

# Create, preserve, support

*Using Community Preservation Act funds  
to foster local housing initiatives*

**Prepared by:**

**The Massachusetts Housing Partnership**

**March, 2016**

## About this book

The “CPA and Affordable Housing” guidebook, originally published in 2008 by CHAPA and MHP, was one of the first attempts to document and explain the various ways that CPA funds can be used for housing.

This second edition updates the eligible uses based on the 2012 amendments to the original legislation and is intended to be a comprehensive resource for CPC members and other involved citizens.

While the focus of this guidebook is how to use CPA funds to promote affordable housing initiatives, each CPA community will define their own local housing needs and priorities within a broader context of community preservation and development goals.



## In Appreciation

*This guidebook is dedicated to Robert H. Kuehn, Jr. (1942-2006), a developer and former president of the Citizens’ Housing and Planning Association. He was a pioneer in mixed-income housing and historic preservation, and instrumental in the creation of the Community Preservation Act.*

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# Introduction

THE MASSACHUSETTS COMMUNITY PRESERVATION ACT (CPA) can be a powerful tool to help communities achieve affordable housing goals. Successful initiatives in communities throughout the Commonwealth demonstrate how CPA can be an effective and flexible funding source to create, preserve, and support affordable housing.

Communities throughout Massachusetts often lack genuine housing choice, and are facing population changes that have substantial housing implications: Homes are less affordable—incomes have been relatively stagnant, while the cost of buying and renting a home has escalated. As a result, a larger share of income is needed to pay housing costs, leaving residents with less discretionary income and families struggling to find decent homes in neighborhoods with appropriate schools and services.

It is critical that municipalities respond to these issues to create healthy communities in the years to come. Affordable housing is especially vital to further fair housing and strengthen economic health. The availability of decent homes that people can afford provides stability and opportunity for individuals and families, attracts and retains employees and employers, and boosts consumer spending. CPA funds can play an important role in helping create healthy communities with a range of housing choices and opportunities.

*To help realize the CPA's full potential as an effective affordable housing resource, Community Preservation Committees can cultivate a collaborative and deliberate community approach.*

While market factors play into the ability of communities to initiate affordable housing activities, communities with productive track records often embrace a collaborative and deliberate approach to identifying and funding proposals. Community Preservation Committees (CPCs) work best to help achieve housing goals when they work in partnership with the community to encourage local housing initiatives.

This guidebook explains how CPCs can effectively foster housing initiatives, clarifies opportunities for and legal limitations to funding housing initiatives under the CPA statute and other applicable laws, and illustrates a variety of initiatives funded in the first 14 years of the CPA.

For additional information about the CPA and the full range of eligible activities, visit the Community Preservation Coalition's website at [www.communitypreservation.org](http://www.communitypreservation.org).

CPA was signed into law on September 14, 2000 after more than a decade of work by state and community officials, advocacy organizations, lawmakers, and citizens. Communities that adopt CPA can allocate the funds to local or regional initiatives to achieve affordable housing, historic preservation, open space, and recreation goals. CPA assembles four diverse interest groups with a common aim to preserve and enhance the community.

# How to use this guidebook

This guidebook is intended to assist both new and experienced CPC members and other interested citizens in using CPA as a tool to help achieve local affordable housing goals. The guidebook is comprised of three chapters and a series of appendices, as summarized below.

## **Chapter 1: The CPC's opportunity to foster community housing**

This chapter intends to help CPCs increase their effectiveness at using their community's CPA funds to achieve local affordable housing goals. Although it is written primarily for CPCs that have encountered or anticipate obstacles in utilizing CPA funds for affordable housing initiatives, the information and ideas can also benefit CPCs in communities that have already successfully funded one or more housing initiatives. The chapter encourages a deliberate and collaborative role for the CPC to cultivate initiatives and offers an array of methods toward this aim.

## **Chapter 2: Legal considerations**

This chapter explains legal considerations to be aware of in using CPA funds for affordable housing initiatives. It reviews the requirements of the CPA statute, as well as other laws that can affect local housing initiatives. It is important that CPC members are fully informed of the opportunities and limitations of the laws pertaining to affordable housing.

## **Chapter 3: Examples of eligible activities**

This chapter provides profiles of CPA-funded affordable housing initiatives to illustrate the uses of CPA funds for affordable housing, and to inspire ideas for initiatives in other communities.

## **Appendices**

The appendices intend to summarize considerations and information that are related to CPA more broadly, not solely related to funding affordable housing initiatives. This section also provides links to other resources that may be helpful.

# The CPC'S opportunity to foster community housing

How do communities succeed in using CPA funds to support housing initiatives? How can CPCs help erode barriers to achieving local housing goals? This chapter describes methods that the CPC can use to encourage affordable housing programs and developments through more effective collaboration with municipal officials and other local and regional housing entities.

MHP's community assistance team often helps CPA communities overcome barriers to successfully accomplishing housing initiatives, and finds that a community's approach to its CPA program can affect overall success.

Despite numerous, well-documented benefits for communities that have diverse housing choice, local affordable housing initiatives can face a range of obstacles including not-in-my-back-yard (NIMBY) attitudes, overall resistance to change, and regulatory barriers. To help overcome these obstacles, communities can foster:

- Stronger leadership to champion local housing initiatives;
- Deeper public awareness of barriers that impede resident's efforts to thrive in their community;
- Greater understanding of how broad housing choice strengthens communities and regions.

Some CPCs have a network of willing and able affordable housing advocates and developers seeking funding every year. In these communities, demand for funds often exceeds what is available and competition is lively. Other communities struggle to spend their CPA funds, often due to a combination of inadequate resources, lack of local capacity and/or a lack of interest in affordable housing. Working with community stakeholders, the CPC can help overcome these obstacles and move affordable housing initiatives forward.

## Collaborate with stakeholders

CPCs can be actively collaborative—initiating, coordinating, and promoting initiatives for CPA funding. CPCs can use this approach for projects in any of the four CPA funding areas (affordable housing, historic preservation, open space conservation, and recreation). For example, CPC members can coordinate with municipal staff to negotiate open space acquisitions, develop a scope of work for rehabilitation of historic town properties, or identify municipal property for development of new affordable housing units.

By statute, the CPC is designed as a type of local coalition, with representatives from various municipal boards and commissions including the Housing Authority, Historical Commission, Planning Board, Board of Park Commissioners, and Conservation Commission. With this diverse membership, the CPC can improve and reinforce collaboration and communication among these municipal entities. Additionally, the CPC is optimally poised to cultivate collaboration among housing organizations, municipal officials, and other local and regional stakeholders to identify and promote housing initiatives.

How can the CPC stimulate this type of broad collaboration? There are many approaches to engaging stakeholders and encouraging dialogue that the CPC can champion. The following are ideas for sparking collaboration in your community:

- Schedule one-on-one interviews with representatives of housing advocacy groups and organizations, including the local housing authority, to learn more about their initiatives and needs.
- Invite the local housing authority, the regional planning agency, and municipal officials (such as the municipal planner or director of the Senior Center) to present at a CPC meeting about community and/or regional housing needs.
- Present information about CPA-eligibility and local housing needs at community meetings, such as meetings of the Board of Selectmen, Council on Aging, Chamber of Commerce and/or local business association, and local/regional community development corporation.
- Organize a tour of housing developments in your region to inspire discussion about the community’s vision for affordable housing development.
- Host a CPA housing roundtable with housing advocates, housing organizations, municipal officials, and other community members to identify possible affordable housing initiatives that could be funded through CPA.

This type of engagement can be part of a more comprehensive process to create a Community Preservation Plan or a Housing plan, a prequel or supplementary to such a planning effort, or can be independent of a larger planning effort. More information about planning follows below.

## Strengthen local implementation capacity

Communities in Massachusetts may have a variety of entities that help further local housing goals and implement initiatives. These can include the Housing Authority, Housing Partnership or Affordable Housing Committee, Affordable Housing Trust, town planner or housing coordinator, housing advocacy organization, regional planning agency, or regional housing office. Working together, these entities provide local capacity to undertake and support local and regional housing initiatives.

CPA funds can support and strengthen capacity to accomplish local housing initiatives. It is important for CPCs to identify the existing entities that can implement housing initiatives. Understanding these entities’ strengths and opportunities for growth can inform the housing goals of the CPC.

A current housing plan or housing element of a Master Plan, as described in the “What type of plan?” box on the next page, likely identifies local housing capacity and needs that can be used as a starting point. If your community doesn’t have a plan that provides this information, the CPC can engage community stakeholders to understand how CPA funds can best support and enhance local housing capacity.

There are many ways that CPA funds can build local housing capacity. For example, CPA funds can expand an existing rental assistance program run by the housing authority. Or, as another example, CPA funds can be used to contract the services of a professional housing coordinator to help the community overcome barriers to successful implementation of local housing initiatives. Chapter 3 provides more detailed examples of how CPA funds can be used.

### Required Housing Authority Member

One membership seat on the CPC is required for a member of the local housing authority Board of Commissioners (not an employee of the Housing Authority). However, not every community has a local housing authority. In that case, the law states that the local CPA ordinance or bylaw may designate “a person acting in the capacity of or performing like duties” to fill this seat. This may be a member of the local housing partnership, housing trust, or housing committee.

## Strengthen the CPC’s housing focus

In addition to the required Housing Authority representative, it can be helpful to have additional representation for affordable housing on the CPC. A resident with professional expertise in affordable housing development, advocacy, or financing, or a representative of another local housing entity can serve as an at-large member. This approach can strengthen the CPC’s housing focus and bring additional expertise and knowledge to help the CPC further the community’s housing goals.

## Understanding housing needs

Understanding your community's housing needs is essential to a community's ability to direct CPA funds strategically and effectively. It is also a statutory requirement that CPCs study the "needs, possibilities, and resources" for community preservation, including housing needs, possibilities, and resources.<sup>1</sup>

A housing plan helps the community anticipate and assess housing options to respond to changes in the region and community. Does your community have homes that are affordable to people in different life stages? Do your land use regulations create barriers to development of needed housing types, such as multi-family homes? Does your community need more housing options for older adults to downsize? Is there an adequate supply of affordable family-sized homes to meet the current and future demand?

A well-researched plan may support conventional local wisdom about the type and scale of housing needs, or it may point the community in new directions. While anecdotal information can be helpful, vigorous research is indispensable when it comes to developing plans.

Some communities have a current plan that identifies local housing needs and opportunities. For other communities, adoption of CPA will require updating an older housing plan or creating a new plan. A local housing plan or needs assessment should have a regional perspective and support regional housing needs. Check if your regional planning agency has a current housing plan.

It's quite common for a community to seek assistance from a housing consultant, regional planning agency, or the local planning department to create or update a housing plan. CPC administrative funds can be used to hire a consultant to develop a housing plan. Doing this only requires a vote of the CPC to authorize. Alternately, CPA project funds can be appropriated by the local legislative body for this, as a "support of community housing" CPA project.

For information on consultants, go to [https://www.chapa.org/consultant\\_browse](https://www.chapa.org/consultant_browse).

For information on regional planning agencies, go to <https://www.chapa.org/other-links/regional-planning-agencies>.

MAPC's MA Housing Data Portal provides a basic housing needs assessment for all municipalities in the state and instant access to rich, value-added data with text and charts that automatically reflect your community. Visit the site at <http://www.housing.ma>.

### What type of plan?

#### Housing Needs Assessment

Helps the community determine the current and forecasted need for affordable housing within the community. The assessment includes an analysis of demographic characteristics, housing supply, and affordability indicators in the subject community as compared with trends in the region, state, and country.

#### Housing Plan

In addition to identifying housing needs, a housing plan identifies development constraints and limitations in the community, assesses local implementation capacity, and identifies community housing goals and strategies to address housing needs.

#### Housing Production Plan

A Housing Production Plan (HPP) is similar to a housing plan, however it is also state-recognized regulatory tool that must be prepared in accordance with state regulations and guidelines. An HPP must describe how the community plans to produce affordable units to obtain state-certification of the HPP. With a certified HPP, the Housing Appeals Committee will uphold a Zoning Board of Appeals denial of a Comprehensive Permit if the proposed development is not consistent with local needs.

#### Master Plan

In Massachusetts, under M.G.L. c.41 s.81D, a Master Plan is designed to provide a basis for decision-making regarding the long-term physical development of the municipality. A Master Plan must include a housing element that identifies and analyzes existing and forecasted housing needs and objectives.

#### Community Preservation Plan

A community preservation (CP) plan establishes goals and priorities for allocation of local Community Preservation Act funds.

<sup>1</sup> M.G.L. c.44B s.5(b)(1).

## Establish CPA goals & priorities

A current housing needs assessment provides a foundation to establish meaningful housing goals and strategic priorities for CPA housing appropriations. Recognizing that CPA planning is one component of a larger community planning landscape, CPA housing goals and priorities should reinforce other community preservation and development goals, such as those developed through a master plan, as well as the goals for all the CPA categories. The community's goals and priorities for use of CPA funds with regard to housing initiatives can be incorporated in a housing plan and/or a Community Preservation Plan (CP Plan). CPCs can adopt a CP Plan to formally establish goals and priorities within each CPA category including housing.

### Benefits of creating a Community Preservation Plan

A CP Plan can provide guidance and direction to help the CPC determine which CPA requests should be recommended to the local legislative body for funding approval. Such a plan does not bind the CPC; rather, it can free the CPC to have pointed and strategic deliberations about current CPA requests that are based on identified community needs and priorities. A CP Plan can also help stimulate ideas for housing initiatives and lead to future funding requests.

A CP Plan can help the CPC determine if it would be beneficial to set aside, in reserve, additional funds for affordable housing in the annual budget beyond the required 10 percent. Setting aside additional funding for specific projects or initiatives can demonstrate the community's commitment to affordable housing and encourage additional housing requests. For example, Manchester-by-the-Sea appropriated an additional \$100,000 for affordable housing beyond the minimum 10 percent requirement in FY2015 to help build up a reserve for future housing initiatives.

A CP Plan can also establish a non-binding target allocation policy, beyond the minimum 10 percent requirements, demonstrating the CPC's commitment to affordable housing but not binding use of CPA funds in the same way reserving funds does. The Eastham CPC established a policy in its FY2015 CP Plan to recommend appropriation of roughly 30 percent of undesignated CPA funds for affordable housing initiatives.

### Components of a strong Community Preservation Plan:

- Maximize the community's knowledge about housing needs and CPA;
- Provides analysis of local and regional community preservation resources;
- Identifies needs both among and within each CPA category;
- Engages the community to identify project possibilities, goals, and priorities, including direct consultation with municipal officials, municipal board and commission members, and stakeholders, including residents, business owners, and local non-governmental organizations;
- Establishes CPA goals and priorities that are tied to other community goals;
- Describes how and when funding decisions will be made and what criteria will be used to compare funding requests objectively;
- Is reviewed annually to confirm and update the goals and priorities, with a comprehensive update at roughly five-year intervals.

### Importance of community engagement in the planning process

- Maximize the community's knowledge about housing needs and CPA;
- Inspire creative thinking about addressing housing needs;
- Build support for future CPA-funded housing initiatives;
- Build trust between the CPC, municipal officials, stakeholders, and the public;
- Involve community members in shaping use of their tax dollars;
- Encourage collaboration and communication among public officials, boards and commissions, private organizations, and other community stakeholders;
- Foster future community service (e.g., identify possible CPC candidates and local housing advocates).

Adapted from the National Coordinating Centre for Public Engagement: [www.publicengagement.ac.uk](http://www.publicengagement.ac.uk)

CPCs can prepare CP Plans internally with support of the local Planning Department or CPC staff or allocate administrative funds to contract with professional planning services. One such example is the Eastham Community Preservation Plan: [http://www.eastham-ma.gov/public\\_documents/EasthamMA\\_CommPreservation/index](http://www.eastham-ma.gov/public_documents/EasthamMA_CommPreservation/index).

For examples of other CP Plans, visit: [www.communitypreservation.org/content/plans-apps](http://www.communitypreservation.org/content/plans-apps).

### MA Department of Revenue (DOR) guidance for the CPA Annual Needs Study

The committee must study the community preservation needs, possibilities and resources of the city or town consulting with various municipal agencies, particularly those represented on the committee. It should then develop a community preservation program and financial plan for the city or town. The program should identify long term and short-term goals and needs, set criteria for evaluating proposed acquisitions and initiatives, prioritize projects and estimate their costs. The financial plan should include a multi-year revenue and expenditure forecast and identify the fund or other municipal financing source for each proposed project. The program and financial plan should be reviewed and updated annually to reflect changes in the community's needs, priorities and resources.

Source: DOR IGR No. 01-209, as amended by No.01-207 and 01-208.

## Small towns & regional collaboration

It can be challenging for small towns and rural communities to address housing needs with limited CPA funds and implementation capacity. In 2015, close to 40 CPA towns generated less than \$200,000 in total annual surcharge collections. With such limited funds and capacity, regional collaboration can serve as an effective means of addressing housing needs and fostering housing production or assistance programs.

Regional planning agencies prepare regional housing plans and foster such regional collaboration among communities to help address housing needs. For instance, Pioneer Valley Planning Commission (PVPC) completed a Regional Housing Plan in 2014 that identified housing opportunities in the region and established a regional housing committee to help oversee implementation of the plan.

Communities can pool CPA funds to support regional housing assistance programs and collaborate to contract professional housing consultant services. This type of regional collaboration can boost the effectiveness of CPA funds for housing in communities of many sizes. Chapter 3 provides more detailed examples of regional CPA-funded initiatives.

## Champion initiatives

It is fairly typical for CPCs to advocate for its CPA funding recommendations on the floor of Town Meeting or other local legislative bodies. The CPC can also advocate for projects long before it makes its official recommendations without creating a conflict of interest (see sidebar). However, before promoting initiatives, the CPC members should understand local housing needs and possibilities. Based on this understanding, the CPC can promote initiatives through active engagement of stakeholders.

CPCs can issue a Notice of Fund Availability (NOFA) to solicit CPA applications for potential affordable housing projects. Through this process, the CPC solicits the submission of applications and provides clear review criteria that reflect local housing priorities. The NOFA should indicate how much funding is available and can also indicate the CPC's expectation for maximum per unit subsidy. The CPC would review any applications that result from the NOFA and make recommendations to the local legislative body in the same manner that it would for any other CPA funding request.

Other CPCs have been successful in identifying and funding housing activities by a less formal process whereby CPC members work directly with municipal officials or other stakeholders to develop project proposals for CPC consideration. The clearer the CPC can be about priorities for housing projects and activities, the more on

### Conflicts of interest for CPC members

Conflicts of interest arise when there is a conflict between private interests and public duties, such as if a CPC member or immediate family member has a financial interest in a matter within the CPC's purview.

A CPC member advocating for a CPA-eligible initiative would be within the CPC's role to further a public purpose if there is no personal financial benefit or interest in the matter.

target the response can be from groups and organizations wanting to assist in meeting the community's affordable housing goals.

## Foster development<sup>2</sup>

Is one of your CPC's housing priorities to foster development? Whether your CPC wants to encourage construction of new units or adaptive re-use of existing buildings, the key to effectiveness is the same—be transparent, predictable, and efficient.

### Be transparent

Broadcast your local housing priorities and availability of CPA funds.

#### **What is the vision for development?**

Based on your community's identified housing needs and goals, what is the vision for development? For example, is the priority to develop for family-sized units, rental or ownership units, units to count on the Subsidized Housing Inventory (SHI) per M.G.L. c.40B or units for moderate-income households? (For more information on the M.G.L. c.40B, see Appendix B.)

#### **How will you get the word out?**

The CPC can issue a Request for Proposals (RFP) and utilize local media and social media to get the word out, such as the local newspaper, online newsletter, community meetings, Facebook, and/or Twitter.

### Be predictable

Describe how the CPC will evaluate proposals, what level of advocacy the CPC can offer to the project proponent, and what the award conditions will be.

#### **How will the CPC evaluate proposals?**

Develop evaluation criteria that are tied to your community's identified housing needs and best practices for determining the proposal's feasibility. For example, how important is location, design, subsidy per unit, or target population in evaluating different project proposals?

#### **Will the CPC advocate for the project?**

Who will be the local champions for housing developments/proposals recommended by the CPC? Identify local advocates, such as members of the Affordable Housing Committee, Housing Authority, and elected officials, in addition to the Community Preservation Committee. The CPC can be influential as an advocate for projects by staying in touch with local and state elected officials and others to raise awareness and inform. The CPC can also support proposed developments by stimulating coverage in local and social media outlets and advocating through various stages of the municipal permitting process.

### Be efficient

Develop an efficient decision-making process. Time truly is money in this regard.

#### **How long will it take to make a decision?**

Housing developers will want to know that proposals will be reviewed within a reasonable timeframe and the steps involved in the review process. The CPC should have realistic expectations and clearly communicate these expectations.

<sup>2</sup> This section is roughly based on a presentation from the North Shore Regional Housing Forum by Toby Kramer, Director of Real Estate Development, Neighborhood of Affordable Housing (NOAH), 11/19/14.

### **Can an affordable housing trust help?**

No matter how predictable, time-efficient, and transparent the CPC process and expectations are, CPA funds must still be approved by the local legislative body, which can be especially challenging if it is a town meeting form of government since town meetings typically convene only once or twice a year. One solution to consider is to establish a local Municipal Affordable Housing Trust (housing trust), per M.G.L. c.44B s.55c. CPA funds may be transferred to the local housing trust after CPC recommendation to and approval by the local legislative body. CPC members may be represented on the trust board to create overlap and integrated communications between these two municipal entities.

For more information on Municipal Affordable Housing Trusts, search for the MAHT Guidebook and the MAHT Operations Manual on MHP's website: [www.mhp.net](http://www.mhp.net).

### **Housing trusts**

Roughly 70 CPA communities have created a housing trust. A housing trust is a municipal entity that has the power to accept grants as well as acquire, lease, and sell real property, typically without having to go back to the legislative body for further approval.

### **Due diligence**

To foster development, the CPC can recommend funding for a variety of due diligence activities to determine site feasibility if there is a specific site identified. For example, the CPC can recommend the use of CPC administrative or CPA project funds to determine the availability of services and utilities to a specific site, capacity for wastewater treatment and drinking water, fire safety requirements, zoning and other permitting requirements, gas and electric services, and any conservation or environmental issues. This is particularly useful in determining the feasibility of developing surplus municipal properties.

# Legal considerations

## CPA statute fundamentals

This chapter focuses on statutory considerations regarding uses of CPA funds for affordable housing initiatives, the role and responsibilities of the CPC, and other relevant laws including: the Fair Housing laws, MA Anti-Aid Amendment, and Uniform Procurement Act. The CPA statute (M.G.L. c.44B, as amended in 2012), provides definitions of key terms, describes permitted uses of funds, and explains the CPC's role and responsibilities. For more general information about the CPA statute, including the CPC roles and responsibilities and CPA revenue sources, see Appendices A and C.

### Who is served?

The CPA statute defines affordable housing as “community housing” that serves households at or below 100 percent of the area median income (AMI), as determined by the federal Department of Housing and Urban Development (HUD). One of the most important rules to remember is that these income limits apply to all CPA housing initiatives. The CPA statute provides specific definitions for the terms “low-income housing,” “moderate-income housing,” and “low- and moderate-income senior housing.”

#### CPA statute definitions c.44B s. 2

**Low-income housing:** housing for those persons and families whose annual income is less than 80 percent of the area wide median income (AMI). The area wide median income shall be the area wide median income as determined by the U.S. Department of Housing and Urban Development (HUD).

**Moderate-income housing:** housing for those persons and families whose annual income is less than 100 percent of the area wide median income (AMI). The area wide median income shall be the area wide median income as determined by the department of Housing and Urban Development.

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

The income limits vary by community and are updated annually by HUD. Although 100 percent AMI is the maximum threshold for use of CPA funds, CPA expenditures for housing should be based on addressing local needs, which are often greater for households with lower incomes than the maximum—at or below 30 percent AMI, 50 percent AMI, and 80 percent AMI.

An additional consideration for some communities is that units must serve households at or below 80 percent AMI to count on the state's Subsidized Housing Inventory. (SHI)<sup>3</sup> per M.G.L. c.40B.

Many communities are interested in having units supported with CPA funds reflected on the SHI. While housing developed through Comprehensive Permits is eligible for inclusion on the inventory, many other types of housing also qualify to count toward a community's affordable housing stock. For more information on M.G.L. c.40B, see Appendix B.

<sup>3</sup> The Subsidized Housing Inventory is used to measure a community's stock of low- or moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law. For more information go to <http://www.mass.gov/hed/community/40b-plan/>.

Note that there can be a difference between the 80 percent AMI figures determined by HUD and the DOR calculation which is 80 percent of the HUD 100 percent of AMI figure. The HUD figure includes adjustments based on unusually high or low housing-cost-to-income relationships. The Massachusetts Department of Housing and Community Development (DHCD) uses HUD's figures to determine eligibility for the SHI. Many other affordable housing funding programs also base eligibility on the HUD income limits. It is important to be aware of this difference so that the CPA income requirements don't unwittingly jeopardize eligibility for other non-CPA funds or inclusion on the SHI.

For more information on the difference between HUD and DOR calculations see the Community Preservation's article: [http://www.communitypreservation.org/enews/cpa\\_housing\\_jp.htm](http://www.communitypreservation.org/enews/cpa_housing_jp.htm). Information on HUD's calculation can be found at: <http://www.huduser.org/portal/datasets/il.html>.

### Annual 10 percent requirements

Each year, at least 10 percent of annual CPA revenues (including both the local surcharge revenue and state trust fund distribution) must be spent on projects in the three main CPA categories, as follows: 1) community housing, 2) historic preservation, and 3) open space and recreation<sup>4</sup>. Alternatively, these funds may be set aside in reserve accounts for later spending on projects in each of these categories. See Appendix C for more information about CPA revenue sources.

Whether the money is spent or set aside, a total of 30 percent of CPA funds must be allocated to these three categories each year. The remaining 70 percent can be used for any of the three categories, with an option to use up to five percent for CPC administrative purposes. Therefore, the CPA statute allows for spending between 10 percent and 80 percent (or 75 percent if using five percent for administrative expenditures) annually on any one category.

### Administrative funds

At the recommendation of the CPC, a community can appropriate up to five percent of the annual CPA revenues for the administrative and operating expenses of the Community Preservation Committee (CPC). This includes costs such as staff time or professional services to help manage local CPA funds as well as supplementary expenses such as printing, postage, stationery, phone, transportation, rent, and legal fees. Note also that the CPC's administrative funds can be used to cover costs incurred in scoping out possible projects for recommendation to the local legislative body. Costs such as appraisal fees, percolation tests, surveys, engineering studies, and environmental assessments can be paid for out of the CPC's administrative funds to assess the desirability of recommending a project to the local legislative body.

The CPC administrative budget is included in the annual community preservation budget presented as part of the municipality's annual budget process. All budgets must be approved by the local legislative body.

### Grant agreements

While not required in the statute, many communities have chosen to execute grant agreements to set clear expectations when granting CPA funds for projects on privately-owned property or when funding a municipal housing trust. A grant agreement helps to ensure that the CPA funds are being used in accordance with CPA guidelines and for activities authorized by town meeting or city council.

### Some communities allocate more for housing

#### Amherst

The Town of Amherst has appropriated roughly 22 percent of total CPA revenue for housing initiatives.

#### Chatham

The Town of Chatham has appropriated about 29 percent of its total CPA revenue to affordable housing initiatives.

#### Somerville

Somerville's FY2015 Community Preservation Plan establishes a minimum of 45 percent of total revenue for community housing reserve or projects due to a demonstrated critical need for affordable housing. This funding will be allocated to the community's Affordable Housing Trust Fund, which the CPC empowered as the CPC's housing arm.

<sup>4</sup> Note, the 2012 amendments to the CPA statute changed the requirement to spend or set aside 10 percent of revenue for "open space" to "open space and recreation."

Grant agreements typically specify the amount of funding, what the funds are intended to be used for, any conditions of funding (such as acquiring matching funds or executing a deed restriction), reporting and monitoring requirements, and what remedies would be required should the funds be used improperly or not entirely used. Note that a grant agreement, if it is an “agreement between a governmental body and an individual or nonprofit entity, the purpose of which is to carry out a public purpose of support or stimulation, instead of procuring supplies or services for the benefit or use of the governmental body,” is exempt from Chapter 30B requirements (M.G.L. Chapter 30B, Section 2).

Grant agreements are executed after the municipality’s legislative body approves the use of the funds but prior to distributing the funds to the private organization. The agreement is accepted (signed) by both the municipality (either the CPC or local governing body) and the party receiving the CPA funds.

For additional information and examples of grant agreements visit the Community Preservation Coalition’s website at <http://www.communitypreservation.org/news/7136> and/or MHP’s website at [www.mhp.net](http://www.mhp.net).

### Overview of eligible activities & legal considerations

A number of CPA communities also allocate funds to physically preserve existing aging affordable housing units, such as at a local housing authority property. Rehabilitation of community housing is only eligible if the property was acquired or created with CPA funds.

DHCD has released a memo to clarify the difference between rehabilitation and preservation. Visit their website to access it: <http://www.mhp.net/writable/resources/documents/PH-Notice-2013-14.pdf>.

CPA can fund a wide variety of housing uses. Section 5(b) (2) of the CPA statute allows the funds to be used for the “acquisition, creation, preservation and support of community housing; and for the rehabilitation and restoration of...community housing that is acquired or created” with CPA funds. Of the areas eligible for CPA funds, housing is the only one that allows “support” activities, which permits a broad range of uses. In addition to the eligible activities described in Section 5(b) (2), the law allows the municipality to appropriate CPA funds to a housing trust fund per Section 5(f) and to fund regional projects. There are a variety of legal considerations for uses of CPA funds, as described below.

#### Acquisition

The CPA statute defines the term “acquire” as “obtain by gift, purchase, device, grant, rental purchase, lease or otherwise.” Some considerations regarding acquisition of property and property interest:

- **Ownership of property:** any real property interest acquired with CPA funds must be owned by the municipality, but management of that interest for affordable housing properties may be delegated to the housing authority or a nonprofit organization (M.G.L. c.44b s.12(b)).
- **Permanent deed restriction required:** real property interests acquired in whole or in part with community preservation fund monies must be bound by a permanent deed restriction that limits the use of the interest to the CPA purpose for which it was acquired and runs with the property in perpetuity. The restriction must conform to the requirements of M.G.L. c.184, which governs deed restrictions generally.
- **Holder of the deed restriction:** a deed restriction for community preservation purposes may be enforced by the municipality or the commonwealth. It may also run to the benefit of and be enforced by a nonprofit, charitable corporation or foundation selected by the city or town.
- **Proceeds from sale:** proceeds from any sale of a real property interest acquired with CPA funds must be credited to the municipality’s CPA fund.

#### Create

To create affordable housing, communities can fund many types of activities including new construction, rehabilitation for adaptive reuse of existing buildings, and homebuyer programs that convert market-rate homes to deed-restricted affordable homes. A specific consideration when creating affordable housing units

<sup>5</sup> CPA funds can be used for property acquisition-related purposes, per DOR guidance (IGR No. 01-209).

with CPA funds is that the CPA statute articulates preference for the reuse of existing buildings or new construction on previously developed sites. This is not a requirement, but is a goal that is in keeping with the state’s principles for sustainable development (<http://www.mass.gov/hed/docs/dhcd/cd/smartgrowth/sdprinciples.pdf>).

### **Preservation**

The term “preservation” is defined in the statute as the “protection of personal or real property from injury, harm, or destruction.” Typically, the acquisition of community housing unit(s) or a housing deed restriction is required when preserving existing affordable housing units. Many older affordable units in the Commonwealth have affordability restrictions that are not permanent or do not survive if an eligible buyer is not secured within certain time limits. CPA funds help to preserve such units as affordable housing.

The use of the CPA funds should be clarified regarding “acquisition” or “preservation.” Preserving the affordability of units often results in a private entity taking title to a property and would not trigger the same requirements of a CPA-funded “acquisition” project, namely that the property be owned by the municipality.

For homeownership units, the state Department of Housing and Community Development (DHCD)’s Local Initiative Program (LIP) provides a template for the state-approved “Universal Deed Rider.” This Deed Rider spells out how to maintain affordability over housing units in perpetuity. The Universal Deed Rider can be found on DHCD’s website at: <http://www.mass.gov/hed/docs/dhcd/hd/lip/lipdeedrider.pdf>.

### **Support**

The 2012 amendments to Section 2 of the CPA statute added a definition for the term “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 who are eligible for community housing or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable.”

Examples of what communities have done under “support” include: homebuyer or rental assistance programs, hiring of local housing coordinators and consultants, contracts for the services of regional housing offices, contracts for professional planning services to prepare housing needs assessments or housing plans, predevelopment activities, site preparation, surveys, and other related purposes<sup>5</sup> such as appraisals, closing costs, and other legal fees associated with affordable housing development.

Some other predevelopment uses and property acquisition-related purposes include: mitigation of brownfields, permit processing fees, support costs related to issuing RFPs, and technical review of affordable housing development proposals.

Chapter 3 provides detailed examples of activities conducted under the umbrella of “support.”

Note that the provisions of the Anti-Aid Amendment to the MA Constitution apply with regard to utilizing public funds for private interests. In order to comply with the law, all CPA-funded affordable housing projects or programs should include some type of affordability restriction or recapture provision recorded through a deed, mortgage, or contract that assures a public benefit. For more information see the “Other laws applicable to housing initiatives” section on page 15 of this guidebook.

### **Rehabilitate**

Under CPA, rehabilitation of community affordable housing is only eligible for funding if the housing was previously acquired or created with CPA funds. As such, many home rehabilitation programs do not qualify for CPA funds unless affordable housing units are created as a result of the application of CPA program funds.

Section 2 of the CPA statute defines the term “rehabilitation” essentially as capital improvements to make the property functional for its intended use such as improvements for accessibility and building code compliance. One important note regarding CPA-funded projects involving any historic resource is that all work performed on the resource must comply with the U.S. Secretary of the Interior’s Standards

for Rehabilitation. For more information on this requirement, and the standards, see: <http://www.communitypreservation.org/content/SOI-standards>.

### **Municipal Affordable Housing Trusts**

CPA funds may be allocated to a Municipal Affordable Housing Trust (housing trust) per Section 5(f) of the CPA statute. There are a few important considerations regarding the appropriation of CPA funds for housing trusts.

The housing trust statute (M.G.L. c.44 s.55C) states that the purpose of a trust is to “create or preserve” affordable housing. However, the trust statute does not include “support” of affordable housing, which is an eligible activity under the CPA statute, as one of a housing trust’s purposes. Therefore, without further action, a housing trust would be limited to activities to “create or preserve” affordable housing without the ability to perform activities considered “support” allowed by CPA, such as funding predevelopment activities, hiring a housing coordinator, or establishing a down payment or rental assistance program.

Some communities have attempted to address this discrepancy by executing grant agreements between housing trusts and CPCs. The Community Preservation Coalition addressed the need for such grant agreements in its October 2014 newsletter, and provided samples available at the following link: <http://www.communitypreservation.org/news/7136>. MHP also has a grant agreement template which is available at [www.mhp.net](http://www.mhp.net). However, the housing trust statute does not explicitly grant housing trusts the power to execute grant agreements to carry out activities that are outside of a housing trust’s statutory purposes.

Individual housing trusts, particularly those that are using CPA funds for “support” activities as defined in the CPA statute, should consult their municipal or special counsel regarding the use of CPA funds by municipal trusts.

More information regarding Municipal Affordable Housing Trusts search for the MAHT Guidebook or MAHT Operation Manual on [www.mhp.net/community/publications-and-materials](http://www.mhp.net/community/publications-and-materials).

### **Regional housing initiatives**

Communities are not restricted to spending CPA funds only within their city or town borders. In fact, a 2012 amendment to Section 5(b)(1) of the CPA statute requires CPCs to consider regional project when studying the needs, possibilities, and resources regarding community preservation. Projects that extend beyond community geographical boundaries should satisfy important local needs. In recent years there has been some progress on more regional approaches to affordable housing, including the provision of technical and financial resources through HOME Consortia<sup>6</sup>, regional planning agencies, and regional non-profit organizations.

Regional housing initiatives can provide rental or homebuyer assistance, coordinate affordable housing development that spans municipal borders, and support the extension of important infrastructure (such as sewer or water infrastructure) from an adjacent community to service affordable housing. Chapter 3 provides more detailed examples of regional initiatives supported with CPA funds.

### **Proportionate spending**

CPA funds must be allocated in the same proportion as the percentage of CPA eligible housing units in the development or program. For example, if half the housing units to be created in a development are for households that are CPA income-eligible, half of the total cost of the development may be funded using CPA funds. If a property is acquired entirely with CPA funds, the entire property must be for the eligible CPA purpose for which it was acquired and permanently deed-restricted for the same per Section 12 of the CPA statute.

<sup>6</sup> The HOME Investment Partnerships Program (HOME) provides formula grants to states and localities that communities use—often in partnership with local nonprofit groups—to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. For more information, go to [www.hud.gov](http://www.hud.gov) >Program Offices >Community Planning and Development >Affordable Housing >Affordable Housing Programs >HOME Investment Partnerships Program.

# Other laws applicable to housing initiatives

## Fair Housing laws

### Federal

Federal Fair Housing laws include a collection of laws enacted to protect civil rights. The federal law that is most significant to the use of CPA funds for affordable housing and other local regulations and policies is the Fair Housing Act (FHA).

The overall intent of the FHA is to achieve an integrated society. The FHA obligates public agencies to affirmatively further fair housing including through regulations and policies, such as zoning bylaws and allocation of CPA funds. The FHA also prohibits discrimination for housing related transactions on the basis of **race, color, religion, sex, familial status (including children under age 18, pregnant women, and people securing custody of children), national origin, or physical or mental disability**<sup>7</sup>.

### Disparate impact

It is important for CPC members and other town officials 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 should evaluate their rules, regulations, policies, and actions to not only ensure against discriminatory effects but to also affirmatively further fair housing.

For example, disparate impact can occur through zoning regulations that prohibit or discourage development of multi-family housing, local preference policies for affordable housing units, policies that discourage construction of family-sized units, limitations on number of unrelated people living in a household, design preferences that limit physical access for people with disabilities or run counter to the needs of families, and zoning that favors development of age-restricted housing.

In 2015, there were two significant public actions that reinforce the concept of disparate impact: The U.S. Supreme Court's June 2015 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* (TDHCA v. ICP) and the U.S. Department of Housing and Urban Development (HUD) issuance of the Rule on Affirmatively Furthering Fair Housing.

- The TDHCA v. ICP decision reinforces that integration is a core purpose of the FHA, and indicts federal, state, and local governments for causing and exacerbating residential racial segregation, and affirms the public obligation to advance integration<sup>8</sup>.
- The purpose of the subsequent HUD rule is to help communities that receive HUD funding to meet their fair housing obligations including the expansion of access to quality affordable housing throughout the community. This HUD rule replaces HUD's prior requirement for an analysis of impediments with a fair housing assessment. The new rule will better inform program planning to fulfill these obligations under the FHA.

### State

In addition to the federal protected classes, the Massachusetts Anti-Discrimination Law (M.G.L. c.151B s.4) includes protected classes based on marital status, age, sexual orientation, gender identity, children, military status (veteran or member of the armed forces), receipt of public assistance and/or housing subsidy, genetic information, and ancestry.

*"Much progress remains to be made in our Nation's continuing struggle against racial isolation."*

Source: U.S. Supreme Court's June 25 2015 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*

<sup>7</sup> Disabilities include hearing, mobility, and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation.

<sup>8</sup> Roisman, Florence Wagman, "The Power of the Supreme Court's Decision in the Fair Housing Act Case, TDHCA v. ICP," *Poverty & Race*, v. 24, no. 4, July/August 2015.

For more information about Fair Housing laws and considerations

HUD—Fair Housing Laws and Presidential Executive Orders:

[www.hud.gov](http://www.hud.gov) > Program Offices > Fair Housing

Summary of HUD Rule on Affirmatively Furthering Fair Housing:

[www.mass.gov/dhcd](http://www.mass.gov/dhcd) > Community > Community Planning > Fair Housing and Civil Rights Information

Metropolitan Area Planning Council's Disparate Impact Housing Toolkit:

[www.mapc.org/DisparateImpactHousingToolkit](http://www.mapc.org/DisparateImpactHousingToolkit)

MA Department of Housing and Community Development Fair Housing and Civil Rights Information:

[www.mass.gov/dhcd](http://www.mass.gov/dhcd) > Community > Community Planning > Fair Housing and Civil Rights Information

MA Commission Against Discrimination:

[www.mass.gov/mcad](http://www.mass.gov/mcad)

## Interested in creating housing for teachers or veterans?

### Providing housing for teachers or veterans isn't discrimination, is it?

Maybe not, but consider this example: A community creates housing and makes it available only to local teachers. If a distinct majority of the teachers in the district are one race or gender, the town or city could find itself vulnerable to a discrimination case. Discrimination may not be the intent, but could be the result.

### A housing plan can help

Housing plans are data driven to help communities identify local housing needs. If your plan names certain groups of people (e.g., teachers or veterans) as being disadvantaged in finding affordable housing in town in comparison to other groups, then this may strengthen your case when supporting housing that could benefit particular groups. However, this does not exempt a community from the provisions of the Massachusetts Anti-Discrimination Law.

### Anti-Discrimination Law

The MA Anti-Discrimination Law declares that it is illegal to discriminate on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, children, ancestry, marital status, veteran/military status, public assistance recipients, disability, genetics, and gender identity.

It is important for CPC 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, not only to ensure against discriminatory effects, but also to affirmatively further fair housing.

Source: Massachusetts Affordable Housing Alliance (MAHA), "Interested in creating teacher or veteran housing?"

## Anti-Aid Amendment

The Anti-Aid Amendment to the Massachusetts Constitution (MA. Const. amend. Article 42, s.2) as amended by Article 103 generally prohibits the granting of public funds (such as CPA funds) to private organizations or individuals except when the funds are used for a designated public purpose and the benefits accrue to the public.

In order to comply with the law, all CPA-funded affordable housing projects or programs should include some type of affordability restriction or recapture provision recorded through a deed, mortgage, or contract that assures a public benefit.

**If your CPC is reviewing a project application which involves the grant of CPA funds to a private entity or organization, consult with your municipal counsel to determine what restrictions or recapture provisions are sufficient to ensure a public benefit and comply with the Anti-Aid Amendment.**

## The Uniform Procurement Act

Municipalities and other public entities must comply with M.G.L. c.30B, the state's Uniform Procurement Act for the acquisition of goods and services and the acquisition and disposition of real property.

However, the acquisition of real property interests using CPA funds, normally covered by M.G.L. c. 30B s.16, is exempt. This allows for a simpler process for property acquisitions using CPA funds, and allows municipalities to respond more quickly in the eventuality that a desirable property comes on the market. One caveat is that the price paid by the municipality can be no higher than the value as determined by the municipality through "procedures customarily accepted by the appraising profession as valid," which is

typically an appraisal by a qualified real estate appraiser who is contracted by the municipality (rather than the project sponsor).

Any disposition, which includes sale and lease of real property, and procurement of goods or services is subject to the provisions of c.30B. With regard to procurement of appraisal services, the CPC must be mindful of the procurement procedures that differ based on estimated contract amount. For contracts under \$10,000, the public body must use sound business practices. For contracts between \$10,000 and \$34,999, the public body must solicit three written or oral quotes. For contracts of \$35,000 and over, the public body must issue a bid offering or request for proposals. The limits change periodically so it is best to check the Inspector General's website to ensure that the numbers are current.

For more information about M.G.L. c.30B, the Inspector General's Office issues a manual that can be downloaded from <http://www.mass.gov/ig/publications/manuals/30bmanL.pdf> or purchased in hard-copy form from the State Bookstore (<http://www.sec.state.ma.us/spr/sprcat/catidx.htm>).

# Examples of eligible activities

CPA funds can be used to acquire, create, preserve, and support community housing. They can also be used to rehabilitate affordable housing that was previously acquired or created with CPA funds. This chapter profiles projects that illustrate each of these uses, with the exception of rehabilitation, since, to our knowledge, no communities have yet used their CPA funds in this way. Projects that illustrate multiple-use and regional strategies to affordable housing development are also showcased in this chapter.

## Create

CPA appropriations become especially important in supporting the production of affordable housing to fill the gap between the cost of development and what qualifying occupants can afford to pay. Many affordable housing developments rely on multiple layers of subsidies to fill these gaps, including various state and federal programs. CPA funds can be used to leverage other essential public subsidies to make developments financially feasible.

The following profiles describe some of the ways communities have used CPA funds to create affordable housing including: land purchase, adaptive re-use, land purchase, conversion of market-rate homes, new construction, recycled housing, and accessory apartments.

### Land purchase

CPA funds can be used to acquire property for the purpose of creating affordable housing. As explained further in Chapter 2, a housing development on property purchased with CPA funds must be CPA eligible. In the profile below, Westport allocated CPA funds for the town to acquire property. Neutralizing land costs through pre-acquisition of buildable land can be effective to enhance feasible development possibilities and affords more control over design and location of development. Prior to acquisition it is important to determine site constraints and opportunities to ensure feasibility of development. Note that acquisition of real property with CPA funds is exempt from the provisions of M.G.L. c.30B s.16, which requires a municipality to seek property through a bid or RFP process, as described in Chapter 2.

#### Profile

##### **WESTPORT: Noquochoke Village**

**SPONSOR:** Town of Westport and The Community Builders

**NOT YET COMPLETED**

**WHERE:** Route 177

**WHAT:** With CPA funds, the town purchased land adjacent to town-owned property to assemble 31 acres for the purpose of creating affordable housing. The developer will construct 50 affordable apartments in townhouse-style buildings.

**AFFORDABILITY:** 40 units will be designated for households with 60 percent or less of AMI and 10 units for households earning 30 percent or less of AMI.

**CPA CONTRIBUTION:** \$750,000



## Adaptive re-use

Adaptive re-use of existing buildings can be an effective way to create affordable housing by converting existing nonresidential properties, such as schools, mills, churches, hospitals, and office buildings, to housing units. The properties to be converted are often historic sites and CPA funds can be used for both affordable housing and historic preservation purposes. Historic rehabilitation projects may also qualify for additional funds, such as federal and state historic tax credits. The projects described here include conversion of a former church in Williamstown and manufacturing buildings in Lexington and Middleborough into affordable housing developments.

### Profile

#### **WILLIAMSTOWN: Church Corner Apartments**

**SPONSOR:** Scarafoni Associates

**COMPLETED:** 2011

**WHERE:** Cole Avenue

**WHAT:** After the former St. Raphael's Church and Rectory closed in 2005, the Affordable Housing Committee proposed converting the church building into eight affordable apartments. The town purchased the property and wrote and sent out a Request for Proposals (RFP) to find a developer to take on this complex site.

**AFFORDABILITY:** There are two one-bedroom units, four two-bedroom units, and two three-bedroom units. All eight units are affordable in perpetuity at 80 percent of AMI.

**CPA CONTRIBUTION:** \$1.2 million



### Profile

#### **LEXINGTON: Douglas House**

**SPONSOR:** Supportive Living Inc.

**COMPLETED:** 2008

**WHERE:** Oakland Street

**WHAT:** Conversion of a 19th century shoe and clothing manufacturing building into 15 studio-type, barrier-free rental apartments for brain-injured adults requiring supportive services. The development also includes commons areas for residents to share.

**AFFORDABILITY:** Eligible residents are offered rental assistance through HUD's Section 811 Project Rental Assistance Contract. Residents pay 30 percent of their adjusted income towards rent with the balance paid by HUD.

**CPA CONTRIBUTION:** \$300,000



### Profile

#### **MIDDLEBOROUGH: Shoe Shop Place**

**SPONSOR:** The Neighborhood Corporation (TNC) and Neighborhood of Affordable Housing (NOAH)

**NOT YET COMPLETED**

**WHERE:** 151 Pierce Street

**WHAT:** The adaptive re-use of a historic shoe factory into 25 affordable apartments through the "friendly 40B" process. The project is a mix of one, two, and three-bedroom units all located within ¼ mile of Middleborough Center.

**AFFORDABILITY:** All units will be affordable to residents earning at or below 60 percent AMI.

**CPA CONTRIBUTION:** \$40,000



### Rental housing initiatives

Purchase of existing market-rate homes and conversion to affordable homes can create permanent deed-restricted affordable rental housing. The initiative's sponsoring entity would acquire existing market-rate homes, undertake rehabilitation if needed, and rent to qualifying households. A housing trust, Housing Authority, or non-profit housing organization could sponsor such an initiative.

The example described here is a program of the Eastham Affordable Housing Trust that includes purchase and rehabilitation costs.

#### Profile

##### **EASTHAM: Purchase/Rehab Initiative**

**SPONSOR:** Eastham Affordable Housing Trust

**COMPLETED:** Ongoing

**WHERE:** Various sites

**WHAT:** Through an annual allocation of CPA funds to the Eastham Affordable Housing Trust, multiple single-family houses have been acquired for use as affordable rental properties. The properties are owned by the trust and managed through a contract with the non-profit Community Development Partnership. The organization is responsible for property management, resident selection including creation and execution of an Affirmative Fair Housing Marketing Plan, holding lotteries, and verifying income. The organization is compensated with 50 percent of the net rent on a monthly basis.

**AFFORDABILITY:** Six single-family homes affordable at or below 80 percent of AMI.

**CPA CONTRIBUTION:** \$1,578,097

### First-time homebuyer programs<sup>9</sup>

Buy-down the cost of homes to create affordable mortgage costs for first-time homebuyers with qualifying incomes. There are typically two program models for buy-down programs:

1. Purchase/rehab model: The sponsoring entity acquires property, rehabilitates it as necessary, and sells to a qualified buyer for an affordable price with a deed restriction to secure ongoing affordability. When using CPA funds, the acquisition of real property is exempt from M.G.L. c.30B s.16 (per M.G.L. c.44B s.5(f)). It is important to determine an acceptable level of rehabilitation for the subject properties to stay within the program budget and to ensure that the new homebuyer is not burdened with additional rehab costs after purchase.
2. Subsidy model: The sponsoring entity qualifies potential buyers, the buyer locates a home to purchase on the market, and the sponsoring entity provides a subsidy at closing to buy-down the cost of the mortgage and executes a deed restriction to secure ongoing affordability. It is critical to set program parameters, including maximum subsidy per unit, maximum property acquisition cost, and minimum property condition/rehabilitation needs with quality standards.

In both models, the sponsoring entity must create a transparent, fair, and affirmative process to market the program and select qualified buyers in order to ensure compliance with federal Fair Housing laws and the Massachusetts Anti-Discrimination Act.

If the municipality, housing trust, or local housing authority purchases the property, the re-sale or leasing must be compliant with M.G.L. c.30B: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30B>. Consult your municipal counsel and procurement officer to ensure compliance with all state laws.

<sup>9</sup> This description is largely based on the Community Preservation Coalition's December 2009 article "Housing Buy-Down Programs: A great way to create affordable housing without new construction" by Leedara Zola.

## Profile

### **EASTON: Homebuyer Assistance Program**

**SPONSOR:** Easton Affordable Housing Trust

**COMPLETED:** Ongoing

**WHERE:** Various sites

**WHAT:** The trust's Homebuyer Assistance Program is a subsidy model program. The trust established this program in 2012 to assist low-income households with the purchase of a home in Easton. The program's guidelines and marketing plan meet with the requirements of the Department of Housing and Community Development (DHCD) under the state's Local Action Unit (LAU) program to count the program's units on the state's Subsidized Housing Inventory (SHI). The units must be restricted with a permanent deed restriction, affirmatively and fairly marketed, and comply with DHCD's resident selection criteria. To help address the challenges of locating a home within an affordable price range, the 2015 round allows a deeper subsidy of up to 35 percent of the purchase price or up to \$95,000, whichever is lower.

**AFFORDABILITY:** The program has created three permanent affordable units (two condominiums and one single-family house).

**CPA CONTRIBUTION:** \$87,700

## Profile

### **NEWTON: Homebuyer Assistance Program**

**SPONSOR:** City of Newton

**COMPLETED:** Ongoing

**WHERE:** Various locations

**WHAT:** The city established the Newton Homebuyer Assistance Program in 2001 to provide financial assistance to buy-down the purchase price of a home. The program has assisted 36 households with a combination of CPA, HOME, and CDBG funding. In total, the city has allocated a total of \$4.25 million, which includes over \$3.2 million of CPA funds, to support this program. As of 2015, about \$1.5 million CPA funds have been expended to assist 16 households. With 2015 program changes, the program will provide maximum subsidies of up to \$250,000 per two-bedroom unit and \$275,000 per three-bedroom unit.

**AFFORDABILITY:** Households with up to 80 percent AMI.

**CPA CONTRIBUTION:** \$1.5 million expended as of April 2015

## Profile

### **YARMOUTH: Buy-Down Affordable Homes**

**SPONSOR:** Yarmouth Affordable Housing Trust

**COMPLETED:** Ongoing

**WHERE:** Various sites

**WHAT:** The Yarmouth Trust's Buy-Down Program is a purchase/rehab model homebuyer program. The trust has contracted with a non-profit organization, Housing Assistance Corporation (HAC), to administer the program. HAC locates and purchases the properties, runs fair and affirmative program marketing, and qualifies and selects buyers. This program requires significant levels of homebuyer counseling, with the administering organization spending 20 to 40+ hours with each homebuyer.

**AFFORDABILITY:** The program produced 13 affordable units between 2007-2015.

**CPA CONTRIBUTION:** \$1,100,000

## New construction

There are many examples of new construction to create affordable units with the support of CPA funds. Often these types of developments are eligible for other private, state, or federal funds. Combining CPA funds with other sources effectively leverages additional funds. The allocation of CPA funds by a community early on in the planning or development process can make the development more competitive for other funds by this demonstration of local support.

New construction, depending on the scale of the project and the level of leveraging, can provide high value for the CPA's investment: Smaller projects usually require larger local subsidies primarily because less leveraging is available from other funding sources.

The CPC can support construction of new affordable housing on publicly-owned land, as infill housing, as family-sized units, to serve special needs, through Comprehensive Permit projects, and as mixed-use development.

### Development of publicly-owned land

CPA funds can support the development of affordable housing on publicly-owned land. This can include land owned by the municipality or by the local housing authority that can be sold or leased to a developer.

#### Profile

##### **NORTHBOROUGH: New senior development**

**SPONSOR:** Northborough Affordable Housing Corporation

**COMPLETED:** 2014

**WHERE:** 1 Centre Drive

**WHAT:** The Northborough Housing Authority's (NHA) elderly public housing development had a senior center run by the town attached to it. A new senior center was built and the decision was made to tear down the old senior center, leaving a vacant lot on which the NHA wanted more rental units for seniors. With DHCD's approval and assistance, the NHA declared the property surplus and selected the Northborough Affordable Housing Corporation (NAHC) to be the developer, with NHA providing a long-term lease to the NAHC. Over \$800,000 in CPA funds were secured to tear down the old senior center and build the four new units.

**AFFORDABILITY:** Four rental units restricted to seniors with incomes up to 80 percent AMI.

**CPA CONTRIBUTION:** \$800,000



#### Profile

##### **ORLEANS: John P. Hinckley Homes**

**SPONSOR:** Harwich Ecumenical Council for Housing (HECH)

**COMPLETED:** 2012

**WHERE:** 257 Route 6A

**WHAT:** The Town of Orleans purchased a 1.65 acre parcel of land located at 257 Route 6A for the development of four affordable homeownership units—two, two-bedroom units and two, three-bedroom units. CPA funds were used to purchase the land, fund a pre-development consultant for the town, and reduce the purchase price of the units.

**AFFORDABILITY:** Four homeownership units affordable at 80 percent AMI.

**CPA CONTRIBUTION:** Over \$1 million

## Infill housing

CPA funds can support the construction of new housing on small lots in existing neighborhoods. Sites can be acquired (often through tax foreclosure), donated or purchased. Lots that do not conform to existing zoning requirements but might accommodate new starter homes or smaller houses for empty nesters may be considered through the state's LAU program or a local infill bylaw.

Development costs can vary greatly depending on the site, nature of the development, and the cost of land.

### Profile

#### STURBRIDGE: Fairview Park Affordable Housing

SPONSOR: Habitat for Humanity

COMPLETED: 2012

WHERE: 77 and 79 Fairview Park Road

WHAT: Habitat for Humanity used CPA funds to acquire a parcel of land and to finance the construction of two single-family homes.

AFFORDABILITY: Both homes are affordable below 50 percent AMI.

CPA CONTRIBUTION: \$125,000



### Profile

#### SUDBURY: Sudbury Duplexes

SPONSOR: Sudbury Housing Authority

COMPLETED: 2012

WHERE: Great, Ford, Greenwood, and Landham Roads

WHAT: The demolition of four deteriorated single-family homes and construction of eight affordable rental units in four duplexes. On a separate site, an additional duplex was constructed on surplus land adjacent to an existing housing authority three-bedroom home. The Town of Sudbury provided significant support to this development through its financial contribution in the form of CPA and Sudbury Housing Trust funds.

AFFORDABILITY: All units are affordable to residents earning at or below 60 percent AMI.

CPA CONTRIBUTION: \$600,000



## Family-sized units

CPA funds can support new construction of affordable housing, whether permitted as a Comprehensive Permit under M.G.L. c.40B or through local zoning provisions. A need for affordable housing sized for families with three or more bedrooms is often indicated through a local housing needs assessment.

### Profile

#### WESTFORD: Stony Brook I

SPONSOR: Common Ground, Inc.

COMPLETED: 2006

WHERE: Farmer's Way

WHAT: The new construction of 15 units of family rental housing in the Stony Brook area of Westford. Located across the street from the Stony Brook School, these units that are designed to fit into the community's character. The project was permitted through a special permit.

AFFORDABILITY: Five units affordable at 50 percent AMI, five units at 65 percent AMI, and five at 100 percent AMI.

CPA CONTRIBUTION: \$279,000



## Special needs housing

CPA funds can help communities provide housing for groups within the community with special needs as identified in local housing needs assessments.

### Profile

#### HINGHAM: Commander Paul F. Anderson House

**SPONSOR:** Father Bill's and MainSpring

**COMPLETED:** 2012

**WHERE:** 111-113 Fort Hill Street

**WHAT:** In 2010, the sponsor acquired a housing facility zoned for permanent supportive housing. The original structure was demolished and rebuilt as a two-story home. The development consists of six supportive housing units for veterans who have experienced homelessness. The development also provides supportive services for its residents. Tenants also have access to healthcare, behavioral health care, substance abuse counseling, case management, life skills, and vocational services.

**AFFORDABILITY:** Tenants are required to pay rent totaling 30 percent of their gross income.

**CPA CONTRIBUTION:** \$250,000



## Comprehensive Permit developments

Communities can allocate CPA funds to support private affordable housing developments that are permitted through a Comprehensive Permit, under M.G.L. c.40b. In fact, many of the other profiles in this chapter are also developments that were permitted through a Comprehensive Permit rather than local zoning regulations. In the case of such private developments, CPA funds can be a small portion of the overall project budget, such as in the Stockbridge development profiled on the next page. Appendix B provides more information about M.G.L. c.40B.

### Profile

#### STOCKBRIDGE: Pine Woods

**SPONSOR:** Community Development Corporation of South Berkshire for Construct Inc., a Southern Berkshire housing and homeless service organization

**COMPLETED:** 2006

**WHERE:** West Stockbridge Road

**WHAT:** The development of a 40B to build 25 affordable apartments and five market-rate apartments in 14 buildings on three acres of a larger 19-acre parcel. Permanent conservation restrictions protect the remaining 16 acres of open space including road frontage on Rte. 102 and land stretching along Larrywaug Brook to the Housatonic River.

**AFFORDABILITY:** 25 rental units affordable to residents below 60 percent AMI.

**CPA CONTRIBUTION:** \$300,000



## Mixed-use development

Mixed-use developments have different uses in the same building or on the same property. A typical example of a mixed-use project is a building that has retail shops on the ground floor and residential units on the upper stories. CPA funds for housing can be used in mixed-use developments if the amount of CPA funds is used in the same percentage of the CPA eligible housing.

The department of revenue (DOR) issued a guidance document, file no. 2004-275, in 2004 regarding the issue of mixed-use developments as it pertained to Chilmark. The DOR guidelines can be found at: [http://www.communitypreservation.org/enews/DOR\\_L\\_Chilmark\\_2004.pdf](http://www.communitypreservation.org/enews/DOR_L_Chilmark_2004.pdf).

## Recycled housing

This type of project involves moving an existing house slated for teardown to another site, making necessary improvements, and selling or leasing it to a qualifying occupant in exchange for affordability restrictions. This is typically done with a publicly-owned or other donated parcel of land.

### Profile

#### **NANTUCKET: Housing Nantucket**

**SPONSOR:** Housing Nantucket

**COMPLETED:** Ongoing

**WHERE:** Various locations

**WHAT:** Housing Nantucket (previously the House Recycling Program)

creates a method by which private individuals can donate unwanted but structurally sound dwellings to a local non-profit, Housing Nantucket, which works in concert with the Town of Nantucket. Housing Nantucket relocates the homes, rehabilitates them, and rents them to income-qualified year-round residents. Housing Nantucket has successfully relocated and rehabilitated 21 homes since 1996. Most projects are completed within nine months of their start date. This effort has produced a significant inventory of perpetually affordable year-round rental homes.

Housing Nantucket is partially funded through money from the CPA.

**CPA CONTRIBUTION:** \$1.3 million



## Accessory apartments

Accessory apartments, sometimes called “in-law apartments” are small apartments within existing residences or out-buildings on the property. These apartments can help increase the supply of affordable rental units in a municipality. CPA funds can be used to support the costs of improvements necessary to develop such units, with the provision that the units be permanently deed restricted to preserve affordability.

### Profile

#### **BARNSTABLE: Accessory Affordable Apartment Program**

**SPONSOR:** Town of Barnstable, Growth Management Department

**COMPLETED:** Ongoing

**WHERE:** Various locations

**WHAT:** The Accessory Affordable Apartment Program’s main objective is to use existing housing stock to provide affordable housing. The program allows for the creation of new accessory affordable units either in the dwelling or within an existing detached structure on owner-occupied dwelling properties. These affordable apartment units are subject to a Comprehensive Permit issued by the Zoning Board of Appeals Hearing Officer. As of 2015, there are approximately 140 accessory affordable apartment units in Barnstable. CPA funds of up to \$20,000 can be granted to assist property owners with eligible costs to convert properties to affordable apartments.

**CPA CONTRIBUTION:** \$200,000

## Preserve

Communities can allocate CPA funds to the local housing authority, non-profit or for-profit developers, or work through its municipal affordable housing trust to preserve community housing. The acquisition of community housing can be particularly useful for projects to preserve expiring affordability restrictions or for some limited activities to repair existing affordable housing units to protect the housing structure from future injury, harm, or destruction.

### Profile

#### **AMHERST: Rolling Green**

**SPONSOR:** Beacon Communities, LLC

**COMPLETED:** 2015

**WHERE:** Rolling Green Drive

**WHAT:** Acquisition and pre-development costs to preserve 41 units of affordable housing at the Rolling Green, a 204-unit multi-family property. The affordable housing units at this apartment complex were not protected by a deed restriction or regulatory agreement after the mortgage was repaid in full, and the owners indicated they would raise rents five percent annually until all units were at market rate. Beacon Communities, utilizing CPA funds through a bond of \$1.25 million and a variety of other funds, acquired the property to create permanent affordability for the 41 affordable units. Massachusetts Housing Partnership provided funds for a preliminary capital needs analysis and facilitated talks with potential buyers.

**AFFORDABILITY:** 41 rental units affordable at or below 60 percent AMI.

**CPA CONTRIBUTION:** \$1.25 million



### Profile

#### **WEYMOUTH: Tammy Brook Apartments**

**SPONSOR:** Beacon Communities

**COMPLETED:** 2009

**WHERE:** 167 King Avenue

**WHAT:** The Mayor and Town Council approved a \$150,000 loan to Beacon Communities to help with the purchase and rehabilitation of 90 affordable units at the Tammy Brook Apartments complex.

**AFFORDABILITY:** 24 units under 50 percent AMI, 41 units under 80 percent AMI, and 25 units unrestricted.

**CPA CONTRIBUTION:** \$150,000



## Support

CPA funds can be used to support affordable housing through predevelopment activities, site improvements, and financial assistance for qualifying households. In addition, communities can use CPA funds for affordable housing plans and to expand professional capacity to implement CPA-eligible housing initiatives.

### Predevelopment

CPA 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 CPA 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. These 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 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,” are eligible to receive both CPA administrative and project funds and may include preliminary environmental or financial feasibility studies, surveys, site planning, and design studies.

### **Preliminary environmental or financial feasibility studies**

CPA funds can pay for tests to ensure that the site is suitable for housing development and to determine where the development should be placed. Environmental tests can include: Phase I environmental reports, test borings, and wetlands delineations.

#### **Profile**

##### **WAYLAND: The Residences at 89 Oxbow**

**SPONSOR:** Oxbow Partners

**COMPLETED:** 2008

**WHERE:** 89 Oxbow Street

**WHAT:** The redevelopment of the former Nike Missile site in Wayland into 16 units of workforce housing targeted to first-time home buyers. CPA funds were used to purchase the land from the federal government and towards: site testing; demolishing former buildings at site; architectural, engineering and site planning; and construction at the site.

**AFFORDABILITY:** All units are affordable to first-time homebuyers earning at or below 100 percent AMI.

**CPA CONTRIBUTION:** \$1,385,000



#### **Site planning**

CPA funds can be appropriated to pay consultants to prepare conceptual site plans that can be used to inform the public. This information may be included in an RFP to solicit interest from developers for affordable housing developments on public property.

#### **Profile**

##### **HOLLISTON: Cutler Heights**

**SPONSOR:** Cutler Heights LP (includes Holliston Housing Development Corp., Jon Juhl and non-profit developer Neighborhood of Affordable Housing)

**COMPLETED:** 2011

**WHERE:** 79 Hollis Street

**WHAT:** CPA funds were used to undertake predevelopment work including septic system design analysis and completion of a topographical survey. The Town of Holliston and the Holliston Housing Authority provided strong support for the Cutler Heights development through the town’s issuance of a Comprehensive Permit and the leasing of housing authority land for the development.

**AFFORDABILITY:** All 30 units are affordable to residents earning at or below 60 percent AMI.

**CPA CONTRIBUTION:** \$909,600



## Financing assistance to qualifying households

CPA funds may be used to provide subsidies directly to eligible households to lower the cost of obtaining affordable housing. This was clarified in the recent amendments to M.G.L. Ch. 44b and is further described on the Community Preservation Coalition's website: <http://www.communitypreservation.org/content/advocacy>. Eligible activities in this category include down payment, closing cost, and rental assistance.

### Down payment and closing cost assistance

Provide financial support to first-time homebuyers to help cover down payment and closing costs. This assistance is provided as deferred payment loans with recapture provisions.

#### Profile

##### **SANDWICH: Down Payment and Closing Cost Program**

**SPONSOR:** Housing Assistance Corporation

**COMPLETED:** Ongoing

**WHERE:** Various locations

**WHAT:** This program assists first-time homebuyers by providing up to \$10,000 in zero percent interest, deferred payment loans to assist with down payment and closing costs. The buyer is required to attend a Homebuyer Education Workshop Series and must have a household income of up to 80 percent AMI. The buyer must contribute at least 1.5 percent of the purchase price.

**AFFORDABILITY:** Households with earnings up to 80 percent AMI.

**CPA CONTRIBUTION:** \$48,500 (FY2011)

### Rental assistance

Offer direct assistance in the form of rental vouchers that subsidize the difference between market rents and what a household can afford to pay (usually no more than 30 percent of household income).

#### Profile

##### **CHATHAM: Voucher Program**

**SPONSOR:** Chatham Housing Authority

**COMPLETED:** Ongoing

**WHERE:** Various locations

**WHAT:** CPA funds support the Chatham Housing Authority's rental assistance program in which landlords of eligible tenants receive monthly subsidies for up to three years. Since the program began in 2004, the rental voucher program has created between 18 and 24 affordable rental units each year with \$690,000 in CPA funds.

**AFFORDABILITY:** Households with up to 80 percent AMI.

**CPA CONTRIBUTION:** \$690,000

## Professional capacity

Fund a professional to support the implementation of the Community Preservation Plan and other local affordable housing plans, as well as to provide technical input on housing development proposals. A Housing Coordinator can range from a part-time staff person or consultant to a full time position if warranted. Housing coordinators can be hired as staff and report to a municipal official (planner, town administrator, town manager, mayor) or be hired as a consultant based on an agreed-upon scope of services and fee schedule.

### Profile

#### **BRIDGEWATER: Housing Coordinator**

**SPONSOR:** Town of Bridgewater

**COMPLETED:** Ongoing

**WHAT:** In 2015, the Bridgewater Town Council appropriated \$26,000 in CPA funds to contract the consulting services of a professional housing coordinator. The scope of work includes SHI administration, support for local housing initiatives, staffing the Municipal Affordable Housing Trust, and creating and maintaining current ready-buyer and ready-renter lists.

**CPA CONTRIBUTION:** \$26,000

## Multiple use strategies

Communities can fund projects that incorporate more than one or all three funding categories of CPA—historic preservation, open space and recreation, and affordable housing. CPA represents an opportunity to reconcile some traditional competition for funding among these different funding categories, accomplishing several municipal goals simultaneously. This section provides examples of CPA-funded housing projects that also included historic preservation, open space, and/or recreation components.

### Historic preservation and housing

Incorporate the development of affordable housing units into historic structures being rehabilitated such as schools, mills, libraries, etc.

### Profile

#### **WILLIAMSTOWN: Cable Mills**

**SPONSOR:** Mitchell Properties

**UNDER CONSTRUCTION**

**WHERE:** Water Street

**WHAT:** The site consists of approximately nine acres and involves the substantial renovation of three existing former mill buildings into 61 residential apartment units. The town was extremely supportive of the developer's efforts to take a distressed abandoned mill property and convert it to a mixed-income rental development. In addition to the award of CPA funds, the town issued a special permit for the construction of this complex. An open space/recreation component included the creation of a publicly accessible riverwalk along the Green River.

**AFFORDABILITY:** 13 of 61 units will be affordable to residents earning at or below 50 percent AMI.

**CPA CONTRIBUTION:** \$1,692,539 from the historic, housing, and open space (passive recreation) funding categories.



## Open space and housing

Preserve open space in tandem with the creation of affordable housing clustered on a part of the parcel. CPA housing funds may only be used on the parcel set aside for housing construction.

### Profile

#### **EASTHAMPTON: East Street Ciak Property**

**SPONSOR:** Pioneer Valley Habitat for Humanity

**UNDER CONSTRUCTION**

**WHERE:** East Street

**WHAT:** The city worked with the Valley Land Fund and the Pascommuck Trust to purchase the Ciak property, preserving 14 acres as open space and reserving a one-acre parcel on East Street for community housing. The city issued a RFP for the site and the sole bidder was Pioneer Valley Habitat for Humanity. They are constructing a duplex that will provide affordable homes for two families. The city worked with local land conservation groups to acquire the property and then secured approval from the city council to allocate the CPA funds. In addition, the project received \$200,000 in matching funds from DHCD.

**AFFORDABILITY:** All units affordable to residents earning at or below 50 percent AMI.

**CPA CONTRIBUTION:** \$150,000 from the housing and open space funding categories.

### Profile

#### **CARLISLE: Benfield Farms**

**SPONSOR:** Neighborhood of Affordable Housing, Inc. (NOAH)

**COMPLETED:** 2015

**WHERE:** 575 South Street

**WHAT:** A 45-acre site with a variety of uses including 26 mixed-income affordable senior housing units on seven acres, 26-acres of conservation land, and additional acres for recreation (which has since been determined more appropriate as open space due to environmental and habitat considerations). The site will include passive recreation opportunities such as horseback riding, cross country skiing, hiking and kayaking.

**AFFORDABILITY:** Five apartments are reserved for households with incomes at or below 30 percent AMI, 17 apartments are for households at or below 60 percent AMI, and four units are for households with up to 100 percent AMI.

**CPA CONTRIBUTION:** \$836,108



## Regional strategies

### Housing assistance programs

By pooling CPA funds, communities can establish regional housing assistance programs to assist eligible households with the cost of renting or buying a home.

#### Profile

##### **MARTHA'S VINEYARD: Dukes County Rental Assistance Program**

**SPONSOR:** Dukes County Regional Housing Authority

**COMPLETED:** Ongoing

**WHERE:** In market rentals across Martha's Vineyard

**WHAT:** The Housing Authority administers rental assistance on Martha's Vineyard funded with the pooled Community Preservation Act funds of the six island towns to address the affordability gap between low incomes and high housing costs. The program assists an average of 75 working households island-wide who can pay at least half of a fair market rental, make less than 80 percent AMI and pay no more than 30 percent of their gross income towards rent. The average household use of rental assistance on Martha's Vineyard is three years.

**AFFORDABILITY:** Up to 75 households annually with incomes averaging 50 percent of AMI

**CPA CONTRIBUTION:** \$500,000 annual average funding totaled from six towns.

### Housing services

Communities can pool CPA funds to expand professional capacity for support of affordable housing initiatives. This type of service can be particularly helpful for communities to support local housing initiatives.

#### Profile

##### **CONCORD: Regional Housing Services Office (RHSO)**

**SPONSORS:** Acton, Bedford, Burlington, Concord, Lexington, Sudbury, and Weston

**COMPLETED:** Ongoing

**WHERE:** Not applicable

**WHAT:** RHSO is a collaboration between member towns of Acton, Bedford, Burlington, Concord, Lexington, Sudbury, and Weston. Each community allocates funds for the RHSO membership fee, which range from about \$10,000 to \$30,000 annually in 2015. Most of the RHSO member communities use CPA funds for this purpose. The RHSO provides core housing services to each member community, including local support for community review of affordable housing proposals, and regional activities including administration of regional housing assistance programs.

**AFFORDABILITY:** Varied

**CPA CONTRIBUTION:** About \$150,000 from six of the seven communities (Burlington uses non-CPA funds).

## **Profile**

### **HUDSON: Regional Housing Services Contract**

**SPONSORS:** Bolton, Boxborough, Hudson, Littleton, and Stow

**COMPLETED:** Ongoing

**WHAT:** This five-town collaboration initially gathered to aggregate their affordable housing ideas, opportunities and address challenges in an economical way. Through a competitive RFP process they selected a private non-profit corporation (Metro West Collaborative Development, Inc.) to undertake a series of activities including:

- Submission of new-unit SHI applications;
- Developing Housing Production Plans;
- Identifying and implementing affordable housing program opportunities.

The contract costs the towns approximately \$65,000 with each town contributing from \$7,000 up to \$25,000 depending on actual hours used.

**AFFORDABILITY:** Varied

**CPA CONTRIBUTION:** About \$30,000 from three of the five communities.

# CPC responsibilities, composition, & annual reporting

## Responsibilities

The Community Preservation Committee (CPC) is charged with studying the community preservation needs, possibilities, and resources of the community; holding one or more public informational hearings on these needs, possibilities, and resources; and recommending annual expenditures for initiatives within the four CPA categories to the local legislative body (town meeting/city or town council/board of alderman). A recommendation by the CPC and appropriation by the legislative body are both required to spend CPA funds. Both are made by majority vote. The only exception to the majority vote is in the cases of authorizing bonding or eminent domain proceedings under CPA. These uses require a two-third vote of the local legislative body.

The legislative body may make appropriations of CPA funds in the amount recommended by the CPC, or it may reduce or reject any recommended amount. It may also reserve all or part of the CPC recommendation for a later appropriation by allocating it to a reserve for that category instead, per the Department of Revenue (DOR) Informational Guideline Release (IGR) 01-209, Section VI.

## Composition

The CPC is required by law to include representation across the allowed spending areas: community housing, historic preservation, open space, and recreation. There are five mandated CPC membership appointments—one member, as designated by each of the following:

- Conservation Commission
- Historic Commission
- Planning Board
- Board of Park Commissioners
- Housing Authority

In addition, up to four additional at-large positions can be created at the discretion of the community, and as detailed in a bylaw or ordinance establishing the committee approved by the local legislative body.

## Reporting requirements

Once adopted, the CPA is considered a local program. However, the CPA statute tasks the DOR with developing regulations and guidelines for the program. DOR is also responsible for administering the statewide Community Preservation Trust Fund. DOR's website has useful guidance regarding the mechanics of managing CPA funds and required reporting. This website is especially helpful when it comes to the annual CPA reporting requirements, as there is mandatory reporting that municipalities must adhere to in administering CPA funds.

One of the statutory responsibilities of the CPC is to keep track of all CPA accounts/funding and to report annually to the local legislative body on the status of the CPA program in the community.

In addition to reporting CPA activity to the local legislative body, DOR requires three annual reports from CPA communities: the CP-1, CP-2, and CP-3. The CP-1 and CP-2 forms are hard copy forms, while the CP-3 is an online reporting platform. All of these are available on the DOR website, along with detailed

information about submission deadlines and other reporting requirements. To access the DOR website with information on these reports or to download the hard copy reports, go to <http://www.mass.gov/dor/local-officials/municipal-databank-and-local-aid-unit/data-bank-reports/cpa/>.

All CPA communities should make sure to submit the CPA reports on time, so as not to risk delay in receipt of their annual distribution from the statewide CPA Trust Fund. The Board of Assessors or municipal accounting officer will usually complete the CP-1 surcharge report, the accounting officer also usually completes the CP-2 fund report, and a CPC member or municipal staff usually completes the CP-3 projects database report. The CP-3 report must include all community preservation fund appropriations approved during the fiscal year and must also include uses of any CPA funds allocated to Housing Trusts or Conservation Funds.

# Overview of M.G.L c.40B

## 40B overview

Chapter 40B s.20-23, the state's Comprehensive Permit law, was enacted in 1969 to help address the shortage of affordable housing statewide by reducing barriers created by local zoning, approval processes and other restrictions. Chapter 40B sets a standard for communities to provide a minimum of 10 percent of their total housing stock as affordable to households at or below 80 percent AMI or, alternatively, affordable housing on sites comprising more than 1.5 percent of the total land area zoned for residential, commercial, or industrial use. Once a community has met or surpassed the 10 percent or 1.5 percent thresholds they can choose not to consider new 40B applications. Most communities are aware of where they stand regarding the 10 percent threshold and are often interested in having new housing developments include affordable units that will count on the state's Subsidized Housing Inventory (SHI). To find your community's SHI go to <http://www.mass.gov/hed/docs/dhcd/hd/shi/shiinVENTORY.pdf>.

Units created with CPA funds that are not permitted by Ch. 40B may be eligible for inclusion on the state's SHI but it is best to communicate with DHCD prior to funding to ensure compliance with relevant rules and regulations. An application for inclusion on the SHI must be made to DHCD under its Local Action Units Program (LAU). Access the application at <http://www.mass.gov/hed/docs/dhcd/hd/lip/localactionunitapp.doc>.

CPA funds can be used to create housing for households up to 100 percent of AMI. Chapter 40B SHI-qualified units are restricted at or below 80 percent of AMI, as determined by HUD. Therefore, in order for CPA-funded units to count toward a community's 10 percent threshold, they must serve households at or below 80 percent AMI per the HUD income limits. There may be a need for housing at an affordability level above 80 percent AMI, but such units would not count on the SHI.

## Local Initiative Program (LIP) and Local Action Units (LAU)

DHCD's Local Initiative Program (LIP) provides a way for affordable units (at or below 80 percent AMI) created with CPA funds to be included on the state's SHI. In order for housing to be considered a Local Action Unit (LAU):

1. The housing unit must be created as a result of the city or town's action or approval.
2. The units will be sold or rented on a fair and open basis and will be subject to an affirmative fair marketing and resident selection plan approved by DHCD.
3. The unit sale price or rent will be affordable to households at or below 80 percent AMI.
4. The housing unit will have its permanent affordability secured by DHCD-approved use restrictions.

### Local preference

The Local Initiative Program currently allows a maximum of 70 percent of the units in a development to be designated as local preference if the community demonstrates the need for a local preference. However, the use of local preference categories must comply with applicable fair housing laws. Typically, local preferences include people who already live in the community, people who work for the community or for a business located in the community, or those with children who attend school in the community. DHCD can provide additional information on using local preference categories.

More detailed information about LIP and Local Action Units (LAUs) is available on DHCD's website at <http://www.mass.gov/hed/community/40b-plan/local-initiative-program-lip.html>.

# Primary CPA Revenue Sources

## Local surcharge<sup>10</sup>

Community preservation monies are raised locally through the imposition of a surcharge of not more than three percent of the tax levy against real property. Municipalities must adopt CPA by ballot referendum.

The Community Preservation Coalition provides more information regarding individual community's local surcharge revenue collections: <http://www.communitypreservation.org/content/cpa-overview>.

## State Community Preservation Trust Fund

The CPA statute also creates a statewide Community Preservation Trust Fund, administered by the Department of Revenue (DOR), which provides distributions each year to communities that have adopted CPA. These annual disbursements serve as an incentive for communities to pass CPA. Trust fund revenues are derived from document recording fees dedicated to CPA that are charged by the state's Registries of Deeds. DOR reports monthly on these collections (<http://www.communitypreservation.org/collections>), and each March they provide an estimate of the annual trust fund distribution (<http://www.communitypreservation.org/news/401>). Each CPA community receives their distribution from the trust fund at a formula-based percentage of what they raised locally. Visit the CPC's website to learn more about the formula used to distribute the statewide CPA Trust Fund: [http://www.communitypreservation.org/enews/Distribution\\_Formula.htm](http://www.communitypreservation.org/enews/Distribution_Formula.htm).

The Community Preservation Coalition provides more information regarding the CPA Trust Fund on their website: <http://www.communitypreservation.org/content/trustfund>.

## Municipal bonding

The CPA law allows for municipalities to issue general obligation bonds or notes to fund community preservation initiatives. Debt issued in this way is general obligation debt that is anticipated to be paid from Community Preservation revenue. The payments due each year over the term of the bond are included in the annual Community Preservation budget: it is the CPC's responsibility to ensure annual allocation of fund revenues for the debt services. The amount of debt that a municipality may borrow against CPA funds is limited to that which is payable from estimated local CPA surcharge revenues over the life of the borrowing.

DOR provides detailed information on municipal borrowing. DOR's Informational Guideline Release (IGR) No. 00-209, as amended by IGR No. 01-207 and 02-208, is helpful for information regarding borrowing against CPA funds: [www.mass.gov/DOR](http://www.mass.gov/DOR).

The Community Preservation Coalition also provides information on using bonding as a source of CPA funding. Visit their website to learn more: <http://www.communitypreservation.org>.

<sup>10</sup> The descriptions provided for local surcharge and the Community Preservation Trust Fund are excerpted from the Community Preservation Coalition's website: <http://www.communitypreservation.org>.

# Other general legal considerations

## Open Meeting Law

The Open Meeting Law (M.G.L c30A, subsection 19(a), as revised in 2009) requires that all meetings of public bodies, of which a CPC is considered, be open to the public. The purpose of the law is to ensure transparency in a public body’s deliberations to protect the democratic process. A few important things to note:

- Members of public bodies, whether they are elected, appointed, or taking an oath of office, must hold a certification that shows they understand the requirements of the Open Meeting Law and the consequences of violating it. The certificate must be held where the body maintains its official records.
- Meetings are defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.”
- A deliberation is defined as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.”
- Public bodies must provide the public notice of the meeting 48 hours in advance of the meeting with the municipal clerk and it must be visible to the public at all hours.
- The public is permitted to attend meetings of public bodies.
- Public bodies are required to create and maintain accurate minutes of all meetings. The minutes must state the date, time, and place of the meeting, a list of members present or absent, and the decisions made and actions taken, including a record of all votes.
- Minutes are public records, are subject to disclosure, and must be maintained in accordance with the Secretary of State’s record retention schedule (<http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm>).
- Topics discussed in public meetings must be advertised in the public notice. Topics not advertised cannot be discussed and may not be covered under broad categories such as ‘new business’ or ‘miscellaneous.’
- Public bodies may consider some topics in executive or closed session if the body follows the proper procedures for going into such a closed session. There are 10 purposes for executive sessions including to consider purchase, lease, or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of a public body.

The Attorney General’s Office provides trainings to public bodies on the Open Meeting Law and has also established a website ([www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting)) where more detailed information can be found.

## Conflict of Interest Law

Members of the CPC are considered municipal employees under the state’s conflict of interest law—M.G.L. Ch. 268A (<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter268A>). The law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public’s trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service.

The law covers a variety of issues including bribery, gifts and gratuities, misuse of an official position, self-dealing and nepotism, false claims, appearance of conflict, and confidential information.

The law requires all members to take online training in the law and submit a certificate of completion every two years.

Visit the State Ethics Commission's website for additional information and training material: <http://www.mass.gov/ethics>.

Ethics Commission Attorney of the Day (hotline for questions and concerns): 617-371-9500

## Resources & references

### **Community Economic Development Assistance Corporation (CEDAC)**

A public-private community development finance institution that provides technical assistance and pre-development funds to local and regional non-profits involved in housing development.

[www.cedac.org](http://www.cedac.org)

### **Citizens' Housing and Planning Association (CHAPA)**

State-wide membership organization providing studies, workshops, forums, information and advocacy on affordable housing.

[www.chapa.org](http://www.chapa.org)

### **Community Preservation Coalition**

State-wide organization providing information and technical assistance to communities on the CPA.

[www.communitypreservation.org](http://www.communitypreservation.org)

### **MA Department of Housing and Community Development (DHCD)**

The state's housing agency administering a number of state housing programs and source of information on housing that includes: Ch. 40B, the Subsidized Housing Inventory (SHI), the Local Initiative Program (LIP), the Planned Production Program, state public housing, and state funding programs for housing.

[www.mass.gov/dhcd](http://www.mass.gov/dhcd)

### **MA Department of Revenue (DOR)**

DOR is responsible for regulation and oversight of the CPA.

[www.mass.gov/DOR](http://www.mass.gov/DOR)

### **MassDevelopment**

State finance agency providing funding for brown field mitigation, business development, cultural facilities, child care, and housing.

[www.massdevelopment.com](http://www.massdevelopment.com)

### **MassHousing**

State finance agency providing funding for the development of affordable housing.

[www.masshousing.com](http://www.masshousing.com)

### **Massachusetts Housing Partnership (MHP)**

State agency providing permanent financing for affordable rental development, technical assistance for municipalities and non-profits, and administers the ONE Mortgage Program ([www.mhp.net/one-mortgage/why-one](http://www.mhp.net/one-mortgage/why-one)) for low- to moderate-income first-time homebuyers.

[www.mhp.net](http://www.mhp.net)

### **MA Office of the Inspector General (IG)**

Information on Ch. 30B Uniform Procurement Act

<http://www.mass.gov/ig/publications/manuals/30bmanl.pdf>

### **U.S. Department of Housing and Urban Development (HUD)**

Federal housing agency providing funding and information on a wide range of affordable housing topics.

<http://www.hud.gov/>

To find the HUD Area Median Income (AMI) for your city or town go to <https://www.huduser.gov/portal/datasets/il/il15/index.html>

## Resources on Ch. 40B

The following are a number of useful web resources that provide accurate and useful information on Chapter 40B:

### **CHAPA 40B Fact Sheet**

<https://www.chapa.org/sites/default/files/40%20B%20fact%20sheet.pdf>

### **DHCD—Ch. 40B Statute**

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40B>

### **Ch. 40B Overview Information**

<http://www.mass.gov/hed/community/40b-plan/>

### **State Ch. 40B Regulations**

<http://www.mass.gov/hed/economic/eohed/dhcd/legal/regs/760-cmr-56.html>

### **DHCD 40B Guidelines**

<http://www.mass.gov/hed/economic/eohed/dhcd/legal/comprehensive-permit-guidelines.html>

### **Subsidized Housing Inventory (SHI)**

<http://www.mass.gov/hed/community/40b-plan/subsidized-housing-inventory-shi.html>

### **Local Initiative Program (LIP)**

<http://www.mass.gov/hed/community/40b-plan/local-initiative-program-lip.html>

# Community Preservation Act

## General Laws Chapter 44B (2010 Official Edition)

### As amended by St. 2012, c. 139, §§ 69-83 and c. 503 of the Acts of 2014

**Provided by the Massachusetts Department of Revenue, January 2013 and amended January 2015**

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

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

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

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

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

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

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

“Community preservation committee”, the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

“Community Preservation Fund”, the municipal fund established under section 7.

“CP”, community preservation.

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

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

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

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

“Maintenance”, incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency or readiness.

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

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

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

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

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

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

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

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

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

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

(b½) Notwithstanding chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property, and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal revenue, including, but not limited to, hotel excises pursuant to chapter 64G, linkage fees and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A, and 20A½ of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, and gifts received from private sources for community preservation purposes; and provided further that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions, adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

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

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

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

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

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

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

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

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

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

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

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

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

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when

a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

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

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

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

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

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

(b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation, including the consideration of regional projects for community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies.

As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

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

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

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

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

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

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

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

**Section 6.** In each fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, not less than 10 per cent of the annual revenues for

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

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years; provided, however, that funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town. The community preservation funds shall not replace existing operating funds, only augment them.

**Section 7.** Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts sections 3 to 7, inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian.

The authority to approve expenditures from the fund shall be limited to, the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the fund: (i) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (ii) additional funds appropriated or dedicated from allowable municipal sources pursuant to subsection (b<sup>1</sup>/<sub>2</sub>) of section 3, if applicable; (iii) all funds received from the commonwealth or any other source for such purposes; and (iv) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee.

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

**(b)** The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to

a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots shown on plans, for indexing instruments recorded while a petition for registering is pending, for additional certificates of sewer assessments, for old age assistance liens, for duplicates and for photocopies.

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

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

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

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

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

(b) The commissioner shall multiply the amount remaining in the fund after any disbursements for operating and administrative expenses pursuant to subsection (c) of section 9 by 80 percent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town and if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b $\frac{1}{2}$ ) of section 3. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

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

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the city or town's equalized property valuation per capita ranking, ranking cities and towns from highest to lowest valuation. The commissioner shall also determine the population of each city or town and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by 2. The dividend is the community preservation raw score for that city or town.

(e) The commissioner shall then order each city or town by community preservation raw score, from the lowest raw score to the highest raw score. This order shall be the community preservation rank for each city or town. If more than 1 city or town has the same community preservation raw score, the city or town with the higher equalized valuation rank shall receive the higher community preservation rank.

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

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.
decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.
decile 10	50 per cent of the base figure.

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

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

(h) When there are monies remaining in the Massachusetts Community Preservation Trust Fund after the first and second round distributions and any necessary administrative expenses have been paid in accordance with section 9 the commissioner may conduct a third round surplus distribution. Any remaining surplus

in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted sections 3 to 7, inclusive. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

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

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

(2) If less than 10 per cent of the cities and towns have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only 1 round of distributions, or in any other equitable manner.

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

**Section 11.** A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

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

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

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

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

State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by the city or town as the local share for state or federal grants upon recommendation of the community preservation committee and the legislative body, as provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

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

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

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

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

**(b)** At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

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



## Massachusetts Housing Partnership

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