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# How to Accept the Community Preservation Act

## Introduction

The Community Preservation Act, codified as General Laws chapter 44B, allows cities and towns that accept certain of its provisions to create a special Community Preservation Fund by assessing a surcharge on annual real estate taxes and to appropriate monies in that fund for open space, historic resource and affordable housing purposes.

Communities that impose the surcharge will also receive additional monies for their special fund from a state trust fund created by imposing a surcharge on documents recorded at the Registry of Deeds or Land Court.

This guide is intended to provide useful information regarding the process of accepting the Act, including a sample summary for the ballot question submitted after legislative approval and a sample format for questions proposed by petitions. However, please note that this guide cannot be substituted for advice of legal counsel. You must contact your city solicitor or town counsel for official legal opinions pertaining to the Act.

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## Methods of Approval

There are two methods for accepting the Act. The first method requires approval of both the legislative body of the city or town **and** the electorate. G. L. c. 44B, § 3(a). The alternative method is through the use of a local ballot question petition. G. L. c. 44B, § 3(h).

Please note that any ballot questions regarding the Act may only appear on regularly scheduled municipal election ballots or the state election ballot. G. L. c. 44B, §§ 3(f) & (h). Proper notification is necessary for ballot question placement. G. L. c. 44B, § 3(g).

Below please find the legal requirements, with citations, for submitting the questions for placement on a ballot, both by the legislative body and by petition. Also, please find an example of deadlines for each method of approval.

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## Legislative Body Action

The first method of approval requires that a majority of the legislative body of the city or town first approve a specific proposal to present to the voters. The legislative body is defined as town meeting, town council, city council, board of alderman or other body with the power to approve budgets, authorize debt and adopt by-laws or ordinances for the community. G. L. c. 44B, § 2.

The legislative body must accept G. L. c. 44B, §§ 3 through 7 and approve the amount of the surcharge. The approved surcharge cannot exceed three percent (3%). G. L. c. 44B, § 3(b).

Pursuant to G. L. c. 44B, § 3(e), the legislative body may include any or all of the following surcharge exemptions in the proposal to be presented to the voters:

1. (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 municipality;
2. For class three, commercial, and class four, industrial, property as defined in section 2A of 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;
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.

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After the legislative body accepts the act and adopts a surcharge plan, a ballot question to approve the acceptance must be placed before the voters at the next regularly scheduled municipal or state election.

If the next regularly scheduled election is a municipal election, the legislative body must act in sufficient time to give the city or town clerk at least 35 days advance notice to place the question on the ballot. If the next election is a state election, the secretary of state must receive at least 60 days written notice to place the question on the ballot for that municipality.

### Ballot Question

The form of the ballot question is set forth in the Act. Pursuant to G. L. c. 44B, § 3(f), the ballot question presented to the voters must read as follows:

“Shall the (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?”

A fair and concise summary of the Community Preservation Act provisions that are the subject of the question must appear on the ballot underneath the question. The summary must be prepared by the city solicitor or town counsel and must include the surcharge percentage approved by the legislative body. The summary should also include the exemptions, if any, adopted by the legislative body.

**Below please find a sample summary:**

“Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act (Act), establishes a dedicated funding source to enable cities and towns to (1) acquire open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) acquire and restore historic buildings and sites, and (3) create affordable housing.

In (MUNICIPALITY), the funding source for these community preservation purposes will be a surcharge of (\_\_\_%) on the annual property tax assessed on real property and annual distributions made by the state from a trust fund created by the Act. If approved, the following will be exempt from the surcharge: ((1) property owned and occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the (City/Town), as defined in Section 2 of said Act; (2) class three, commercial, and class four, industrial, properties as defined in G. L. c. 59, § 2A; (3) \$100,000 of the value of each taxable parcel of residential real property; (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). A taxpayer receiving a regular property tax abatement or exemption will also receive a pro rata reduction in surcharge.

A Community Preservation Committee will be established by [ordinance or by-law] to study community preservation resources, possibilities and needs and to make annual recommendations to (city council/town council/ town meeting) on spending the funds. At least 10% of the funds for each fiscal year will be spent or reserved for later spending on each of the Act’s three community preservation purposes: (1) open space, (2) historic resources and (3) affordable housing.”

**Please note that this is a sample only and should not be used without the advice of legal counsel. The Act requires counsel for the city or town to prepare the summary.**

The question is approved and the statute accepted if a majority of the voters voting on the ballot question vote “yes.”

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### Ballot Question Petition

An alternative acceptance procedure may be used if the legislative body of the city or town does not accept the act and approve a surcharge amount at least 90 days before a regular municipal, or 120 days before a regular state election. G. L. c. 44B, § 3(h).

Under the alternative procedure, the voters of the city or town may file a ballot question petition to have a question seeking acceptance of the act, approval of a specific surcharge percentage and approval of any allowable exemptions to be placed on the ballot. The petition form itself must include the surcharge percentage and any exemptions, if any, proposed for approval. Sample petition language may read:

We the undersigned request that the question of adopting sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, which establishes a dedicated funding source to enable cities and towns to (1) acquire open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) acquire and restore historic buildings and sites, and (3) create affordable housing, be placed on the ballot for the next regular municipal election.

In (MUNICIPALITY), the funding source for these community preservation purposes will be a surcharge of (\_\_\_\_%) on the annual property tax assessed on real property and annual distributions made by the state from a trust fund created by the Act. If approved, the following will be exempt from the surcharge: ((1) property owned and occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the (City/Town), as defined in Section 2 of said Act; (2) class three, commercial, and class four, industrial, properties as defined in G. L. c. 59, § 2A; (3) \$100,000 of the value of each taxable parcel of residential real property; (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). A taxpayer receiving a regular property tax abatement or exemption will also receive a pro rata reduction in surcharge.

A Community Preservation Committee will be established by [ordinance or by-law] to study community preservation resources, possibilities and needs and to make annual recommendations to (city council/town council/ town meeting) on spending the funds. At least 10% of the funds for each fiscal year will be spent or reserved for later spending on each of the Act's three community preservation purposes: (1) open space, (2) historic resources and (3) affordable housing.

The petition must be signed by at least five percent (5%) of the registered voters of the city or town and submitted to the local board of registrars of voters, board of election commissioners or election commission for certification of signatures. The board or commission must certify the signatures within seven (7) days of filing.

If the petition is signed by the required number of voters, the city or town clerk or secretary of state must then place the question on the ballot at the next regular municipal or state election held after certain minimum time periods. If the question is to appear on a municipal election ballot, petitions must be submitted to the board or commission for certification at least 42 days before the municipal election so that certification can be completed at least 35 days before the election.

If the question is to appear on a state election ballot, the petitions must be submitted to board or commission at least 67 days before the state election so that certification can be completed and notice given to the Secretary of the Commonwealth at least 60 days certification of the signatures.

It is advisable for petitioners to submit a petition for certification as early as possible so that there is sufficient time to gather additional signatures should any problems with the signatures be identified in the certification process. Also, for questions to be placed on the state election ballot, the Secretary of the Commonwealth must **receive** notification at least 60 days before the election—therefore such notification must be sent in sufficient time to allow for delivery of mail.

### Ballot Question

The Act does not provide a format for a ballot question proposed by petition. However, as previously mentioned, the Act does contain the format of a ballot question submitted after approval of the legislative body. This format includes a specific question and insertion below the question of a fair and concise summary of the Community Preservation Act provisions that are the subject of the question, prepared by the city solicitor or town counsel, which must include the surcharge percentage approved by the legislative body and any exemptions adopted by the legislative body. Accordingly, any ballot question proposed by petition should be placed on the ballot in substantially the same form as a question submitted after approval of the legislative body. Additionally, the city solicitor or town counsel should prepare a fair and concise summary to be printed below the question which includes the surcharge percentage and any exemptions which are sought for approval by the petition. A sample ballot question proposed by petition may read:

“Shall the (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as proposed by a petition signed by at least five percent of the registered voters of this city or town, a summary of which appears below?”

Insert Fair and Concise Summary

The question is approved and the statute accepted if a majority of the voters voting on the ballot question vote “yes.”

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### Effective Date

A community accepting the statute at an election held before the actual tax commitment for a fiscal year is made may impose the surcharge beginning in that fiscal year, or in the fiscal year that begins the July 1 after the election, as specified in the acceptance vote of the legislative body or in the ballot question petition. G. L. c. 44B, § 4(a).

## Notification of Acceptance

The city or town clerk must notify the Commissioner of Revenue if the statute is accepted. The notification must include the date and terms on which the voters accepted the Act. G. L. c. 44B, § 10(a).

## Amended Acceptance

A city or town may amend the surcharge percentage and exemptions "in the same manner as they were accepted by such city or town." Accordingly, amendments may be done by majority vote of the legislative body or petition and thereafter approval by the voters at an election. G. L. c. 44B, § 16(a).

## Revocation of Acceptance

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. G. L. c. 44B, § 16(b). Therefore, if acceptance of the Act was done by petition for the ballot question, it can only be revoked by petition for a ballot question. Similarly, if acceptance was done by approval of the local legislative body and ballot question, it can only be revoked by vote of the local legislative body and ballot question.

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## Other Resources

Below please find a list of other resources for more information regarding the provisions of the Community Preservation Act:

**Massachusetts Department of Revenue**

Division of Local Services  
P.O. Box 9490  
Boston, MA 02205-9490  
Phone: 617-626-2300  
Fax: 617-626-2330  
Website: [www.mass.gov/dls](http://www.mass.gov/dls)

**The Trust for Public Land**

10 Milk Street, Suite 810  
Boston, MA 02108  
Phone: 617-367-6200  
Website: [www.tpl.org](http://www.tpl.org)

**Community Preservation Coalition**

10 Milk Street, Suite 810  
Boston, MA 02108  
Phone: 617-367-8998  
Fax: 617-367-9885  
Website: [www.communitypreservation.org](http://www.communitypreservation.org)

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