

Amendments to the Community Preservation Act

included in H. 4200 (the FY 2013 state budget)

passed by the Massachusetts Legislature on 6/28/12

(full budget cropped to show only sections relevant to CPA)

785 SECTION 69. Section 2 of chapter 44B of the General Laws, as appearing in the 2010 Official
786 Edition, is hereby amended by inserting after the definition of “Annual income” the following
787 definition:-

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

793 SECTION 70. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by
794 striking out, in line 24, the words “or eligible for listing”.

795 SECTION 71. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by
796 striking out the definition of “Maintenance” and inserting in place thereof the following
797 definition:-

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

801 SECTION 72. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by
802 striking out, in line 54, the words “, but not including maintenance”.

803 SECTION 73. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by
804 striking out the definition of “Rehabilitation” and inserting in place thereof the following 2
805 definitions:-

806 “Rehabilitation”, capital improvements, or the making of extraordinary repairs, to historic
807 resources, open spaces, lands for recreational use and community housing for the purpose of
808 making such historic resources, open spaces, lands for recreational use and community housing

809 functional for their intended uses including, but not limited to, improvements to comply with the
810 Americans with Disabilities Act and other federal, state or local building or access codes;
811 provided, that with respect to historic resources, “rehabilitation” shall comply with the Standards
812 for Rehabilitation stated in the United States Secretary of the Interior's Standards for the
813 Treatment of Historic Properties codified in 36 C.F.R. Part 68; and provided further, that with
814 respect to land for recreational use, “rehabilitation” shall include the replacement of playground
815 equipment and other capital improvements to the land or the facilities thereon which make the
816 land or the related facilities more functional for the intended recreational use.

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

822 SECTION 74. Section 3 of said chapter 44B, as so appearing, is hereby amended by inserting
823 after subsection (b) the following subsection:-

824 (b½) Notwithstanding chapter 59 or any other general or special law to the contrary, as an
825 alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by
826 approving a surcharge on real property of not less than 1 per cent of the real estate tax levy
827 against real property and making an additional commitment of funds by dedicating revenue not
828 greater than 2 per cent of the real estate tax levy against real property; provided, however, that
829 additional funds so committed shall come from other sources of municipal revenue including, but
830 not limited to, hotel excises pursuant to chapter 64G, linkage fees and inclusionary zoning
831 payments, however authorized, the sale of municipal property pursuant to section 3 of chapter
832 40, parking fines and surcharges pursuant to sections 20, 20A and 20A1/2 of chapter 90, existing
833 dedicated housing, open space and historic preservation funds, however authorized, and gifts
834 received from private sources for community preservation purposes; and provided further, that
835 additional funds so committed shall not include any federal or state funds. The total funds
836 committed to purposes authorized under this chapter by means of this subsection shall not exceed
837 3 per cent of the real estate tax levy against real property, less exemptions, adopted. In the event
838 that the municipality shall no longer dedicate all or part of the additional funds to community
839 preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced
840 pursuant to section 16.

841 SECTION 75. Said section 3 of said chapter 44B, as so appearing, is hereby further amended by
842 striking out, in lines 28 to 30, inclusive, the words “or (3) for \$100,000 of the value of each
843 taxable parcel of residential real property” and inserting in place thereof the following words:-

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

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

847 SECTION 76. Section 5 of said chapter 44B, as so appearing, is hereby amended by inserting
848 after the word “preservation”, in lines 23 and 24, the following words:-, including the
849 consideration of regional projects for community preservation.

850 SECTION 77. Subsection (b) of said section 5 of said chapter 44B, as so appearing, is hereby
851 further amended by striking out paragraph (2) and inserting in place thereof the following
852 paragraph:-

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

864 SECTION 78. Said section 5 of said chapter 44B, as so appearing, is further amended by striking
865 out subsection (d) and inserting in place thereof the following subsection:-

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

873 SECTION 79. Said chapter 44B is hereby further amended by striking out section 6, as so
874 appearing, and inserting in place thereof the following section:-

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

887 community preservation committee and the first year implementation expenses shall not exceed
888 5 per cent of the annual revenues in the Community Preservation Fund.

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

893 SECTION 80. The second paragraph of section 7 of said chapter 44B, as so appearing, is hereby
894 amended by striking out the first sentence and inserting in place thereof the following sentence:-
895 The following monies shall be deposited in the fund: (i) all funds collected from the real property
896 surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (ii)
897 additional funds appropriated or dedicated from allowable municipal sources pursuant to
898 subsection (b $\frac{1}{2}$) of section 3, if applicable; (iii) all funds received from the commonwealth or
899 any other source for such purposes; and (iv) proceeds from the disposal of real property acquired
900 with funds from the Community Preservation Fund.

901 SECTION 81. Said chapter 44B is hereby further amended by striking out section 10, as so
902 appearing, and inserting in place thereof the following section:-

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

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

925 (c) The commissioner shall further divide the remaining 20 per cent of the fund in a second
926 round distribution, known as the equity distribution. The commissioner shall determine the

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

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

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

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

| | | |
|-----|-----------|---------------------------------|
| 949 | decile 1 | 140 per cent of the base figure |
| 950 | decile 2 | 130 per cent of the base figure |
| 951 | decile 3 | 120 per cent of the base figure |
| 952 | decile 4 | 110 per cent of the base figure |
| 953 | decile 5 | 100 per cent of the base figure |
| 954 | decile 6 | 90 per cent of the base figure |
| 955 | decile 7 | 80 per cent of the base figure |
| 956 | decile 8 | 70 per cent of the base figure |
| 957 | decile 9 | 60 per cent of the base figure |
| 958 | decile 10 | 50 per cent of the base figure |

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

962 (g) Notwithstanding any other provision of this section, the total state contribution for each city
963 and town shall not exceed the actual amount raised by the city or town's surcharge on its real
964 property levy and, if applicable, additional funds committed from allowable municipal sources
965 pursuant to subsection (b1/2) of section 3.

966 (h) When there are monies remaining in the Massachusetts Community Preservation Trust Fund
967 after the first and second round distributions and any necessary administrative expenses have
968 been paid in accordance with section 9, the commissioner may conduct a third round surplus
969 distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the
970 surplus by the number of cities and towns that have accepted sections 3 to 7, inclusive. The
971 resulting dividend shall be the surplus base figure. The commissioner shall then use the decile
972 categories and percentages as defined in this section to determine a surplus equity distribution for
973 each participant.

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

978 (1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection
979 (b) of section 3 and those cities and towns that adopt the maximum surcharge and additional
980 funds committed from allowable municipal sources such that the total funds are the equivalent of
981 3 per cent of the real estate tax levy against real property pursuant to subsection (b^{1/2}) of said
982 section 3 shall be eligible to receive additional state monies through the equity and surplus
983 distributions.

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

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

990 SECTION 82. Section 12 of said chapter 44B, as so appearing, is hereby amended by striking
991 out subsection (a) and inserting in place thereof the following subsection:-

992 (a) A real property interest that is acquired with monies from the Community Preservation Fund
993 shall be bound by a permanent restriction, recorded as a separate instrument, that meets the
994 requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the
995 purpose for which it was acquired. The permanent restriction shall run with the land and shall be
996 enforceable by the city or town or the commonwealth. The permanent restriction may also run to

997 the benefit of a nonprofit organization, charitable corporation or foundation selected by the city
998 or town with the right to enforce the restriction. The legislative body may appropriate monies
999 from the Community Preservation Fund to pay a nonprofit organization created pursuant to
1000 chapter 180 to hold, monitor and enforce the deed restriction on the property.

1001 SECTION 83. Section 16 of said chapter 44B, as so appearing, is hereby amended by inserting
1002 after the word “chapter”, in line 5, the following words:- , including reducing the surcharge to 1
1003 per cent and committing additional municipal funds pursuant to subsection (b 1/2) of section 3.

1600 SECTION 155. (a) Notwithstanding any general or special law to the contrary, after complying
1601 with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall dispose of
1602 the consolidated net surplus in the budgetary funds for fiscal year 2013 in the following order to
1603 the extent that funds are available: (i) transfer \$25,000,000 to the Massachusetts Community
1604 Preservation Trust Fund, established by section 9 of chapter 44B of the General Laws; and (ii)
1605 transfer the remaining balance from the General Fund to the Commonwealth Stabilization Fund.

1606 (b) All transfers pursuant to this section shall be made from the undesignated fund
1607 balance in the budgetary funds proportionally from the undesignated fund balances; provided,
1608 however, that no such transfers shall cause a deficit in any of the funds.

2772 SECTION 218. Sections 57 to 71, inclusive, shall apply to all Community Preservation Fund
2773 appropriations approved by a city or town's legislative body on or after the effective date of
2774 acceptance of sections 3 to 7, inclusive, of chapter 44B of the General Laws in any such city or
2775 town.