



The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

AN ACT TO SUSTAIN COMMUNITY PRESERVATION

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to continue the commonwealth's commitment and partnership with cities and towns to enhance affordable housing, park and open space preservation and historic preservation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section Two is hereby amended by removing the definition of "Rehabilitation" and inserting in place thereof the following:-

"Rehabilitation", the remodeling, reconstruction and making of extraordinary repairs to historic resources, open spaces, lands for recreational use and community housing, but not including maintenance, for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended use, including but not limited to improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. With respect to historic resources, rehabilitation shall have the additional meaning of work to comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68. 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 related recreational use.

SECTION 2. Section 3 of said Chapter 44B, as appearing in the 2004 Official Edition is hereby amended by adding after paragraph (b) the following new paragraph:-

(b 1/2) As an alternative to subsection (b) of section 3, 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 that additional funds so committed shall come from another source or sources of municipal revenue, including but not limited to hotel/motel excise taxes pursuant to chapter 64G of the general laws, linkage fee and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40 of the general laws, parking fines and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90 of the general laws, existing dedicated housing, open space and historic preservation funds, however authorized, and provided further that additional funds so committed shall not include any federal funds or funds from private sources, provided that inclusionary zoning payments and linkage fees shall be considered public funds for the purposes of this chapter. The total funds committed to the Community Preservation Act under this subsection shall not exceed 3% 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.

SECTION 3: Section 3 of said chapter 44B is hereby amended by inserting after paragraph e (3) the following new paragraph:-

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

SECTION 4. Section 5 of the Chapter 44B, as most recently amended by Chapter 289 of the Acts of 2006 is hereby amended by striking paragraph (b)(2) in its entirety and inserting in place thereof the following:-

(2) The community preservation committee shall make recommendations periodically throughout the year, or as a single yearly recommendation 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 the rehabilitation or restoration of open space and community housing that is acquired or created as provided in this section. 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.

SECTION 5. Said Section 5 is further amended by striking paragraph (d) and inserting in place thereof the following:-

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

SECTION 6. Section 6 of Chapter 44B is hereby amended by striking it in its entirety and inserting in place thereof the following:-

Section 6. In every 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 such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. The legislative body may also make such appropriations from the Community Preservation Fund as it deems necessary for direct

costs associated with a municipality's first year implementation, including but not limited to tax billing software or hiring outside vendors, provided that the total of any administrative and operating expense of the Community Preservation Committee and the first year implementation expenses do not exceed five 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, but funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town in the commonwealth. The community preservation funds shall not replace existing operating funds, only augment them.

SECTION 7. The second paragraph of Section 7 of Chapter 44B is amended by striking the first sentence and inserting in place thereof the following:-

The following monies shall be deposited in the fund: (a) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b) if applicable, additional funds appropriated or dedicated from allowable municipal sources pursuant to subsection (b ½) of section 3; (c) all funds received from the commonwealth or any other source for such purposes; and (d) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund.

SECTION 8. Section 8 of Chapter 44B is hereby amended by striking it in its entirety and inserting in place thereof the following:-

Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The fees for so recording, filing or depositing 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 under chapter 188 or to the filing of a third mortgage or fourth mortgage extended by any public agency or quasi public agency, including but not limited to a Commonwealth municipality or the Massachusetts Housing Partnership. No surcharge shall apply to the fees charged for

additional pages, photostatic copies, abstract cards, additional square feet for the filing and recording of plans or for additional or required marginal references.

(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 or to the filing of a third mortgage or fourth mortgage extended by any public agency, including but not limited to a Commonwealth municipality or the Massachusetts Housing Partnership. 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) Notwithstanding subsections (a) and (b) of section 8, in the event that the Massachusetts Community Preservation Trust Fund balance is insufficient to support a 75% first round match distribution pursuant to section 10 for all cities and towns that have accepted sections 3 to 7 inclusive, as certified by the commissioner of revenue on October 1st of each year, the fees of the registry of deeds and fees of the assistant recorder to be paid when the instrument is left for recording, filing or deposit and the fee for so recording, filing or depositing a municipal lien certificate shall be subject to a surcharge to be determined by the commissioner of the department of revenue necessary to support, by the commissioner's best reasonable estimate, a 75% first round match for the following fiscal year, with each fee rounded to the nearest dollar.

Under no circumstances shall each fee surcharge to be paid to the register of deeds or assistant recorder when the instrument is left for recording, filing or deposit for community preservation be greater than \$70. Under no circumstances shall each fee surcharge paid to the register of deeds or assistant recorder for so recording, filing or depositing a municipal lien certificate for community preservation be greater than \$40.

The surcharges shall be imposed for the purposes of community preservation. No community preservation surcharges shall apply to a declaration of homestead under chapter 188 to the filing of a third mortgage or fourth mortgage extended by any public agency, including but not limited to a Commonwealth municipality or the Massachusetts Housing Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards, additional square feet for the filing and recording of plans or for additional or required marginal references.

(d) Each fiscal year, the commissioner of the department of revenue shall certify the fees pursuant to section 8. The commissioner of revenue shall notify the registers of deeds, the assistant recorders, and the joint committee on revenue of the change at least ninety days prior to the first day of the fiscal year.

(e) 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. Paragraph (c) of Section 9 of said Chapter 44B is hereby amended by striking said paragraph and inserting in place therefore the following:-

(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 for such purposes and any expense incurred by the registers of deeds and the assistant recorder to administer and collect the surcharges pursuant to section 8 shall be deemed an operating and administrative expense of the program. The commissioner of revenue shall annually on October 15th direct the state treasurer to disburse an amount not to exceed one-half of one per cent of the annual total revenue received in the preceding fiscal year from a register of deeds or an assistant recorder pursuant to the provisions of section 8 to such register of deeds or assistant recorder to pay operating and administrative expenses of the program certified to the commissioner by the register of deeds or assistant recorder and to disburse

an amount not to exceed 5 per cent of the annual total revenue received by the state treasurer in the preceding fiscal year under the provisions of said section 8 to the department of revenue to pay total operating and administrative expenses of the program.

SECTION 10. Section 10 of Chapter 44B is amended by striking it in its entirety and inserting in place thereof the following:-

Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies from the fund established in section 9 to cities and towns that have accepted sections 3 to 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the municipality 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 municipality accepts this act pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to the commissioner by October 30th, the maximum additional funds the municipality intends to transfer to the Community Preservation Fund from allowable municipal sources for the following fiscal year. Once certified, the municipality 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 section 9(c) by 80 per cent. 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 75 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 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 municipality's equalized property valuation per capita ranking, ranking municipalities from highest to lowest valuation. The commissioner shall also determine the population of each municipality and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by two. The dividend is the community preservation raw score for that municipality.

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

(f) After determining the CP rank for each municipality in the commonwealth, the commissioner shall divide all municipalities into deciles according to their CP ranking, with approximately the same number of municipalities in each decile, and with the municipalities with the highest CP 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 municipality to a decile according to their CP 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.

(f) Notwithstanding any other provision of this section, the total state contribution for each city or town shall not exceed the actual amount raised by the municipality's surcharge on its real property levy, and if applicable, additional funds committed from allowable municipal sources pursuant to subsection b (1/2) of section 3.

(g) When there are monies remaining in the 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 this chapter. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

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

(1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection (b) of section (3) and those cities and towns that adopt the maximum surcharge and additional funds committed from allowable municipal sources such that the total funds are the equivalent of 3 per cent of the real estate tax levy against real property pursuant to subsection (b 1/2) of section 3 of this chapter shall be eligible to receive additional state monies through the equity and surplus distributions.

(2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property

levy, the commissioner may calculate the state grant with only one round of distributions, or in any other equitable manner.

(j) After distributing the 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. Section 12 of Chapter 44B is amended by striking it in its entirety and inserting in place thereof the following:-

(a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. In the event that there is a deed restriction placed on any real property pursuant to this chapter, the legislative body is authorized to appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to Chapter 180 to hold, monitor and enforce the deed restriction on said property.

(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. The legislative body may also transfer ownership of such property acquired under this chapter to a nonprofit organization created under chapter 180 or chapter 203, provided that in the event of such a transfer, the municipality shall retain a permanent deed restriction pursuant to Chapter 184 to maintain the property for the purpose it was authorized to be acquired for by the legislative body. The legislative body may appropriate monies necessary to transfer ownership of a property between two entities so long as a deed restriction is acquired and maintained by the town or city.

SECTION 12. Section 16 of said Chapter 44B is hereby amended by striking paragraph (a) and inserting in place thereof the following:-

(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 1/2) of section 3.

SECTION 13. Notwithstanding any general or special law to the contrary, this Act shall apply to all Community Preservation Fund appropriations approved by a city or town's legislative body on or after the effective date of acceptance of the Community Preservation Act in such city or town."

