

GUIDE FOR THE TRURO HOUSING AUTHORITY DISCUSSION OF RECOMMENDATIONS FOR MAHT (March 20, 2025 DRAFT)

ESTABLISHMENT:

At the 2022 TM, An Article Passed Adopting MGL c.44 Sec.55C, Establishment of a Municipal Affordable Housing Trust Fund (MAHT). The Select Board in 2024 authorized the Housing Authority to do a study of MAHTs and make recommendations for establishment of a Truro MAHT.

MEMBERSHIP: (Bold Items have received tentative approval but have not been adopted.)

Number of Members: 5 members, 2 alternates.

Alternative Members: May participate in debate, they may vote when a member is absent, and they will not be automatically become a member when there is an opening?

Members' Terms: MGL c.44 Sec.55 C states that terms shall be 2 years. It would take a Home Rule Act to Change the Terms

Select Board Member (Mandated by The Statute)

Town Manager, Non-voting member, may appoint a designee

Representation from other Town Boards: Housing Authority shall appoint one member to serve on the Board.

All the Appointees (Except for the Town Manager or his designee) must be Full Time Residents except the Select Board may appoint a Part Time Resident to one seat on the Board.

Select Board should consider the appointment of people with certain skills, education and employment such a developer (people who develop affordable housing, in particular), someone with a financial services background, a realtor or an attorney with expertise with land use or real estate law, etc.

Strongly recommend there be a preference for members at large who either rent or own affordable housing in Truro or have experienced housing insecurity.

Education and training opportunities shall be available to MAHT members?

POWERS

Discussion On Powers of Truro MAHT: (Full list of the powers of MAHTs are outlined in the statute (M.G.L. .c 44, 55C). The powers listed here are from Mass. Housing Partnership's Publication Municipal Affordable Housing Trust which describes this list as the primary powers a municipality can give to their MAHT):

Accept and receive property or money by gift, grant, etc.- Select Board agreement needed if the gift or grant would significantly impact the Town's budget or town employees' workload?

Purchase and retain property • Sell and lease property : TM permission needed under the same circumstances as for any other Town purchase, sale or lease of property?

Employ and pay advisors?

Borrow money and mortgage or pledge trust assets as collateral: TM permission needed under the same circumstances as for any other Town borrowing, mortgage or pledge of assets?

Manage or improve property?

Various accounting and fund administration capabilities?

ESTABLISHMENT OF THE TRUST

Complete a Declaration of Trust?

Transfer all AMI Restricted Funds in the existing Affordable Housing Account into the MAHT and all new AMI Restricted Funds related to housing should go to MAHT including the funding for programs such as rental assistance, down payment assistance, maintenance and monitoring of affordable housing, preservation of deed-restricted housing, etc. ?

All future funds designated for AMI Restricted Housing and other projects or programs related to affordable housing should be directed into the MAHT?

The existing Affordable Housing Account should continue to function and to receive and distribute funding for non-AMI restricted projects, until the establishment of a Truro Seasonal Communities Trust Fund or another Trust Fund is established to fund non-AMI Projects?

There should be staff designated to assist with the work of the MAHT? Funding shall be provided to assist the MAHT with its work?

The MAHT shall create a complete accounting of the use of CPC funds and to assure that CPC has the information they need to complete on a timely basis the mandated reporting to the State of Massachusetts?

All policies related to the operation of the MAHT shall be public and be available on the MAHT's Truro website?

TRANSPARENCY: (Bold Items have received tentative approval but have not been adopted.)

Transparency: All discussions, documents, etc. shall be public except those that related to the negotiations around acquisition of property, etc. The on-going accounting of funds received and expended by the Trust shall be open to the public.

There should be monthly reports of all activities of the MAHT which shall be presented to the Select Board and available to the public on the Town website and at Town Hall? **An annual report shall be published and include all receipts and expenditures of the Trust and the source of the funds, including the dates they were received and dates of expenditures and the purpose of the transaction.** The report shall be included in the Town Meeting Warrant?

MUNICIPAL TRUSTS IN TOWNS ON THE OUTER AND LOWER CAPE

Every Town, except Truro and Provincetown, on the Outer and Lower Cape, have a Housing Trust most have been created to implement the State Municipal Housing Trust Statute (Part 1, Article 44, section 55C). Provincetown has a Community Housing Council which oversee their Trust Fund. The MGL Municipal Housing Trust statute is pasted at the end of this document.

All of the Trusts and the Council are appointed by their Select Board.

All the Trusts have one Select Board Member that serves on the Board of the Trust or Board of their Housing Council. (Required by the MA. Law)

Trusts' powers are spelled out in their by-laws or creation documents. The MA law includes a list of possible powers a town can grant to Trust Boards. Some but not all include all the powers listed in the Municipal statute. **(See: Section on the Powers of the Lower and Outer Cape Towns' Municipal Trust Funds)**

Two Trusts have the Town Managers serving on their Trust Boards, of one of which serves in an ex-officio capacity. (There has been some confusion around the requirement that Town Managers must serve on Trust Boards. There is a requirement for Trust Boards of certain Cities and Towns to appoint Town Managers as Chair of the Trust Board. But the statute also states. **“Nothing in this subsection shall prevent a board of selectmen from appointing a town manager or town administrator as a member or chair of the board with or without the power to vote”**. The other Cape towns have interpreted that to mean their Select Board does not have to appoint the Town Manager to the Trust Board but may appoint the Town Manager as a member or Chair of the Trust Board with or without the power to vote.

All Board Members can serve no more than 2 years. (Included in the MA Law)

Membership of Lower and Outer Cape Towns' Municipal Trusts

PROVINCETOWN

Provincetown has a Community Housing Council. It oversees the Provincetown Housing office, performs all the tasks of the Provincetown Local Housing Partnership and administers the Affordable Housing Trust Fund. Their Trust is governed by Chapter 2 of the Acts of 2020 instead of the Municipal Trust Statute.

Their membership includes 7 members, one is a member of the Select Board. One is a representative of the Housing Authority, and the rest are appointed by the Select Board.

WELLFLEET

Wellfleet's Municipal Housing Trust Fund has 5-7 members including one Select Board member. They have comprehensive operating procedures that they hired a consultant to help them draft. The Select Board appoints the Trust Board and their article states "To the extent possible, the Select Board shall appoint as Trustees individuals with a background or interest in affordable housing and specifically those with financial, legal or development expertise or expertise on housing preservation."

EASTHAM

Eastham Municipal Housing Trust Board has 5 members, one who is a member of their Select Board. They have by-laws that include a detailed list of principles. They also have a list of eligible activities and under each activity is the note "CPA funds must be used only for those purposes specified in CPA allowable activities."

ORLEAN

Orleans allows for a Municipal Housing Trust Board of 5-9 members with one of the members is a member of the Select Board. They presently have a 9-member Board. They have a comprehensive charge which includes Their Purpose, Board of Trustees, Powers of the Board of Trustees.

BREWSTER

Brewster has a 7 member Board of Trustees appointed by the Select Board. One member is a member of the Select Board, one is a member of the Brewster Housing Partnership, one member of the Community Presentation Committee, one is a member of the Planning Board, two residents at-large and the Town Administrator, or a staff member or resident selected by the Town Administrator as the Administrator's designee. They have an extensive by-law that includes Purpose, Board of Trustees, Meeting of the Trustees, Powers of the Board, Acts of the Trustees, Status of the Trustees, Custodian of the Funds, Funds Paid to the Trustees, Taxes, etc.

HARWICH

Harwich has a five-member Board, one member is the Town Administrator who is serving in an ex-officio capacity (The by-law says the Town Administrator or his designee shall serve as a Trustee without the ex-officio designation yet the list of the members indicates he is serving in an ex-officio capacity), one member of the Select Board and three Trustees appointed by the Select Board. They have a by-law detailing the Appointments, Purpose, Duty and Responsibilities

POWERS OF LOWER AND OUTER CAPE TRUST FUNDS

The state statute which establishes the rules for the Municipal Housing Trusts (MGL Part 1, Title VII, Chapter 44, Section 55C) lays out a lists of powers that can be provided to the Trusts. The Statute lays out 16 such powers. The first power listed in the statute is: The power to accept and receive real property, personal property or money by gift, grant, contribution , devise or transfer from any person, firm, corporation or other property tendered to the trust in connection with any ordinance or by-law or any general law or any other source including moneys from Chapter 44B (Community Preservation Funds-the statute notes that funds from CPC shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter.) The some of the other powers include (2) the ability to purchase and retain real or personal property including investments that yield a high rate of income or no income; (3)to sell, lease, exchange transfer or convey any personal, mixed or real property at public auction..... The whole statute related to Municipal Housing Trusts is attached.

Some Lower and Outer Cape Towns lists all the powers provided by Section 55C and assign them to their Community Housing Trusts including Wellfleet, Eastham and Brewster. Orleans lists all the powers outlined in the statute but some of those powers require the approval of the Select Board.

Harwich appears to restrict the purpose of their Trust to the preservation and creation of affordable housing in the Town of Harwich for the benefit of low and moderate income households as defined by DHCD and to acquire by gift, purchase or other, real estate and personal property, both tangible and intangible, of every sort and description and to use and/or dispose of such property both real and personal, in such matter as the Trustees deems appropriate.

Provincetown Community Housing Council oversees their Housing Trust. Their website says the Affordable Housing Trust Fund (AHTF) can be used to support and create year-round, affordable housing and programs (rental and ownership) up to 80% AMI. Revenue into this fund is supported by Inclusionary Zoning In-Leiu Fees, community donations, and local tax box options. The AHTF is also eligible recipient of the Housing Fund, supported by Room Occupancy Tax, distributed at the discretion of the Select Board. CPA funds have been transferred in to AHTF in previous years.

Section 55C: Municipal Affordable Housing Trust Fund

[Subsection (a) effective for all funds held in trust under Chapter 44B on or after November 7, 2016. See 2016, 218, Sec. 246.]

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households and for the funding of community housing, as defined in and in accordance with the provisions of chapter 44B. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the board additional powers consistent with this section:—

[Clause (1) of subsection (c) effective for all funds held in trust under Chapter 44B on or after November 7, 2016. See 2016, 218, Sec. 246.]

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B; provided, however, that any such money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the trust, and such funds shall be accounted for separately by the trust; and provided further, that at the end of each fiscal year, the trust shall ensure that all expenditures of funds received from said chapter 44B are reported to the

community preservation committee of the city or town for inclusion in the community preservation initiatives report, form CP-3, to the department of revenue;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

[Clause (4) of subsection (c) effective for all funds held in trust under Chapter 44B on or after November 7, 2016. See 2016, 218, Sec. 246.]

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and

(16) to extend the time for payment of any obligation to the trust.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.

(g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.

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betty@bettygallo.com