgment in the exercise of official duties.

Under M.G.L. c. 268A §27, every municipal employee must receive a summary of the law's requirements at the commencement of employment and must acknowledge receipt of that summary in writing within 30 days thereafter. In addition, under M.G.L. c. 268A §28, every municipal employee must complete the State Ethics Commission online training program within 30 days after becoming a municipal employee and every two years thereafter.

Your municipality should be collecting your certificate of completion. The online training takes approximately 45 minutes and can be found [here](#).

**BEST PRACTICES TIP:** Identify who will certify that online training is completed; make it a part of you calendar. [More information on the Conflict of Interest Law](#)

### FAIR HOUSING

The Fair Housing Act<sup>4</sup>, prohibits discrimination for housing-related transactions on the basis of race, color, national origin, religion, sex, disability, and familial status including children under the age of 18, pregnant women, and people securing custody of children. In addition to the federally-protected classes, Massachusetts, under M.G.L. c. 151B, includes marital status, age, sexual orientation, gender identity, military status (veteran or member of the armed forces), receipt of public assistance and/or housing subsidy, genetic information, and ancestry. Multiple other laws relate to Fair Housing including federal laws such as Section 504 of the Rehabilitation Act of 1972, Title II of the American with Disabilities Act and Massachusetts state law (MGL c.151B).

It is important for board members to understand that even when a practice or policy isn't intended to discriminate or limit housing opportunities for protected classes, it may still have a discriminatory effect. Municipalities are obligated to evaluate their rules, regulations, policies, and actions to not only ensure against discriminatory effects but to also affirmatively further fair housing. In February 2013, the US Department of Housing and Urban Development (HUD) issued the "Final Rule on the Implementation of the Fair Housing Act Discriminatory Effects Standard." While this rule was replaced in 2020, HUD has proposed restoring the 2013 rule on the grounds that it better reflects decades of case law and is more in line with the Fair Housing Act's purpose of eradicating housing discrimination in the housing market.

<sup>4</sup> Title VIII of the Civil Rights Act of 1968, as amended.

**More information of Fair Housing laws and considerations:**

- [HUD–Fair Housing Laws and Presidential Executive Orders](#)
- [EOHLC Fair Housing and Civil Rights Information](#)

**PUBLIC EMPLOYEES/MUNICIPAL AGENCY**

For certain purposes, the housing trust is an extension of the municipality and is subject to the same laws and regulations. It is important that trustees are treated as public employees for the purposes of M.G.L. c. 258, which provides statutory protection for public employees including the trustees against liability for acts taken within the scope of their employment. M.G.L. c. 258 makes the housing trust itself responsible for the actions of its employees (including the trustees and any other trust employees), but limits liability in most instances.

To ensure efficiency and compliance, board members should have a binder of resources which at minimum includes the following:

- MAHTF law (MGL C.44 §55C)
- Housing trust bylaw (certified and AG-approved)
- Declaration of Trust (recorded)
- Massachusetts Open Meeting Law
- Massachusetts Procurement Laws
- Massachusetts Conflict of Interest Law
- Information and resources on Fair Housing
- Local and/or regional affordable housing needs, analyses, plans, etc.
- Housing trust action plan and budget

## SOURCES OF REVENUE

### Range of options to fund a local trust fund

There is a range of potential funding sources that can provide revenue to housing trusts. Many trusts rely on CPA funds, while others have multiple sources of funds. If funding sources are limited, the board might consider advocating for municipal action to secure one or more reliable sources of funding.

A description of a variety of potential revenue sources to capitalize the housing trust follows, including:

- Community Preservation Act (CPA)
- Inclusionary zoning
- Special bylaws
- Voluntary developer payments
- Municipal/tax title property
- Private donations
- Cell tower payments
- Tax override
- Municipal bond
- Resale of affordable units
- Other municipal funds

#### COMMUNITY PRESERVATION ACT (CPA)

The most prevalent source of funds for housing trusts is the CPA, M.G.L. c.44B §.6, which requires that at least 10 percent of total annual CPA revenue, including revenue raised from the local surcharge and the state Community Preservation Trust Fund distribution, be spent or reserved for affordable housing.<sup>5</sup> CPA communities without annual debt service payments on other projects may elect to spend up to 75 percent of total annual CPA revenue on affordable housing, or even up to 80 percent if the community does not allocate any funding to a CPA administrative account. Section 5(f) of the CPA statute expressly permits municipalities to appropriate CPA funds to an affordable housing trust fund, and a number of housing trusts rely on annual CPA appropriations.

**BEST PRACTICES TIP:** It is highly recommended that trusts receiving CPA funds from the municipality execute a grant agreement between the trust and municipality or CPC as described in Section II “Grant Agreement” section of this manual.

<sup>5</sup> For purposes of consistency, this publication uses the term “affordable housing” whereas the CPA statute uses the term “community housing.”

The board is typically required to submit a budget, taking into account the level of funds set aside in the CPA affordable housing reserve and/or annual 10 percent affordable housing requirement.

A CPA appropriation requires a CPC recommendation and majority vote of the local legislative body (i.e., town meeting or town/city council). Therefore, strong communication with the Community Preservation Committee and the local legislative body is critical.

For example, Westport's Board of Trustees and its housing coordinator consultant work together to effectively inform and advocate for CPA funds in three primary ways: basing CPA requests on the Trust's Action Plan, submitting thorough annual CPA applications, and giving specific and complete presentations to the CPC. Other communities, like Brewster, require a representative from the CPC to sit on the trust board to help support strong communication between the entities.



*Noquochoke Village, Westport, MA*

### **INCLUSIONARY ZONING**

Some communities have adopted inclusionary zoning (IZ) bylaws that require new residential development to include a minimum number of affordable units. IZ bylaws can also provide for alternatives to the creation of affordable units with cash in-lieu payments and/or land donations. Most IZ bylaws specifically designate the housing trust to receive any cash payments or land donations, thus providing a source of revenue and/or assets for the trust.

IZ bylaws utilize a formula to calculate the amount of cash payment per unit of affordable housing otherwise required by the bylaw. The formulas vary by community. Formulas can be tied to the affordable purchase price of a unit, the difference between the community's median sales price and affordable purchase price or calculating per unit cost from regional construction and sales reports.

An IZ bylaw can also provide an option for an in-lieu land or cash donation made to the housing trust. The Town of Westport adopted an IZ Bylaw that provides for cash payment (only applicable for homeownership developments) and land donation as alternatives to unit development, both of which would be designated for the housing trust. Westport's calculation for cash payment is based on the difference between the median single-family home sales price in Westport for the most recent calendar year and the price affordable to a qualified purchaser, based on applicable guidelines of the state Executive Office of Housing and Livable Communities (EOHLC), formerly the state Department of Housing and Community Development.

See below for [Westport's IZ Bylaw](#) land donation provision, Article 13.5.3.  
[For more information on Inclusionary Zoning](#)

**DONATIONS OF LAND:** An applicant may offer, and the Board of Trustees of the Westport Affordable Housing Trust Fund (Trustees) with the approval of the SPGQ, may accept donations of land in fee simple, on or off-site, that the SSPGA and Trustees determine are suitable for the construction of an equivalent number of affordable housing units. The SPGA may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of affordable housing units. If the SPGA issues a Special Permit to authorize donations of land in lieu of units and the Board of Trustees of the Westport Affordable Housing Trust Fund votes to accept said donation shall be made to the Westport Affordable Housing Trust Fund prior to the issuance of any building permits for the development or prior to the sale of any lots, if applicable.

### SPECIAL BYLAWS

In addition to inclusionary zoning bylaws discussed above, other types of special bylaws can also provide public benefits in the form of cash payments to a housing trust for affordable housing purposes. For example, the City of Newburyport adopted a bylaw (known as “Section 6C”) that allows issuance of a special permit to develop two single-family homes in a district that allows two-family homes by right or with a special permit. In recognition of the increase in property value from the granting of the special permit, the applicant must pay the trust \$20 per square foot of the second residential structure.

Another example is the City of Somerville’s Affordable Housing Linkage Ordinance, which requires that large-scale commercial developments mitigate their potential negative impact on the supply of affordable housing by contributing a fee to the housing trust.

### VOLUNTARY DEVELOPER PAYMENTS

Municipalities that have received voluntary developer payments for community benefits, including for affordable housing, can direct these funds to the municipal affordable housing trust. The City of Salem and towns of Westford, Andover, and Norfolk are examples of communities that have secured developer payments for the housing trust. For example, one developer in the town of Norfolk provided \$10,000 to the town upon the sale of each market rate unit in a mixed-income development that the town approved through a comprehensive permit. The town then allocated the resources to the trust. Note that given the legal complexities in such negotiated payments, it is important to work closely with the municipal counsel.

### MUNICIPAL/TAX TITLE PROPERTY

Municipalities will occasionally dispose of surplus municipal property or properties foreclosed for non-payment of taxes. These properties can sometimes provide revenue from the proceeds of the sale or potential developable land that can be transferred to the trust to facilitate development of affordable housing.

#### Property sale

In Massachusetts, a municipal chief executive officer (i.e., Selectboard, Mayor or Town Manager) has the authority to direct proceeds from the auction of tax-foreclosed properties to specific purposes including for affordable housing as an allocation to the housing trust.

For example, the Town of Provincetown allocated revenue generated from the sale of a tax-foreclosed property to the housing trust as a way to support local affordable housing initiatives. The Trust received roughly \$147,000 in proceeds from the sale after the mortgage, condo fees, and other expenses were paid off.

#### **Title transfer**

Surplus municipal property and property acquired in tax foreclosure can be sold under M.G.L. c.30B through a Request for Proposals (RFP) for a specified purpose including affordable housing. For tax-foreclosed properties, which are typically auctioned per M.G.L. c. 60, the tax title custodian transfers the custody of the property to another municipal entity, such as the housing trust, to enable disposition through c.30B (check with municipal counsel for local process to transfer custody).

A growing number of communities are transferring surplus parcels or property acquired through tax foreclosure to trusts. The City of Chelsea has transferred an initial lot acquired through tax-foreclosure to the trust for the development of affordable home ownership units. Norwell's Town Meeting voted to transfer a municipal surplus site to its trust in 2015. The trust then released an RFP for affordable, age-restricted housing. A non-profit community development corporation was chosen as the developer and today an 18 unit building has replaced a former police station.

#### **PRIVATE DONATIONS**

Under the housing trust statute, a housing trust has the authority to accept private donations as trust revenue. To solicit or encourage such private donations, the board could broadcast the trust's ability to accept donations in press releases, at public events, on the application packet, and on their website. Wellfleet has outlined on the [town's housing website](#) a variety of ways that people can donate to the local housing trust, from cash donations to planned giving and participating in the summer Wellfleet Housing Angels program.

#### **CELL TOWER PAYMENTS**

A municipality can designate revenue from the lease of municipal land for cell towers for a special purpose including for affordable housing and allocate the proceeds to the housing trust. For example, the Town of Harwich uses the proceeds from a lease of town property for a cell tower to fund the housing trust. This arrangement generates approximately \$50,000 per year.

#### **TAX OVERRIDE**

As the Affordable Housing Committee (AHC) in Orleans was leading the effort to create a trust, town staff and the Finance Committee chair urged the AHC to also propose a permanent tax override to support the new trust. The request was set at \$275,000 and the town voted overwhelmingly to support the effort with 71 percent of voters in favor.

#### **MUNICIPAL BOND**

Medfield voted to establish a housing trust and pass a one million dollar municipal (non-CPA) bond to support the trust during the same spring.

### **RESALE OF AFFORDABLE UNITS**

In older deed riders for affordable units, particularly under the Local Initiative Program (LIP) and Homeownership Opportunity Program (HOP), if a qualified buyer is unable to be secured and the unit is sold at market rate, the housing trust was often designated to receive the difference between the affordable and market rate price.

The City of Newburyport secured revenue for the housing trust in this way under a deed rider for a project created with funding through the New England Fund that predated the state's universal deed rider. The state's universal deed rider has greater assurances for permanence of affordability, and therefore would not provide revenue in this way. Other communities have also generated revenue from the sale of affordable units with older deed riders including Andover and Hudson.

Similarly, a trust can step in to purchase an affordable unit under the municipality's option to purchase when no eligible buyer is found upon resale. If the unit is not marketable or does not meet local housing needs, the trust may have the ability to sell the unit as market rate and retain the sale proceeds, depending on the requirements of the deed rider.

### **OTHER MUNICIPAL FUNDS**

The municipality may appropriate other municipal funds to the housing trust, although this is often challenging given other demands on municipal funds. However, there may be circumstances that enable the municipality to appropriate funds, such as free cash, to the housing trust. For example, the Towns of Truro and Brookline and City of Revere have appropriated free cash to the housing trust.

## ELIGIBLE INITIATIVES

### Familiarize members with trust's opportunities and constraints

#### PURPOSE

With changes made in 2016 to the housing trust statute (M.G.L. c.44 §.55C), the purpose of trusts was expanded to allow all eligible community housing initiatives under CPA (M.G.L. c.44B), :

*. . . to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households and for the funding of community housing, as defined in and in accordance with provisions of chapter 44B.*

This allows trusts to engage in all allowable community housing initiatives under CPA with all funding sources. Specifically, trusts can now fund activities that “support” community housing as defined in the CPA statute.

However, the trust statute does not include definitions for key terms such as “creation,” “preservation,” and “low-and moderate-income.” A community can consult existing programs and statutes in the state to adopt definitions for terms. For activities that fall under “community housing” with CPA, the CPA statute defines appropriate terms including moderate income which is households earning less than 100 percent of the area median income. Ultimately, interpretation of purpose, and activities that are eligible for trust funds, is the responsibility of the board, on behalf of the municipality, with municipal counsel.

#### BOARD POWERS & RESPONSIBILITIES

The board has a fiduciary obligation to oversee the use and management of the housing trust funds and has broad powers to accomplish this. Per the statute, the board is vested with a range of powers and responsibilities, and is considered a municipal agency and public employer. It is important to note that the housing trust statute gives a municipality the authority to expand or limit the powers that a housing trust would otherwise have, consistent with Section 55C<sup>6</sup>.

#### Powers

The statute gives a board 16 primary powers and permits the powers to be limited or expanded. The key powers listed in the statute are briefly summarized here<sup>7</sup>:

- Accept and receive real property, personal property, or money, by gift, grant, or contribution including money, grants, and CPA funds;

<sup>6</sup>The statute says, “...a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the board additional powers consistent with this section...”

<sup>7</sup>For a full description of the Board of Trustee’s powers, refer to the statute (M.G.L. c.44 §.55C [c] 1-16).



- Purchase and retain real or personal property, including investments;
- Sell, lease, convey, etc. any personal, mixed, or real property at public auction or by private contract;
- Execute deeds, assignments, transfers, etc., related to any transaction of the trustees for the accomplishment of the purposes of the trust;
- Employ advisors and agents, such as accountants, appraisers, and lawyers;
- Borrow money and to mortgage and pledge trust assets as collateral;
- Manage or improve real property;
- Abandon any property the trustees deem appropriate.

### **Expenditure of trust funds**

Trust revenue from any source, including municipal appropriations, becomes trust property and the board needs no further authorization from the local legislative body to expend these funds for the purpose of creating and preserving affordable housing unless required through the housing trust bylaw.

### **LOW/MODERATE INCOME**

The board will need a clear understanding of local and regional housing needs to target trust funds to projects and programs that will best support those needs, including households of various income levels. While the housing trust statute does not provide a definition of “low-and moderate-income,” trusts are advised to use their judgement and consult other definitions commonly used in state and federal programs. A trust should consult with municipal counsel if they chose to use a definition that limits eligibility to a higher percent of median income than is used in state affordable housing programs.

At the federal level, for purposes of the Office of Community Development and Planning (CDP), which is responsible for overseeing the Community Development Block Grant (CDBG) program, the U.S. Department of Housing and Urban Development (HUD) uses the term “low and moderate income” to mean income at or below 80 percent of the area median income (AMI), with adjustments for household size. At the state level, Massachusetts programs tend to apply a higher limit for “moderate income.” Thus, the Community Preservation Act allows CPA funds to be used to assist housing for households with incomes below 100 percent AMI, while the Massachusetts Affordable Housing Trust Fund can be used to benefit households with incomes at or below 110 percent of AMI. Therefore, boards can allocate trust funds to create or preserve housing that is affordable for a variety of household income levels.

### **SUBSIDIZED HOUSING INVENTORY (SHI)**

#### **Affordable under M.G.L. c.40B**

M.G.L. c. 40B, the Massachusetts “Anti-Snob Zoning Act,” permits developers of housing in which at least 20 percent or 25 percent of the units are set aside for “income eligible households” to obtain a “comprehensive permit,” granting waivers from local zoning and other regulatory requirements. Unless the community achieves a minimum threshold of affordable housing units, a denial of a comprehensive permit by local authorities may be overturned by

the state Housing Appeals Committee if the Committee determines that the development would be “consistent with local needs.” EOHLC maintains a Subsidized Housing Inventory (SHI) to measure a community’s stock of low- or moderate-income housing for purposes of M.G.L. c.40B.

The Massachusetts Comprehensive Permit Regulations (760 C.M.R. 56) define an “income eligible household” as a household whose income does not exceed 80 percent of AMI. Units created or preserved through trust funds that are affordable to households with incomes at or below 80 percent AMI could be eligible for inclusion on the SHI. To be counted as affordable housing on the SHI, units must meet the following criteria:

1. Units must be created through an eligible subsidy program, including [LIP \(Local Initiative Program\)](#)
2. Units must be affordable to households with incomes at or below 80 percent AMI (as determined and updated annually by HUD) and households are subject to asset limitations.
3. Units must be restricted by a use restriction that runs with the land and is not less than 15 years for rehabilitate housing units and 30 years for newly created units. The state has developed a [universal deed rider](#) that covers the required term for a use restriction and is required for ownership units.
4. Units must be subject to an Affirmative Fair Marketing and Resident Selection Plan that meets EOHLC’s requirements. Such a Plan will require broad and inclusive regional marketing of the units as well as fair resident selection that is primarily accomplished by accepting applications, verifying income and assets and holding a lottery to select a resident for an available unit or to establish an ordered waiting list.

Affirmative Marketing Guidelines can be found on [EOHLC’s website](#).

#### **State’s Subsidized Housing Inventory**

While housing developed under Chapter 40B is eligible for inclusion on the inventory, many other types of housing also qualify to count toward a community’s affordable housing stock, such as units created under the Local Action Unit program (including Inclusionary Zoning units or other local initiatives).

For more information see [“40B Planning”](#)

#### **Affordable under CPA**

When CPA funds are allocated to a housing trust, the board must ensure the use of funds complies with CPA requirements. The CPA statute, M.G.L. c. 44B, allows for use of funds for housing that is affordable to households whose annual income is less than 100 percent AMI. The CPA statute defines “low-income housing” as housing for households earning less than 80 percent of AMI and “moderate-income housing” as housing for households with less than 100 percent of AMI.

The interpretation of the CPA language regarding the calculation of 80 percent of AMI is not the same as HUD’s published income limits. This difference will not affect the trust in

a project using only CPA funds under a grant agreement. However, if other non-CPA funds that use HUD’s calculation are incorporated in the project, the lower of the income limits should be used.

In addition, the CPA statute allows for funding of “low- or moderate-income senior housing” as housing for persons of at least 60 years of age who qualify for low or moderate-income housing.

**CPA COMPLIANCE**

The most common funding source for housing trusts in Massachusetts is CPA funds. Therefore, it is critical to understand the eligible uses and limitations of CPA funds since the requirements of CPA follow the funds. Below are key eligibility and management issues to keep in mind.

**Eligible CPA activities**

Section 5(b)(2) of the CPA statute states the following regarding eligible affordable housing activities:

The community preservation committee shall make recommendations to the legislative body for the... **acquisition, creation, preservation and support** of community housing... and for **rehabilitation or restoration** of... 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.

Community Housing	
Acquire	YES
Create	YES
Preserve	YES
Support	YES
Rehabilitate and/or Restore	YES, if acquired or created with CPA funds

The [Massachusetts DOR](#) and the [Community Preservation Coalition](#) provide guidance and information on the eligible uses of CPA.

**Mixed-use/mixed-income projects**

CPA funds for mixed-income and mixed-use projects must be allocated in proportion to the overall qualifying units. For example, in a mixed-income project, if 50 percent of the units were affordable to households with income less than 100 percent AMI and the remainder were market rate units, then only 50 percent of total predevelopment and/or construction costs would be eligible for CPA funding. Likewise, if a project is mixed-use, for example office or retail use and affordable housing, only predevelopment and construction costs associated with the affordable housing would be eligible for CPA funds.

*It’s important to remember that if CPA funds are used to purchase the land, then the site must be used for CPA-eligible activities. The exception is if the land is proportionally subdivided by use based on the funds that purchased the site.*

## Accounting

Eligibility requirements for CPA funds may differ from other sources of housing trust revenue. Therefore, if the trust has multiple sources of revenue, it is critical to account for use of trust funds by revenue source to ensure appropriate use of funds. The board's votes and commitment letters should identify the revenue source(s) to be awarded to each trust-funded initiative.

In addition, to properly track trust fund expenditures by revenue source, the municipality may need to establish a separate accounting mechanism. For example, the Town of Westford designed a relational database using QuickBooks accounting software to track the use of its housing trust funds. The Land Use Management Department staff worked with the Town Treasurer to create the database, which it has also found useful to track other funds including performance bonds and escrow accounts. To track the housing trust funds, department staff is responsible for creating a new record for each trust-funded initiative that identifies the source of funds. The database enables staff to track expenditures by project and to easily create regular reports for the board and other town officials.

## State reporting requirements

In 2016, changes were made to the trust statute to direct trustees to track CPA funds separately from other income and annually report back to the local CPC on all expenditures of CPA funds in that fiscal year.

"...money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations, and limitations of that chapter when expended by the trust, and such funds shall be accounted for separately by the trust; and provided further, that at the end of each fiscal year, the trust shall ensure that all expenditures of funds received from said chapter 44B are reported to the community preservation committee of the city or town for inclusion in the community preservation initiatives report, form CP-3, to the department of revenue."

Section 13 of the CPA statute requires all Community Preservation Committees to keep detailed records of CPA expenditures, which include housing trust expenditures. The requirements include keeping records of any real property interests acquired, disposed of or improved with CPA funds by the municipality, including the names and addresses of the grantors or grantees and the nature of the consideration.

By September 15 of each year, the CPC is required to submit annual reports to the state through the CP-3 online reporting tool. The board should provide the CPC with complete information on all CPA-funded housing trust expenditures each year prior to this deadline. MHP, with assistance from the Community Preservation Coalition, created [a fillable form](#), along with [instructions](#), for housing trusts to use for this annual report to CPCs.

## More information & technical assistance

CPA and eligible activities can be found at the following resources:

- [Community Preservation Coalition](#)
- [Department of Revenue](#)
- The Massachusetts Housing Partnership's "CPA and Affordable Housing" [guidebook](#)

## CREATION

Activities to create affordable housing include new housing construction, re-use of non-residential buildings for affordable housing, and conversion of market rate units to affordable units through affordability restrictions.

### New construction

Housing trust funds can support increased affordability in private 40B developments, housing development on surplus municipal property or tax-foreclosed properties, or other public or private housing developments. Some examples of communities that have allocated trust funds for housing development costs include Amherst, Beverly, Groton, Hudson, Westport, and Yarmouth.

With regard to a mixed-income or mixed-use project, as discussed in the CPA section, the trust funds would need to be allocated only to the portion of the project that creates affordable units. The board in Groton, for example, invested \$400,000 in a development in the town center with three affordable units and 15 market rate units, an investment of \$133,333 per affordable unit.



*Yarmouth Commons, Yarmouth, MA*

Boards can also allocate housing trust funds to create affordable units in existing buildings, such as the conversion of surplus libraries, fire stations, schools, or other buildings. Sometimes these projects can also include historic preservation components and utilize historic preservation CPA funds.

### Conversion of market rate housing

Boards have used trust funds to convert market rate units to affordable units in a variety of ways including through acquisition or “buying down” existing single-family houses and condominiums as well as supporting the purchase of multifamily developments for conversion to affordable housing.

Remember that this type of work is subject to Ch. 308.  
Check with your legal counsel for more information.

Some boards have purchased housing units, rehabilitated the properties if necessary to bring to code or improve marketability, and sold them subject to affordability restrictions. The Southborough Board of Trustees undertook this type of project by purchasing a modest single-family house with housing trust funds, working with a regional technical high school to rehabilitate the house, and selling it to a low/moderate-income household subject to an affordability restriction as an ownership unit.

The Wenham Board of Trustees was also successful using housing trust funds to purchase a single-family home that, with some rehabilitation, the board sold to a low/moderate-income household with a permanent affordability restriction. This type of initiative can convert an existing market rate home to one that is included on the SHI as an affordable Local Action Unit under the EOHLC LIP program.

Another model provides a subsidy to first-time homebuyers with low/moderate incomes to purchase a home within a specified price range. In Leverett, a homebuyer can access up to \$50,000 to purchase a home with a maximum sale price of \$275,000. The program is available for households earning up to 100 percent AMI and a deed restriction is placed on the home.

Many communities have created these homebuyer opportunities through the state's LIP program if the income eligibility is limited to households earning up to 80 percent AMI. EOHLC can provide sample documents including program guidelines, applications, and marketing plans. The units must be marketed per an Affirmative Fair Housing Marketing Plan that is approved by EOHLC. All applicants must be verified for income and asset levels and then a lottery is held. For ongoing programs, the lottery may be used to create a ready-buyer list. Households on the ready-buyer list can be authorized to search for a home within the terms of the program guidelines or simply be qualified for a house the trust is selling.

**Don't forget:** In order to comply with the Anti-Aid Amendment, trust-funded projects or programs should include an affordability restriction recorded through a deed restriction, mortgage or contract.

## **PRESERVATION**

Preservation of affordable units refers to initiatives to perpetuate existing affordable units in light of affordability restrictions that would otherwise expire, preventing the loss of affordable units. Preservation typically involves refinancing or purchasing properties whose restrictions will expire in the near future. Both rental units and homeownership units can have expiring affordability restrictions.

### **Rental units—preservation of affordability**

Properties that receive public funding, such as long-term project-based Section 8 assistance, federal or state Low-Income Housing Tax Credits, and Section 202 funding (for elderly housing), are required to commit to income and rent restrictions for an extended period. In most cases, however, those restrictions are time-limited, and there is a high volume of properties in the Commonwealth whose existing use restrictions have expired or will expire in coming years.

There are often sizable costs to preserve rental projects, particularly in the case of large developments with substantial deferred maintenance or other capital needs, and the state has adopted a variety of initiatives to help preserve these valuable resources. Because of the costs involved, housing trust funds alone are not likely to be able to preserve these types of properties absent a commitment of significant additional state and federal resources. However,

communities facing the loss of affordable rental units have used housing trust funds to bridge the gap between the cost of purchasing, and refinancing expiring use rental properties and the aggregate amount of other available sources. Trusts can identify properties using the Community Economic Development Assistance Corporation's (CEDAC) [website](#).

### **Homeownership unit preservation**

Housing trust funds can help preserve long-term affordability of homeownership units, which, like rental housing, can be subject to expiring restrictions. Even properties with existing restrictions may be sold to market rate buyers if the restrictions do not survive foreclosure, or if an eligible buyer is not located within the specified schedule. Under the state's universal deed rider, long-term affordability restrictions would remain in place even after sale to a purchaser who is not income-eligible, albeit with the deed rider still in place restricting resale by that purchaser. Under older forms of restriction, the first sale to a non-income-eligible buyer may terminate the restriction.

#### **Finding an eligible buyer under the state's Universal Deed Rider**

The state's Universal Deed Rider requires that an eligible purchaser be located within 90 days of notification to the monitoring agent and municipality of the owner's plans to sell plus 60 additional days if the original eligible purchaser cannot complete the purchase.

In lieu of sale to an eligible purchaser, the monitoring agent or municipality (including the Trust) has the right to purchase the property at the affordable price.

*Acquisition & rehabilitation* In situations where an eligible buyer is unable to be located within the specified schedule, housing trust funds can be used to acquire and rehabilitate the unit at risk. This preservation strategy allows for additional time to ultimately resell to an eligible buyer and the opportunity to make improvements to bring the unit up to code or to increase its marketability.

In addition, the board may determine that the resale price will need to be further reduced, below the maximum permitted under the deed rider, and may elect to subsidize that lower price to enhance marketability to a low-income buyer.

*Monitoring & reserves* A key aspect of preservation of affordable homebuyer units is monitoring. If the community is actively monitoring the affordable units and maintaining a regularly updated waiting list of eligible buyers, then it will be poised to effectively foster resales. The board can engage staff or consultant services to perform this monitoring function.

In addition, the board can set aside (or reserve) housing trust funds in anticipation of stepping in when and if units are at risk during resale due to lack of eligible buyers or rehabilitation needs.

For example, in accordance with its Action Plan, the Medway Affordable Housing Trust budgeted reserve funds for acquisition or to buy-down the price of up to two units over five years to preserve the affordable housing restrictions. The reserve can act as a revolving fund in that all or some of the revenue can be returned to the reserve upon resale of the units, in

the case of an acquisition. In other words, proceeds from the sale of such units are allocated to the trust and may be used for further acquisitions.

### **SUPPORT**

Given the complexities of affordable housing, “support” was included in the CPA statute to further assist communities in meeting their affordable housing needs. Over the past 20 years we have seen CPA funds used to support affordable housing through predevelopment activities, site improvements, and financial assistance for qualifying households. In addition, communities have used CPA funds for housing plans and to expand professional capacity to implement CPA-eligible housing initiatives. With modifications to the trust statute, all allowable “support” activities under CPA are now allowable activities for housing trusts.

#### **Predevelopment**

Trust funding is an important resource to help jump start a development project. A board, committee of the municipality or the project sponsor may apply for funds to finance predevelopment activities. These activities may be needed to determine project feasibility, plan for the number of housing units to be built or preserved, and/or create preliminary site plans for the best use of a parcel. Preliminary investigations can set up realistic expectations regarding a wide range of site development issues and enable the community to assess what housing can be accommodated on a particular parcel. Predevelopment analysis promotes better project planning and helps municipalities set realistic expectations regarding the number of units it can develop and the financial feasibility.

Predevelopment analysis can also provide valuable supportive documentation for request for proposals (RFPs). Having experienced professionals undertake the analysis adds credibility and can help the developer gain additional local approvals and funding necessary for the development to proceed.

Predevelopment activities, also referred to as “soft costs,” may include preliminary environmental or financial feasibility studies, surveys, site planning, and design studies. Some communities that have used housing trust funds for predevelopment activities include Barnstable, Boxborough, Hanover, Salem, and Weston.

#### **Financing assistance to qualifying households**

Trusts may provide subsidies to eligible households to lower the cost of obtaining affordable housing. This was clarified in the 2012 amendments to M.G.L. Ch. 44b, adding a definition for “support of community housing”:

“Support of community housing”, shall include, but not be limited to, programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable.

**Rental assistance** Some communities offer direct assistance in the form of rental vouchers. One model subsidizes the difference between market rents and what a household can afford to pay (typically based on 30-40 percent of monthly gross income). Other programs set a maximum amount per award, such as Eastham and Provincetown that fund up to \$350 per



month for up to three years, toward an eligible tenant's rent. Lease agreements secure the lease term and voucher payments are made directly to the landlord.

### **Professional capacity**

Increasing the supply, and access to, affordable housing is complex work. The most effective trusts tend to have paid professional support to assist in implementing action plans and goals. Professional capacity, sometimes referred to as a housing coordinator, can range from a part-time staff person or consultant to a full-time position reporting to a municipal official (e.g., planner or town administrator). In some cases, a trust hires a consultant based on an agreed-upon scope of services and fee schedule. Multiple boards have allocated trust funds to support staff time in this way, including Easton, Ipswich, Manchester-by-the-Sea, Medway, Somerville, Sudbury, and Westport.

### **Planning support**

In addition, some boards have hired planning consultants to complete housing production plans, housing needs studies, or housing trust action plans. Housing production plans and housing needs studies provide a thorough analysis of local and regional housing needs and can help boards focus and prioritize housing trust initiatives to address the most pressing housing needs. Action plans can help the board determine funding priorities and a supporting budget.

Communities that have allocated housing trust funds to prepare housing plans include Belmont, Boxborough, Dennis, Marion, Newburyport, Provincetown, Stow, and Truro.

**BEST PRACTICES TIP:** Remember to contact your [regional planning agency \(RPA\)](#) to see if they have done a housing needs analysis for your area.

# UNDERTAKING INITIATIVES

## Boards can solicit proposals and initiate activities

### IDENTIFYING PRIORITIES

Housing needs in every community are significant. Trust boards are volunteer entities, and most have limited staff support. To focus the work of the trust, boards should establish a mission statement that clarifies its role in the community. Ideally, mission statements are revisited periodically to assure that it continues to reflect the work of the trust.

Then the board can identify goals and strategies to address identified housing needs in the community. To do this, trustees can draw on existing plans in the community, including a current housing plan, master plan, community preservation plan, and/or regional housing or master plans. Trustees can prioritize ideas based on greatest local needs, feasibility, and professional capacity required. If housing data is older than five years, the board should consider engaging the regional planning agency or a housing consultant to update the community's understanding of local housing challenges.

Holding community meetings or workshops could also assist with prioritization of ideas for housing initiatives if this was not done with existing planning processes. Community engagement can also help build local support as stakeholders learn about local housing needs.

**BEST PRACTICE TIP:** When creating goals, using specific, measurable, achievable, relevant and time-bound (SMART) goals can help assure your objectives are met in the time frame you establish. Wellfleet's trust settled on just two goals with several strategies for reaching each one.

#### Wellfleet Affordable Housing Trust Goals & Strategies

*Create 100 units of low/moderate income rental and homeownership housing units over the next five years.*

- Issue RFP for one home at Freeman Avenue in 2021
- Provide funds to support ADU creation in 2022
- Provide funds to support 46 units at Lawrence Road 2024
- Complete 4 units at Old Kings Highway and 8 units at Paine Hollow Rd by 2024
- Acquire property for the creation of at least 20 new homes by 2025

*Raise \$1 million annually from 2022-2027 for a total of \$5 million.*

- Request 80% of short-term rental tax revenue
- Annual request for CPA funds
- Fundraising for donations
- Secure 1-2 additional revenue streams

## SOLICITING PROPOSALS

Implementing a deliberate and public process to solicit proposals can generate project proposals to help meet the community's housing needs. The board could be specific in the type of proposals it solicits. For example, if there is a great need for affordable rental housing in the community, the board could specifically solicit proposals to create affordable rental housing. Alternatively, the board could simply ask for proposals for the broad purpose to create affordable housing.

### Application process

It is a best practice to have a formal application process that is clearly defined and easily accessible. This allows trustees to fairly compare applications and it provides applicants with clarity in what the trust expects in proposals.

The Westford application allows for a voluntary pre-application in the form of a one-page summary of the project. Some communities allow for a simple pre-application, either voluntary or required, so the board can give the applicant feedback on eligibility before completing the lengthier full application.

Typically, full applications require the following information:

- Basic information about the sponsor, project, and budget
- Project summary narrative
- Sources and uses of funds
- Target population
- Type of housing (ownership, rental, and building type)
- Unit composition (# of bedrooms and income limits)
- Attachments including project budgets, team qualifications, community need, community support, evidence of site control and/or property value, site plans, permitting requirements, proposed timeline and Fair Housing documentation

### When to solicit proposals

Boards can solicit projects on a rolling basis throughout the year or hold one or more funding rounds during the year. Some boards may prefer to hold funding rounds with scheduled deadlines for application submission to enable the board to compare project proposals. Other boards may prefer the flexibility of accepting applications on a rolling basis, which can allow a streamlined approval process. Ultimately, a trust's model for accepting applications may depend on funding sources and when funds are available. Boards that implement funding rounds can also accept time-sensitive projects off-cycle on an as-needed basis. Boards should be aware of the timing of state funding resources.

### Evaluating proposals

***Funding priorities*** It is helpful to applicants if the board clearly states its funding priorities. Board priorities should be based upon established community housing needs and goals as identified through planning documents such as the local housing plan, master plan, and regional or statewide plans related to development and preservation. In [Beverly's Notice of Funding Availability \(NOFA\)](#), released in December 2017, the city listed the three activities they were interested in funding, identified as needs in their housing plan: predevelopment activities, development activities and housing preservation or improvement activities.

**Selection criteria** It is also helpful to establish selection criteria to assist the board in its review of proposals and to provide transparency to applicants regarding how projects will be weighted and selected for funding. The selection criteria can help to structure and focus the board’s deliberations when reviewing applications and to allow objective comparison of multiple proposals. See below for details on Beverly’s selection criteria.

Total Points	Beverly Affordable Housing Trust Fund Selection Criteria
10	The funding request is reasonable as a portion of the overall project costs and on a per-unit basis and adheres to the Trust’s Funding Guidelines.
10	The applicant has demonstrated significant leveraging of the requested Trust Funds with other public and/or private funding sources.
10	The project provides long-term affordability.
10	The project maximizes the number of households served at a range of incomes and household types.
10	The applicant is qualified to undertake the project and has demonstrated success in similar capacity with comparable projects.
10	The applicant has demonstrated appropriate site control.
10	The project provides additional public benefits such as open space, historic preservation, public safety, economic development, etc.
10	The project meets demonstrated community needs.
10	The applicant has demonstrated project support by other City boards, committees, other pertinent organizations, and Beverly citizens, as appropriate.
10	The project is consistent with goals and objectives of City planning policy documents including but not limited to the Beverly Comprehensive Master Plan, and Beverly Community Housing Plan.

**INITIATING PROJECTS & PROGRAMS**

The other method for boards to undertake affordable housing efforts is to actively initiate projects or programs. Based on the identified priorities, the board could originate a project or program idea and take steps through direct actions, as well as allocation of housing trust funds, to help the idea take shape. Trust initiatives could include funding a home ownership “buy down” program, establishing a rental assistance effort or disposing of municipal land for affordable housing development. Some housing trusts have funded feasibility studies and predevelopment activities on municipal sites before releasing an RFP. Others have acquired land or buildings to support the development of affordable housing. During the COVID-19 pandemic, several housing trusts initiated emergency rental assistance programs by procuring program administrators and funding assistance.

**Limitations of board’s role & responsibilities**

The board’s capacity to initiate and foster projects and programs has limitations. As a volunteer board, the trust will be most effective identifying priorities and desirable initiatives, and then engaging professions (e.g., municipal staff, non-profit organizations, consultants, or developers) to assist with implementation.

The role and responsibilities of the board may vary depending on the nature of the initiative, as described below for development projects, programs, and monitoring/resales.

#### DEVELOPMENT PROJECTS

To initiate a development project, boards can undertake a variety of initiatives. For example, housing trust funds can be used to identify buildable property, determine feasibility, and acquire property for new development.

**Land acquisition** Boards can acquire property by outright purchase, at auction or by transference of tax-foreclosed properties, transference of other surplus municipal property, or donation. The trust must comply with the provisions of MGL Ch. 30B when acquiring property with the exception of property being acquired with only CPA funds; in that instance the 30B exemption in the CPA statute applies (see Section II, “Real property disposition, lease, or acquisition.”) The board can offer trust property to a qualified developer for a price below fair market value through an RFP process in compliance with M.G.L. c.30B if the primary purpose of the disposition is for affordable housing and the use of the property is restricted. By subsidizing the cost of land acquisition in this way, the board can give a substantial boost to a development’s feasibility. Boards that have acquired property and used their disposition powers to foster affordable housing development include Chelsea, Dennis, Norwell, Orleans, Sudbury, and Westport.

**Predevelopment activities** Boards can help minimize a developer’s risk by gathering information about the site and community before issuing a request for proposals. The board must procure third-party services for pre-development due diligence activities, in accordance with M.G.L. Ch. 30B. This may include activities that help clarify site feasibility such as soil analysis, site survey, environmental studies (usually a Phase 1 Environmental Site Assessment), wetlands delineation, title work, and housing needs assessment for the community and area. For example, the Barnstable Housing Trust awarded the Barnstable Housing Authority pre-development money for site assessment activities for an authority owned site, which led to the development of 12 affordable rental units.

Boards should be aware that if they expend money on architectural work during the pre-development process, they are subject to the state’s designer selection law, M.G.L. Ch. 7. With both architectural and site planning work, boards run the risk that those plans will not prove economically feasible or marketable and may trigger conformance with public construction laws. In some instances, communities have expended considerable sums on planning only to have difficulty finding a developer willing to carry out their development plan.

**BEST PRACTICE TIP:** MHP encourages communities to articulate broader design guidelines, versus being prescriptive and paying for actual architectural plans.

**Private affordable housing developments** Boards can allocate housing trust funds to support private affordable housing developments. These funds help fill funding gaps and show local support for a development to assist the developer in applying for state and federal resources. Sometimes the trust resources may buy greater affordability or additional affordable units in proposed private development projects. In other words, the board could pro-

vide funds to increase the share of affordable units in a mixed-income development beyond the minimum 20 percent or 25 percent required through the state’s Local Initiative Program (LIP). Or the housing trust funds could deepen affordability by reducing the housing costs for one or multiple units to be affordable to households with lower income levels than originally proposed.



*The McElwain School Apartments, Bridgewater, MA*

**AFFORDABLE HOUSING PROGRAMS**

The board can perform a critical role getting programs off the ground. Initially, boards will often research similar programs in other communities to identify successful models and best practices. Boards, either through the trustees or staff/consultants, can also create the program structure, documents, and Affirmative Fair Housing Marketing Plan. In addition, boards can allocate housing trust funds to market programs, perform income verification, select qualified applicants, and for other program implementation needs. If a program is not to be implemented in-house (through municipal/housing trust staff), the board can issue an RFP to select a consultant or organization to implement the program.

***Monitoring & resales*** Housing trust funds can also be allocated to monitor existing affordable homeownership units and to assist with resale of the units by finding eligible buyers and/or by stepping in to acquire units in jeopardy due to lack of eligible buyers. The board of trustees, through its qualified staff or consultant, can perform these functions.

## FUNDING PROJECTS

### Setting up procedures for awarding funds, tracking payments, and expenditures

#### BOARD VOTE

The board vote to award housing trust funds should include the amount of funding awarded, a description of the project, any conditions of funding including income limits, and the funding source (e.g., CPA, HOME, CDBG, and Inclusionary Zoning).

As described in Section IV, the board will need to track sources of funds because each funding source has different eligibility and annual reporting requirements. Board votes should be in written form in the board minutes and should describe all critical aspects of the vote.

#### AWARD LETTER

After a board vote to approve a housing trust expenditure, it is best practice to notify the awardee in writing about the terms of the approval, to clarify what the permitted use of the funds are, what restrictions or conditions may accompany them and to describe how the funds will be distributed. This can be done through an award letter (sometimes referred to as a grant agreement) that includes the structure of the funds (i.e., loan or grant) and other terms, as described in this [sample award letter](#) from the Town of Westport.

An award letter is appropriate and advised for both private award recipients, such as a developer or organization, as well as municipal award recipients, such as the planning department or other municipal entity. The more clarity the board can provide with respect to its expectations for the use of funds, the less likely it will be that misunderstandings arise. It is much more difficult to undo an improper use of the funds than it is to ensure clear understanding from the beginning.

#### A note on the importance of tracking requirements of revenue sources

It is important to note that various state and federal programs impose substantive requirements, which may include the obligation to pay prevailing wage rates for construction or to seek environmental clearance from the federal or state government before funding. A board utilizing state or federal sources to fund its activities should be sure to develop familiarity with the specific requirements accompanying the use of such source(s).

### REQUIRE AFFORDABILITY RESTRICTION

Housing trust funds can be awarded as a repayable loan, a deferred forgivable loan, or as payment for a contract with affordability restrictions (i.e., a contract with a landlord when providing rental assistance). Outright grants to individuals are not allowable as per the Anti-Aid Amendment to the Massachusetts Constitution. Trust funds can be loaned for development projects for short-term financing for acquisition or development soft costs or longer-term gap financing, which can help leverage state, federal, and private money. Trust funds can also be used for programs that provide loans to individuals. These programs can be formed to help with down payment or closing costs for ownership or rental assistance. In homeowner loans, a variety of structures can be used, including forgiveness over time tied to the length of time the original borrower remains in the home, or a “shared equity” arrangement in which the trust will share in the “upside” from rising property values.

Loans can also be structured to require repayment only to the extent of available cash flow and proceeds on sale or refinancing, such as was done for a development project in Groton.

The Westford Board of Trustees worked with MHP for approval to issue loans as part of [MassDocs](#). MassDocs helps to make affordable housing development more efficient by providing a common set of loan documents for projects using a variety of state and local funds and can be a good source for boards that are interested in issuing loans. The City of Somerville uses MassDocs for housing trust loans for development projects.

### TERMS OF FUNDING AWARD

The award letter should clearly describe the terms of the funding award and may include the following considerations:

1. Any conditions of funding such as commitments of other funds or zoning relief.
2. Expected project/program start and completion dates.
3. The formula for phased payments (or other funding structure as explained above).
4. The level and type of affordability including number of affordable units, target populations, and the affordability levels (e.g., at or below 60 percent AMI or 80 percent AMI).
5. If the units are expected to count on the Subsidized Housing Inventory (SHI), under what program and who should be responsible for the state’s approval process.
6. The term of any deed restrictions (e.g., 30 year or perpetual).
7. The procedure for requesting payments (described more below).
8. Any requirements for submitting project status reports to the board.
9. Repayment requirements if project does not proceed as proposed.

### ISSUING PAYMENTS

Payments from the housing trust fund are issued through the municipality’s customary procedures for issuing payments from other municipal accounts. Typically, invoices may be submitted after the award letter is issued and signed by the awardee. The board should work



with municipal officials to determine to which municipal office to direct awardees to submit payment requests.

**BEST PRACTICES TIP:** Require trustee approval of payments.

It is a good practice to require that a member of the board, such as the treasurer or chair, or a member of the board's staff, sign-off on invoices prior to processing payments. This practice provides a reasonable layer of oversight to ensure payments are for approved expenditures and to monitor the use of funds. The board, which has a greater familiarity with the project, will be more likely than the municipal accountant or treasurer to identify any issues.

**TRACKING EXPENDITURES & CONDITIONS**

The board will benefit from detailed tracking of all housing trust expenditures to ensure transparency and provide for easy reporting. The board, through its treasurer, should work closely with the municipal accountant (or comptroller) to issue regular revenue and expenditure reports that clearly account for sources of revenue, particularly the use of CPA revenue. For housing trusts with CPA allocations, the board of trustees will need to issue a report to the Community Preservation Committee on an annual basis (prior to September 15) documenting all expenditures of CPA funds, as described in more detail in Section IV.

The board should also create a tracking system for conditions of approved grants, including time constraints, triggers for repayments, and other funding or permitting approvals needed to leverage trust funding. The tracking system should note the source of funding and any corresponding conditions for use. The board should designate someone to be responsible for the tracking and reporting of the trust's activities. Tracking reports should be part of the regular board package and changes should be reviewed regularly.

The more time and effort spent to create an operating structure for the trust that reflects relative laws and regulations, the more productive and successful the trust will be in the long run. Consistent training and information sharing with the board is imperative to long-term success. And it cannot be stressed enough that the most effective housing trusts are operated with transparency, strong communication, clear and strategic priorities, and professional capacity.

The following are examples from communities around the state that reflect the range of activities possible for trusts.

#### DEVELOPMENT

There is a growing portfolio of trusts that have supported the creation of affordable housing. These developments vary from very small to substantial in size. Sometimes the developments involve municipal land that was either transferred to the trust or that the trust was engaged in the disposition of for affordable housing. Other times the trust allocates funds to a privately initiated development. To support the creation of affordable housing, communities often need to be actively engaged through advocacy, zoning changes, and funding.

#### Chelsea

In 2019, the City of Chelsea filed legislation to allow the transfer of property taken for non-payment of property tax to the local affordable housing trust fund, specifically to expand the local stock of affordable housing. The act was passed in 2020, [Session Law - Acts of 2020 Chapter 192](#) and the trust has prioritized using tax title properties for homeownership.

The first property transferred to the trust was 41-43 Orange Street, two parcels with a combined area of 0.13 acre. Initial due diligence was performed, including Phase I and Phase II environmental site assessment and a site survey. The trust engaged the community using the online platform, co-Urbanize. Then an RFP was released in late 2022 to convey the property for the design, construction and sale of affordable homeownership units at the site.

The chosen proposal is a partnership of two organizations that will provide ongoing support to the homeowners. And the city will require a deed restriction that is similar to one used for Chelsea's inclusionary zoning program. For Chelsea, this program is a neighborhood stabilization strategy, designed to use municipal land to support lower income households in becoming homeowners.

#### Medway

When a regional non-profit housing developer, Metro West Collaborative Development (CD), originally proposed a 32-unit affordable housing development on an empty parcel in Medway, town leaders encouraged the agency to expand its original concept. They asked Metro West CD to do more.

Metro West CD expanded the development to three additional adjacent parcels to allow for a 92-unit intergenerational campus, developed in two phases. Medway granted a Comprehensive (Chapter 40B) permit and committed more than \$2 million in CPA and trust fund resources.

Phase one of the development created 48-units of rental housing for families and individuals and phase two includes 44 units of rental housing for seniors. The development includes laundry rooms, management offices and community spaces. Outside the site provides play areas and equipment, a bus shelter, and bike storage.



*Glen Brook Way, 92-unit development in Medway* (photos courtesy of Metro West Collaborative Development)

### PROGRAMS

Many trusts support programs that increase access to affordable housing for low-and-moderate income households. Programs can be structured in a myriad of ways, but a best practice is to hire a professional consultant or organization with expertise to implement the program.

#### Homeownership “Buy-down”

These programs are small-scale homeownership initiatives that assist income-qualified households in purchasing an existing home in the community. They are structured in a variety of ways and may focus on different income levels depending on the funding source and interest of the community.

In Norfolk, the trust has historically taken ownership of modest homes, invested in necessary repairs and then held a lottery to sell the homes to an income-qualified household. Appropriate procurement practices must be followed when the trust expects to take title of a home. Sudbury’s trust instead negotiates a sale price, identifies a buyer through a lottery and then contributes the difference between the negotiated sale price and the price affordable to a household earning 80 percent of the area median income. Both of these communities work with EOHLC through the Local Action Unit (LAU) program to add the homes to the SHI.

Other trust “buy-down” programs, such as Leverett, Wellfleet, and Yarmouth, run a lottery to allocate a “voucher” worth a set amount that the buyer then uses when searching for a home to purchase. During a lottery round in 2020, Yarmouth offered two grants worth up

to 35 percent of the home price, or up to \$150,000, and one grant of up to 35 percent of the home price, or up to \$100,000 (whichever was less).

Buy down programs require significant program management, best provided by paid, experienced support. And if the trust intends to add units to the SHI, an [Affirmative Fair Housing Marketing Plan](#) will be required by EOHLIC.

While these programs add units slowly and for a high cost per unit, they can be a useful piece of a comprehensive housing strategy.

### **Rehabilitation\***

Rehabilitation programs can be challenging because the funding allocation is often not great enough to justify an affordable deed restriction, but the community needs to show a public benefit as per the Anti-aid Amendment to the Massachusetts Constitution. Some communities may require a shorter-term restriction or allow the loan to be forgiven overtime with a requirement that it be repaid if the home is sold before the end of the term of the agreement.

Most trust administered rehabilitation programs are small in scale (under \$5,000 allocations), such as Easton and Scituate. Westport has a Housing Rehabilitation Program that offers up to \$50,000 for work that eliminates or corrects safety code violations, reduces homeowners energy costs, improves accessibility for persons with disabilities or other necessary building repairs. Funds are structured as zero interest loans that are forgivable at a rate of 10 percent per year over 10 years. In addition, homes rehabilitated through the program are subject to an Affordable Housing Restriction that restricts resale of the home for 10 years.

*\*CPA funds can only be used for rehabilitation expenses if housing was acquired or created using CPA resources.*

### **Rental Assistance**

During the COVID-19 pandemic, several housing trusts initiated local emergency rental assistance programs. Most local programs contracted with consultants or non-profit organizations to manage program design, marketing, application screening, due diligence, and fund allocation. A few communities had internal capacity to manage the program.

Some housing trusts continue to invest in rental assistance. Gloucester's housing trust contracts with a regional non-profit to offer up to \$4,500 per eligible household that is experiencing housing instability due to a temporary barrier such as job loss, rent increase health or mental crisis, and loss of daycare. [The program](#) allows funds to be used for current rent or rent arrears. Household earning up to 80 percent area median income with no more than \$10,000 in assets may be eligible for support.

## **ADMINISTRATIVE**

### **Staff and Professional Support**

Many housing trusts have administrative support. In some communities, this may be a municipal staff person that provides assistance with communicating between boards, posting meeting agendas and minutes, and other tasks to support the creation of affordable housing. Planning and Community Development departments or town planners often work with housing trusts on projects such as updating a housing production plan or needs analysis,

identifying municipal sites for affordable housing, and developing policy parameters for efforts like inclusionary zoning.

Trusts often hire a consultant or non-profit organization to run programs such as rental assistance or buy down initiatives.

### **Collaborative Housing Efforts**

Shared housing services organizations (SHSO) are collaborative, multi-jurisdictional organizations that provide cost-effective and proactive management and monitoring of affordable housing for participating member communities. An SHSO augments existing staff's capacity by providing the expertise and staffing needed to manage and monitor affordable housing on a continual basis. It also provides a platform for regional sharing of ideas, approaches, and strategies.

There are currently three [SHSO organizations](#) in MA: Regional Housing Services Office (based in Concord), Assabet Regional Housing Consortium (with Hudson the lead community and Metro West Collaborative Development the service provider) and Metro North Regional Housing Services Office (based in Reading).

Additionally, communities on Cape Cod have exhibited a willingness to invest in affordable housing developments in neighboring communities, knowing that more affordable rental housing benefits the whole region. In Eastham, the 65-unit multifamily development, Village at Nauset Green, received \$100,000 each from Wellfleet and Orleans, along with significant funding from Eastham. All 65 units will be credited to Eastham on the SHI.



*Village at Nauset Green, Eastham, MA*

# APPENDIX A

## **MAHT FUND LAW** (M.G.L. c. 44, § 55C)

General Law - Part I, Title VII, Chapter 44, Section 55C

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

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

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

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or bylaw or any general or special law or any other source, including money from chapter 44B; provided, however, that any such money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the trust, and such funds shall be accounted for separately by the trust; and provided further, that at the end of each fiscal year, the trust shall ensure that all expenditures of funds received from said chapter 44B are reported to the community preservation committee of the city or town for inclusion in the community preservation initiatives report, form CP-3, to the department of revenue.

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and

(16) to extend the time for payment of any obligation to the trust.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or bylaw, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.

(g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.



# APPENDIX B

## INSPECTOR GENERAL PROCUREMENT CHARTS



### The Commonwealth of Massachusetts Office of the Inspector General

JOHN W. MCCORMACK STATE OFFICE  
BUILDING  
ONE ASHBURTON PLACE  
ROOM 1311  
BOSTON, MA 02108  
TEL: (617) 727-9140  
WWW.MASS.GOV/IG

The Office of the Inspector General (Office) created the following charts for the easy reference of Massachusetts public procurement procedures. The charts are meant to provide a general overview of the principal public procurement statutes and are not a substitute for reviewing the statute or obtaining the advice of legal counsel. Also, your local rules may include stricter or additional requirements that you must follow. Contact your chief procurement officer or legal counsel for advice on your local rules and procurement procedures. For more information about the procurement laws, consult the statutes, review our procurement manuals and related information or contact the Chapter 30B Technical Assistance hotline. For more information about the resources [mass.gov/ig](http://mass.gov/ig)

**Note:** The Office updated the charts to reflect the changes to M.G.L. c. 30B effective November 25, 2022, pursuant to the passage of [Chapter 198 of the Acts of 2022](#), *An Act Relative to School Operational Efficiency*.

The charts include:

- [M.G.L. c. 149](#) – Building Construction Contracts
- [M.G.L. c. 30, § 39M](#), or [M.G.L. c. 30B](#) – Public Works (non-building) Construction Contracts (with labor)
- [M.G.L. c. 30, § 39M](#), or [M.G.L. c. 30B](#) – Construction Materials Procurements (without labor)
- [M.G.L. c. 7C, §§ 44-58](#) – Design Services for Public Building Projects:
  - Cities, Towns, Regional School Districts and Horace Mann Charter Schools
- [M.G.L. c. 30B](#) – Procurement of Supplies and Services

Any suggestions for the charts or questions concerning M.G.L. c. 30B (Chapter 30B) may be directed to this Office by calling (617) 722-8838 or by emailing us at [30BHotline@mass.gov](mailto:30BHotline@mass.gov). Questions concerning M.G.L. c. 149, M.G.L. c. 30, § 39M, and M.G.L. c. 7C should be directed to the Office of the Attorney General by calling (617) 963-2371 or your legal counsel. Thank you.

Additional information is available from the following sources:

- Prevailing wage rate sheets may be requested online at <http://www.mass.gov/lwd/labor-standards/prevailing-wage-program/> or by calling the Department of Labor Standards at (617) 626-6953.
- *Central Register* advertisements must be submitted to the Secretary of the State's Office online at <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm>.
- *Goods and Services Bulletin* advertisements must be submitted the Secretary of the State's Office online at <http://www.sec.state.ma.us/sprpublicforms/GSSubmissionform.aspx>.
- COMMBUYS postings must be completed at [www.commbuys.com](http://www.commbuys.com).

NOVEMBER 2022 REVISION

M.G.L. c. 149 – Building Construction Contracts

Estimated Contract Amount	Under \$10,000	\$10,000 to \$50,000	Over \$50,000 to \$150,000	Over \$150,000	Over \$10,000,000
<b>Procurement Procedure</b>	Sound business practices (as defined in M.G.L. c. 30B, § 2). <sup>1</sup>	Use a written scope-of-work statement to solicit written responses from no fewer than 3 persons who customarily perform such work.	Sealed bids (using M.G.L. c. 30, § 39M).	Sealed bids (using M.G.L. c. 149, §§ 44A – 44J).	Solicit statements of qualifications prior to soliciting sealed bids (using M.G.L. c. 149, §§ 44A – 44J).
<b>Notice/Advertising Requirements</b>	None.	Post a notice at least two weeks before responses are due on 1) your jurisdiction’s website; 2) COMMBUYS; 3) in the <i>Central Register</i> ; and 4) in a conspicuous place near your office. <sup>2</sup>	Post a notice 1) in your jurisdiction’s office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>3</sup>	Post a notice 1) in your jurisdiction’s office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>4</sup>	Advertise the request for qualifications at least two weeks before responses are due (1) in a newspaper; (2) in the <i>Central Register</i> ; and (3) on COMMBUYS. <sup>5</sup>
<b>DCAMM Certification</b>	No.	No.	No.	Yes. General bidders if more than \$150,000 and filed sub-bidders if more than \$25,000.	Yes. General bidders if more than \$150,000 and filed sub-bidders if more than \$25,000.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.	Yes.
<b>Prequalification</b>	No.	No.	No.	Optional. <sup>6</sup>	Yes.
<b>Bid Sub-bids</b>	No.	No.	No.	Yes, if more than \$25,000.	Yes, if more than \$25,000.
<b>File Deposit</b>	No.	No.	5% of the value of the total bid.	5% of the value of the total bid or sub-bid.	5% of the value of the total bid or sub-bid.
<b>Payment Bond</b>	No.	50% payment bond if contract is >\$25,000. <sup>7</sup>	50% payment bond.	100% payment bond.	100% payment bond.
<b>Performance Bond</b>	No.	No.	No.	100% performance bond.	100% performance bond.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>Contractor Evaluation</b>	No.	No.	No.	Yes.	Yes.
<b>OSD or Blanket Contract Option</b>	Yes.	Yes.	No.	No.	No.

<sup>1</sup> M.G.L. c. 149, § 44A(2)(A), as amended by Chapter 218 of the Acts of 2016, M.G.L. c. 30B, § 2, defines sound business practices as “ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

<sup>2</sup> M.G.L. c. 149, § 44A(2)(B), as amended by Chapter 218 of the Acts of 2016.

<sup>3</sup> M.G.L. c. 149, § 44J, as amended by Chapter 218 of the Acts of 2016.

<sup>4</sup> M.G.L. c. 149, § 44J, as amended by Chapter 218 of the Acts of 2016.

<sup>5</sup> The advertising procedures listed pertain only to the request for qualifications. Within 14 days of the completion of the prequalification process, you are required to post a notice in your jurisdiction and on COMMBUYS listing those general contractors and subcontractors that have been prequalified. A copy of the notice must be sent via first class mail, postage pre-paid, to all prequalified general and subcontractors along with an invitation to bid. The invitation to bid must have a deadline of at least two weeks. Although you may only consider bids from those general and subcontractors who have been prequalified, the advertising requirements for building construction contracts over \$150,000 apply.

<sup>6</sup> If you decide to use the optional prequalification process for projects over \$100,000, follow the procedures listed in the “Over \$10,000,000” column. (Note: The prequalification threshold was not raised in 2016.)

<sup>7</sup> M.G.L. c. 149, § 29.

M.G.L. c. 30, § 39M, or M.G.L. c. 30B, § 5 – Public Works (Non-Building) Construction Contracts (With Labor)

Estimated Contract Amount	Under \$10,000	\$10,000 to \$50,000	\$50,000 or less	Over \$50,000
	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30B, § 5 Option <sup>1</sup>	M.G.L. c. 30, § 39M
<b>Procurement Procedure</b>	Sound business practices (as defined in M.G.L. c. 30B, § 2). <sup>2</sup>	Use a written scope-of-work statement to solicit written responses from no fewer than 3 persons who customarily perform such work. <sup>3</sup>	Sealed bids.	Sealed bids.
<b>Notice/Advertising Requirements</b>	None.	Post a notice at least two weeks before responses are due on 1) your jurisdiction’s website; 2) COMMBUYS; 3) in the <i>Central Register</i> ; and 4) in a conspicuous place near your office. <sup>4</sup>	Post a notice at least two weeks before bids are due 1) in your jurisdiction’s office, and publish 2) in a newspaper; 3) on COMMBUYS; and 4) in the <i>Central Register</i> . <sup>5</sup>	Post a notice 1) in your jurisdiction’s office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>6</sup>
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.
<b>Prequalification</b>	No.	No.	No.	Maybe. <sup>7</sup>
<b>Bid Deposit</b>	No.	No.	No.	5% of the value of the total bid.
<b>Payment Bond</b>	No.	50% payment bond if contract is more than \$25,000. <sup>8</sup>	50% payment bond if contract is more than \$25,000. <sup>9</sup>	50% payment bond.
<b>Performance Bond</b>	No.	No.	No.	No.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.
<b>OSD or Blanket Contract Option</b>	Yes.	Yes.	No.	No.

<sup>1</sup> Authorized by M.G.L. c. 30, § 39M(d).

<sup>2</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016, M.G.L. c. 30B, § 2, defines sound business practices as “ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.”

<sup>3</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016.

<sup>4</sup> M.G.L. c. 30, § 39M, as amended by Chapter 218 of the Acts of 2016.

<sup>5</sup> M.G.L. c. 30B, § 5, and M.G.L. c. 9, § 20A.

<sup>6</sup> M.G.L. c. 149, § 44J.

<sup>7</sup> Although M.G.L. c. 30, § 39M, does not mandate a contractor prequalification process, prequalification of bidders by the Massachusetts Department of Transportation is required for contracts of \$50,000 or more (1) if the awarding authority receives State Aid funds under M.G.L. c. 90, § 34; or (2) the work is on a state road, regardless of whether the awarding authority receives State Aid funds under M.G.L. c. 90, § 34.

<sup>8</sup> M.G.L. c. 149, § 29.

<sup>9</sup> M.G.L. c. 149, § 29.

**NOVEMBER 2022 REVISION**

**M.G.L. c. 30, § 39M, or M.G.L. c. 30B, § 5 – Construction Materials Procurements (Without Labor)**

Estimated Contract Amount	Under \$10,000	\$10,000 to \$50,000	Over \$50,000	Any Amount
	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30, § 39M	M.G.L. c. 30B, § 5 Option <sup>1</sup>
<b>Procurement Procedure</b>	Sound business practices (as defined in M.G.L. c. 30B, § 2). <sup>2</sup>	Use a written scope-of-work statement to solicit written responses from no fewer than 3 persons who customarily perform such work.	Sealed bids.	Sealed bids.
<b>Notice/Advertising Requirements</b>	None.	Post a notice at least two weeks before responses are due on 1) your jurisdiction's website; 2) COMMBUYS; 3) in the <i>Central Register</i> ; and 4) in a conspicuous place near your office. <sup>3</sup>	Post a notice 1) in your jurisdiction's office for at least one week before bids are due; and, at least two weeks before bids are due, publish 2) in the <i>Central Register</i> ; 3) in a newspaper; and 4) on COMMBUYS. <sup>4</sup>	Post a notice at least two weeks before bids are due 1) in your jurisdiction's office, and publish 2) in a newspaper; 3) on COMMBUYS; and 4) in the <i>Central Register</i> . <sup>5</sup>
<b>OSHA Training</b>	No.	No.	No.	No.
<b>Prequalification</b>	No.	No.	No.	No.
<b>Bid Deposit</b>	No.	No.	5% of the value of the total bid.	No.
<b>Payment Bond</b>	No.	50% payment bond if contract is more than \$25,000. <sup>6</sup>	50% payment bond.	50% payment bond if contract is more than \$25,000. <sup>7</sup>
<b>Performance Bond</b>	No.	No.	No.	No.
<b>Prevailing Wage</b>	No.	No.	No.	No.
<b>OSD Option</b>	Yes.	Yes.	Yes.	No.
<b>Blanket Contract Option</b>	Yes.	Yes.	No.	No.

<sup>1</sup> Authorized by [M.G.L. c. 30, § 39M\(d\)](#).

<sup>2</sup> [M.G.L. c. 30, § 39M](#), as amended by Chapter 218 of the Acts of 2016. M.G.L. c. 30B, § 2, defines sound business practices as "ensuring the receipt of favorable prices by periodically soliciting price lists or quotes."

<sup>3</sup> [M.G.L. c. 30, § 39M](#), as amended by Chapter 218 of the Acts of 2016.

<sup>4</sup> [M.G.L. c. 149, § 44J](#).

<sup>5</sup> [M.G.L. c. 30B, § 5](#), and [M.G.L. c. 9, § 20A](#). (Note: If the procurement will exceed \$100,000, and the materials will be purchased for the purpose of stockpiled inventory and will not be used in conjunction with a specific project, at least two weeks before bids or proposals are due, publish in the *Goods and Services Bulletin*.)

<sup>6</sup> [M.G.L. c. 149, § 29](#).

<sup>7</sup> [M.G.L. c. 149, § 29](#). (Note: If the materials will be purchased for the purpose of stockpiled inventory and will not be used in conjunction with a specific project, you do not need to obtain a payment bond.)

**M.G.L. c. 7C, §§ 44-58 – Design Services for Public Building Projects:  
Cities, Towns, Regional School Districts and Horace Mann Charter Schools<sup>1</sup>**

Estimated Design Fee (EDF)/Estimated Construction Cost (ECC)	EDF less than \$30,000 or ECC less than \$300,000	EDF \$30,000 or more and ECC \$300,000 or more
<b>Procurement Procedure</b>	None. Recommend soliciting qualifications and prices from at least three designers.	Qualifications-based selection process. Jurisdiction must either (1) set the design fee; or (2) set a not-to-exceed fee limit and then negotiate the fee with the top-ranked designer within the fee limit.
<b>Advertising Required</b>	No.	Advertise in the <i>Central Register</i> and your local newspaper at least two weeks before the deadline for filing applications.
<b>Designer Selection Board<sup>1</sup></b>	No.	No – adopt selection procedure in writing. <sup>2,3</sup>
<b>Designer Application</b>	No.	Yes. See <a href="#">Designer Selection Procedures for Municipalities</a> . Use "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2016)"
<b>Designer Evaluation (Submit to DCAMM and Designer Selection Board)</b>	No.	Yes. See <a href="#">Designer Evaluation Forms &amp; Information for Municipalities and Agencies</a>
<b>Registration</b>	Yes.	Yes.
<b>Insurance</b>	No.	At a minimum, the lesser of \$1 million or 10% of the project's estimated cost of construction. <sup>4</sup>
<b>Prevailing Wage</b>	No.	No.

<sup>1</sup> Executive Departments of the Commonwealth and Commonwealth charter schools are subject to the jurisdiction of the Designer Selection Board when the design fee is \$30,000 or more and the estimated construction cost is \$300,000 or more.

<sup>2</sup> Cities, towns, school districts and Horace Mann charter schools are required to adopt their own procedures for selecting designers for building projects. These procedures must conform to the purposes and intent of the designer selection process as outlined in [M.G.L. c. 7C, §§ 44 – 58](#), and noted herein. See this Office's [Model Designer Selection Procedures for Municipalities and Other Local Public Agencies](#).

<sup>3</sup> Housing Authorities must follow the procedures established by the Department of Housing and Community Development for the design of state-funded housing. Projects requesting funding from the Massachusetts School Building Authority (MSBA) are subject to MSBA rules.

<sup>4</sup> [M.G.L. c. 7C, § 51](#).

NOVEMBER 2022 REVISION

M.G.L. c. 30B – Procurement of Supplies and Services

Estimated Contract Amount	Under \$10,000	\$10,000 to \$50,000	Over \$50,000
<b>Procurement Procedure</b>	Sound business practices. <sup>1</sup>	Use a written purchase description to solicit written price quotations from no fewer than 3 persons who customarily provide the supply or service. <sup>2</sup>  As of November 25, 2022, the price quotation threshold changed for municipal or regional school districts only from \$10,000 to \$100,000. <sup>3</sup>  <b>NOTE:</b> A governmental body may require that any procurement in an amount of not more than \$50,000 be subject to sealed bid procedures under M.G.L. c. 30B, § 5.	Sealed bids or sealed proposals (M.G.L. c. 30B, §§ 5 or 6).  <b>NOTE:</b> At more than \$100,000 a municipal or regional school district must use a sealed bid or sealed proposal.
<b>Notice/Advertising Requirements</b>	None.	None.	Post a notice at least two weeks before bids or proposals are due in (1) your jurisdiction's office, and publish at least two weeks before bids or proposals are due in a (2) newspaper, and 3) on COMMBUYS.  If the procurement will exceed \$100,000, at least two weeks before bids or proposals are due, publish in the <i>Goods and Services Bulletin</i> .
<b>Award contract to:</b>	Responsible and responsive person offering the best price.	Responsible and responsive person offering the needed quality of supply or service at the lowest price quotation.	Under § 5, the responsible <sup>4</sup> and responsive <sup>5</sup> bidder offering the best price. Under § 6, the most advantageous proposal from a responsible and responsive proposer taking into consideration price and non-price proposals.
<b>Written Contract Required<sup>6</sup></b>	No.	Yes.	Yes.
<b>Maximum Contract Term<sup>7</sup></b>	Three years, unless majority vote authorizes longer.		
<b>OSD Option</b>	Yes.		

<sup>1</sup> M.G.L. c. 30B, § 2, defines sound business practices as "ensuring the receipt of favorable prices by periodically soliciting price lists or quotes."

<sup>2</sup> M.G.L. c. 30B, § 4, as amended by Chapter 218 of the Acts of 2016, requiring the procurement officer to record the names of all persons from whom quotations were sought and submitted with the date and amount of each quotation.

<sup>3</sup> M.G.L. c. 30B, § 5, as amended by Chapter 198 of the Acts of 2022, authorizing a procurement officer for "a municipal or regional school district" to procure a supply or service at more than \$100,000 with a sealed bid procedure.

<sup>4</sup> M.G.L. c. 30B, § 2, defines a responsible bidder or offeror as "a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance."

<sup>5</sup> M.G.L. c. 30B, § 2, defines a responsive bidder or offeror as "a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals."

<sup>6</sup> M.G.L. c. 30B, § 17(a), states that all "contracts in the amount of \$10,000 or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract."

<sup>7</sup> M.G.L. c. 30B, § 12(b), states "Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option."