

# The Commonwealth of Massachusetts

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**In the Year Two Thousand and Eleven**  
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## AN ACT TO SUSTAIN COMMUNITY PRESERVATION

*Whereas*, the deferred operation for this act would tend to defeat its purpose, which is forthwith 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:*

1       SECTION 1. Section 2 of chapter 44B, as appearing in the 2008 Official Edition, is hereby  
2 amended by removing the definition of "Rehabilitation" and "Preservation" and "Historic  
3 Resources" and inserting the following paragraphs:

4       "Rehabilitation," capital improvements or the making of extraordinary repairs to historic  
5 resources, open spaces, lands for recreational use and community housing, for the purpose of  
6 making such historic resources, open spaces, lands for recreational use and community housing  
7 functional for their intended use, including but not limited to improvements to comply with the  
8 Americans with Disabilities Act and other federal, state or local building or access codes. With  
9 respect to historic resources, rehabilitation shall comply with the Standards for Rehabilitation  
10 stated in the United States Secretary of the Interior's Standards for the Treatment of Historic  
11 Properties codified in 36 C.F.R. Part 68. With respect to land for recreational use, rehabilitation

12 shall include the replacement of playground equipment and other capital improvements to the  
13 land or the facilities thereon which make the land or the related facilities more functional for the  
14 related recreational use.

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

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

20 "Support of Community housing", shall include, but not be limited to, programs that provide  
21 grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of  
22 assistance directly to individuals and families who are eligible for community housing, or to  
23 housing, for the purpose of making housing affordable.

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

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

32 SECTION 2. Section 3 of chapter 44B is hereby amended by adding after paragraph (b) the  
33 following new paragraph:-

34 (b 1/2) As an alternative to subsection (b) of section 3, the legislative body may vote to  
35 accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per  
36 cent of the real estate tax levy against real property, and making an additional commitment of  
37 funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real  
38 property, provided that additional funds so committed shall come from another source or sources  
39 of municipal revenue, including but not limited to hotel/motel excise taxes pursuant to chapter  
40 64G of the general laws, linkage fee and inclusionary zoning payments, however authorized, the  
41 sale of municipal property pursuant to section 3 of chapter 40 of the general laws, parking fines  
42 and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90 of the general laws,  
43 existing dedicated housing, open space and historic preservation funds, however authorized, and  
44 provided further that additional funds so committed shall not include any federal funds or funds  
45 from private sources, provided that inclusionary zoning payments and linkage fees shall be  
46 considered public funds for the purposes of this chapter. The total funds committed to the  
47 Community Preservation Act under this subsection shall not exceed 3 per cent of the real estate  
48 tax levy against real property, less exemptions adopted.

49 In the event that the municipality shall no longer dedicate all or part of the additional funds  
50 to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but  
51 may be reduced pursuant to section 16.

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

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

56 SECTION 4. Section 5 of chapter 44B is hereby amended by adding to the following phrase  
57 at the end of the first sentence of paragraph (b)(1):-

58 “,including the consideration of regional projects for community preservation.”

59 SECTION 5. Section 5 of chapter 44B is further amended by striking paragraph (b)(2) in its  
60 entirety and inserting in place thereof the following:-

61 (2) The community preservation committee shall make recommendations periodically  
62 throughout the year, or as a single yearly recommendation to the legislative body for the  
63 acquisition, creation and preservation of open space; for the acquisition, preservation,  
64 rehabilitation and restoration of historic resources; for the acquisition, creation, preservation,  
65 rehabilitation and restoration of land for recreational use; for the acquisition, creation,  
66 preservation and support of community housing; and for the rehabilitation or restoration of open  
67 space and community housing that is acquired or created as provided in this section. With respect  
68 to community housing, the community preservation committee shall recommend, wherever  
69 possible, the reuse of existing buildings or construction of new buildings on previously  
70 developed sites. With respect to recreational use, the acquisition of artificial turf for athletic  
71 fields shall be prohibited.

72 SECTION 6. Section 5 of chapter 44B is further amended by striking paragraph (d) and  
73 inserting in place thereof the following:-

74 (d) After receiving such recommendations from the community preservation committee, the  
75 legislative body shall then take such action and approve such appropriations from the  
76 Community Preservation Fund as set forth in section 7, and such additional non-Community  
77 Preservation Fund appropriations as it deems appropriate to carry out the recommendations of

78 the community preservation committee. In the case of a city, the ordinance shall provide for the  
79 mechanisms under which the legislative body may approve and veto appropriations made  
80 pursuant to this chapter, in accordance with the city charter.

81 SECTION 7. Section 6 of chapter 44B is hereby amended by striking it in its entirety and  
82 inserting in place thereof the following:-

83 Section 6. In every fiscal year and upon the recommendation of the community preservation  
84 committee, the legislative body shall spend, or set aside for later spending, not less than 10 per  
85 cent of the annual revenues in the Community Preservation Fund for open space, not less than 10  
86 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual  
87 revenues for community housing. In each fiscal year, the legislative body shall make such  
88 appropriations from the Community Preservation Fund as it deems necessary for the  
89 administrative and operating expenses of the community preservation committee, but the  
90 appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation  
91 Fund. The legislative body may also make such appropriations from the Community  
92 Preservation Fund as it deems necessary for costs associated with tax billing software and  
93 outside vendors necessary to integrate said software during a municipality's first year  
94 implementation of the Act, provided that the total of any administrative and operating expense of  
95 the Community Preservation Committee and the first year implementation expenses do not  
96 exceed five per cent of the annual revenues in the Community Preservation Fund.

97 Funds that are set aside shall be held in the Community Preservation Fund and spent in that  
98 year or later years, but funds set aside for a specific purpose shall be spent only for the specific

99 purpose. Any funds set aside may be expended in any city or town in the commonwealth. The  
100 community preservation funds shall not replace existing operating funds, only augment them.

101 SECTION 8. The second paragraph of section 7 of chapter 44B is amended by striking the  
102 first sentence and inserting in place thereof the following:-

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

109 SECTION 9. Section 8 of chapter 44B is hereby amended by striking it in its entirety and  
110 inserting in place thereof the following:-

111 Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when  
112 the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The  
113 fees for so recording, filing or depositing a municipal lien certificate shall be subject to a  
114 surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation.  
115 No surcharge shall apply to a declaration of homestead under chapter 188 or to the filing of a  
116 third mortgage or fourth mortgage extended by any public agency or quasi public agency,  
117 including but not limited to a Commonwealth municipality or the Massachusetts Housing  
118 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,  
119 abstract cards, additional square feet for the filing and recording of plans or for additional or  
120 required marginal references.

121 (b) The fees of the assistant recorder, except as otherwise provided, to be paid when the  
122 instrument is left for registering, filing or entering with respect to registered land shall be subject  
123 to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate  
124 shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of  
125 community preservation. No surcharge shall apply to a declaration of homestead of chapter 188  
126 or to the filing of a third mortgage or fourth mortgage extended by any public agency, including  
127 but not limited to a Commonwealth municipality or the Massachusetts Housing Partnership. No  
128 surcharge shall apply to the fees charged for additional lots shown on plans, for indexing  
129 instruments recorded while a petition for registering is pending, for additional certificates of  
130 sewer assessments, for old age assistance liens, for duplicates and for photocopies.

131 (c) On October 1<sup>st</sup> of 2011 and every two years thereafter, the commissioner of revenue shall  
132 determine if the Massachusetts Community Preservation Trust Fund balance is sufficient to  
133 support a 75 per cent first round match distribution pursuant to section 10 for all cities and towns  
134 that have accepted sections 3 to 7 inclusive. In the event that the Community Preservation Trust  
135 Fund balance is insufficient to support a 75 per cent first round match distribution, the fees of the  
136 registers of deeds and fees of the assistant recorder to be paid when the instrument is left for  
137 recording, filing or deposit and the fee for so recording, filing or depositing a municipal lien  
138 certificate shall be subject to a surcharge to be determined by the commissioner of the  
139 department of revenue necessary to support, by the commissioner's best reasonable estimate, a  
140 75 per cent first round match, with each fee rounded to the nearest dollar. Under no  
141 circumstances shall each fee surcharge for the purposes of community preservation, paid to the  
142 register of deeds or assistant recorder when the instrument is left for recording, filing or deposit,  
143 be greater than \$50. Under no circumstances shall each fee surcharge for the purposes of

144 community preservation, paid to the register of deeds or assistant recorder for so recording, filing  
145 or depositing a municipal lien certificate, be greater than \$25. In the event that these maximum  
146 fees are reached and they are insufficient to support a 75 per cent first round match distribution  
147 pursuant to section 10, the Community Preservation Trust Fund match distribution shall be less  
148 than 75 per cent. The surcharges shall be imposed for the purposes of community preservation.  
149 No community preservation surcharges shall apply to a declaration of homestead under chapter  
150 188 to the filing of a third mortgage or fourth mortgage extended by any public agency,  
151 including but not limited to a Commonwealth municipality or the Massachusetts Housing  
152 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,  
153 abstract cards, additional square feet for the filing and recording of plans or for additional or  
154 required marginal references.

155 (d) The commissioner of revenue shall certify the fees pursuant to this section on a biannual  
156 basis. Any fee adjustment determined by the commissioner shall take place on the first day of  
157 the fiscal year following the biannual certification. The commissioner of revenue shall notify the  
158 registers of deeds, the assistant recorders, and the joint committee on revenue of the change at  
159 least one-hundred and twenty days prior to any fee adjustment.

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

162 SECTION 10. Paragraph (c) of section 9 of chapter 44B is hereby amended by striking said  
163 paragraph and inserting in place therefore the following:-

164 (c) The state treasurer shall make all disbursements and expenditures from the fund without  
165 further appropriation, as directed by the commissioner of revenue in accordance with said section

166 10. The department of revenue shall report by source all amounts credited to said fund and all  
167 expenditures from said fund. The commissioner of revenue shall assign personnel of the  
168 department as it may need to administer and manage the fund disbursements and any expense  
169 incurred by the department for such purposes and any expense incurred by the registers of deeds  
170 and the assistant recorder to administer and collect the surcharges pursuant to section 8 shall be  
171 deemed an operating and administrative expense of the program. The commissioner of revenue  
172 shall annually on October 15th direct the state treasurer to disburse an amount not to exceed one-  
173 half of one per cent of the annual total revenue received in the preceding fiscal year from a  
174 register of deeds or an assistant recorder pursuant to the provisions of section 8 to such register  
175 of deeds or assistant recorder to pay operating and administrative expenses of the program  
176 certified to the commissioner by the register of deeds or assistant recorder, and to disburse an  
177 amount not to exceed 5 per cent of the annual total revenue received by the state treasurer in the  
178 preceding fiscal year under the provisions of said section 8 to the department of revenue to pay  
179 total operating and administrative expenses of the program.

180 SECTION 11. Section 10 of chapter 44B is amended by striking it in its entirety and  
181 inserting in place thereof the following:-

182 Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies  
183 from the fund established in section 9 to cities and towns that have accepted sections 3 to 7,  
184 inclusive, and notified the commissioner of their acceptance. The community shall notify the  
185 commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive.  
186 The municipal tax collecting authority shall certify to the commissioner the amount the  
187 municipality has raised through June 30 by imposing a surcharge on its real property levy and  
188 shall certify the percentage of the surcharge applied. In the event a municipality accepts this act

189 pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to  
190 the commissioner by October 30th, the maximum additional funds the municipality intends to  
191 transfer to the Community Preservation Fund from allowable municipal sources for the following  
192 fiscal year. Once certified, the municipality may choose to transfer less than the certified amount  
193 during the following fiscal year.

194 (b) The commissioner shall multiply the amount remaining in the fund after any  
195 disbursements for operating and administrative expenses pursuant to section 9(c) by 80 per cent.  
196 This amount distributed in the first round distribution shall be known as the match distribution.  
197 The first round total shall be distributed to each city or town accepting said sections 3 to 7,  
198 inclusive, in an amount not less than 75 per cent but not greater than 100 per cent of the total  
199 amount raised by the additional surcharge on real property by each city or town and if applicable  
200 the additional funds committed from allowable municipal sources pursuant to subsection (b 1/2) of  
201 section 3. The percentage shall be the same for each city and town and shall be determined by  
202 the commissioner annually in a manner that distributes the maximum amount available to each  
203 participating city or town.

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

211 (d) Each city and town in the commonwealth shall be assigned a community preservation  
212 rank for purposes of the equity distribution. The commissioner shall determine each community's  
213 rank by first determining the municipality's equalized property valuation per capita ranking,  
214 ranking municipalities from highest to lowest valuation. The commissioner shall also determine  
215 the population of each municipality and rank each from largest to smallest in population. The  
216 commissioner shall add each equalized property valuation rank and population rank, and divide  
217 the sum by two. The dividend is the community preservation raw score for that municipality.

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

222 (f) After determining the CP rank for each municipality in the commonwealth, the  
223 commissioner shall divide all municipalities into deciles according to their CP ranking, with  
224 approximately the same number of municipalities in each decile, and with the municipalities with  
225 the highest CP rank shall be placed in the lowest decile category, starting with decile 10.  
226 Percentages shall be assigned to each decile as follows:

227 decile 1 140 per cent of the base figure

228 decile 2 130 per cent of the base figure

229 decile 3 120 per cent of the base figure

230 decile 4 110 per cent of the base figure

231 decile 5 100 per cent of the base figure

232 decile 6 90 per cent of the base figure

233 decile 7 80 per cent of the base figure

234 decile 8 70 per cent of the base figure

235 decile 9 60 per cent of the base figure

236 decile 10 50 per cent of the base figure

237 After assigning each municipality to a decile according to their CP rank, the commissioner  
238 shall multiply the percentage assigned to that decile by the base figure to determine the second  
239 round equity distribution for each participant.

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

244 (g) When there are monies remaining in the trust fund after the first and second round  
245 distributions, and any necessary administrative expenses have been paid in accordance with  
246 section 9, the commissioner may conduct a third round surplus distribution. Any remaining  
247 surplus in the fund may be distributed by dividing the amount of the surplus by the number of  
248 cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base  
249 figure. The commissioner shall then use the decile categories and percentages as defined in this  
250 section to determine a surplus equity distribution for each participant.

251 (h) The commissioner shall determine each participant's total state grant by adding the  
252 amount received in the first round distribution with the amounts received in any later round or

253 rounds of distributions, with the exception of a city or town that has already received a grant  
254 equal to 100 per cent of the amount the community raised by its surcharge on its real property  
255 levy.

256 (1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection  
257 (b) of section (3) and those cities and towns that adopt the maximum surcharge and additional  
258 funds committed from allowable municipal sources such that the total funds are the equivalent of  
259 3 per cent of the real estate tax levy against real property pursuant to subsection (b 1/2) of section  
260 3 of this chapter shall be eligible to receive additional state monies through the equity and  
261 surplus distributions.

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

266 (j) After distributing the trust fund in accordance with this section, the commissioner shall  
267 keep any remaining funds in the trust for distribution in the following year.

268 SECTION 12. Section 12 of chapter 44B is amended by striking paragraph (a) and inserting  
269 in place thereof the following:-

270 (a) A real property interest that is acquired with monies from the Community Preservation  
271 Fund shall be bound by a permanent deed restriction, recorded as a separate instrument, that meets  
272 the requirements of chapter 184, limiting the use of the interest to the purpose for which it was  
273 acquired. The deed restriction shall run with the land and shall be enforceable by the city or town  
274 or the commonwealth. The deed restriction may also run to the benefit of a nonprofit, charitable

275 corporation or foundation selected by the city or town with the right to enforce the restriction. The  
276 legislative body may appropriate monies from the Community Preservation Fund to pay a non-  
277 profit organization created pursuant to Chapter 180 to hold, monitor and enforce the deed  
278 restriction on said property.

279 SECTION 13. Section 16 of chapter 44B is hereby amended by striking paragraph (a) and  
280 inserting in place thereof the following:-

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

286 SECTION 14. Notwithstanding any general or special law to the contrary, this Act shall  
287 apply to all Community Preservation Fund appropriations approved by a city or town's  
288 legislative body on or after the effective date of acceptance of the Community Preservation Act  
289 in such city or town.