

**HOUSING AND SHELTERING COMMITTEE (HSC)
2014 ANNUAL SPRING TOWN MEETING
ARTICLE 34.GENERAL BYLAWS—ESTABLISHMENT OF
MUNICIPAL AFFORDABLE HOUSING TRUST (MAHT)
Amherst Affordable Housing Trust Fund**

BACKGROUND INFORMATION

State Enabling Legislation

The Municipal Affordable Housing Trust (MAHT) Fund law (MGL c.44, s. 55C) was passed by the State legislature in 2005. The purpose of creating a MAHT is to support the creation and preservation of affordable housing in municipalities for the benefit of low-and moderate-income households. *Since the passage of the law over 70 municipalities have established MAHTs.*

A MAHT is a municipal body and its meetings must comply with all provisions of the Open Meeting Law. It must follow public procurement and public construction laws and its finances must undergo an annual audit. Under MGL, MAHT trustees in towns are appointed by the Select Board (e.g. Community Preservation Act Committee), not by town wide election (e.g., Amherst Housing Authority, Amherst Redevelopment Authority).

Our MAHT will be known as the Amherst Affordable Housing Trust Fund

Mission Statement of the Amherst Affordable Housing Trust Fund

To create and preserve housing in Amherst that is affordable to individuals and families with low and moderate income.

Need for a MAHT

The Amherst Housing Production Plan (HPP) accepted by the Town and approved by the Commonwealth in 2013 identifies establishing an MAHT as a priority to help increase affordable housing in our community. As the HPP indicates, many of the families and residents in our community cannot afford to purchase a home in Amherst because of the high cost of housing; the MAHT would help Amherst establish a locally-directed process to help meet this need. Identified needs include:

- Rental housing for families
- Rental housing for individuals
- Preservation and improvement of existing affordable housing
- Affordable homeownership for families
- Housing for at risk and special needs populations

Benefits of an a MAHT

- Streamline the public funding process: this is essential to smaller developments, which are the ones that typically access municipal funds and are the least able to absorb the costs of a lengthy development process and more complex programs .
- Provide support for construction of affordable housing (both non-profit and for profit).
- Purchase property on the market that could be used for affordable housing.

- Preserve properties with expiring affordable housing restriction such as Rolling Green.
- Provide funds for housing rehabilitation for low to moderate-income households.
- Increase community awareness by advocating for and facilitating the creation of more affordable housing.
- Organize annual conference on affordable housing and support additional task forces.

Funding a MAHT

MAHTs are typically funded by dedicated revenue sources, both recurring and non-recurring. Possible sources of funding for a MAHT can include:

- Community Preservation Funds (CPA)
 - Funds derived from inclusionary zoning requirements
 - Private fund raising/donations/bequests
 - Loan repayments
- Two of the most common sources

Powers of the Board of MAHTees

Under MGL, a MAHT has broad powers characterized as “...the creation and preservation of affordable housing”. Therefore, MAHT eligible uses can include acquisition, rehabilitation, new construction, preservation, pre-development costs, and lease and exchange property. There are seventeen powers that are included in MGL and this Town Meeting Article 34 includes all seventeen.

Role of the MAHT

- Fund and support pre-development and design costs, including feasibility and engineering studies.
- Apply for grants and pursue other fund raising ideas
- Monitor the Town’s Subsidized Housing Inventory (SHI)
- Provide funds to housing authority
- Buy and hold property for affordable housing until someone buys it

Working with Other Local Boards and Organizations

As it carries out its mission, the Amherst Affordable Housing Trust Fund would collaborate with and support other bodies such as the Amherst Housing Authority (AHA) and the Housing and Sheltering Committee (HSC), as well as organizations including Valley CDC and Craig's Doors. The Amherst Affordable Housing Trust Fund could work cooperatively with these organizations on a range of projects such as rental rehabilitation, tenant selection, marketing, pre-development steps, and the Amherst Affordable Housing Trust Fund could seek funding options with other agencies.

The Advantage of an MAHT compared to the Amherst Housing Authority (AHA)

Housing Authorities operate under a different part of MGL and are regulated through the Department of Housing and Community Development (DHCD). Housing Authorities can purchase real property but cannot sell property unless its approved by DHCD and through a special state-level legislative act. The primary function of the housing authority is to provide rental housing to low income persons, and most, if not all, of the funds it receives from the state and federal governments is to provide low rent housing. A MAHT can undertake a number of programs and strategies to increase and preserve affordable housing that the housing authority cannot.

A MAHT Has Powers the Amherst Housing and Sheltering Committee (HSC) Does Not

The HSC reviews and helps implement policy and regulations, and gathers community input and ideas to make recommendations on projects and proposals related to housing. A MAHT can accomplish tasks that are outside the scope of the HSC, such as working directly with developers and landowners, raising money, constructing affordable housing and acquiring property.

Establishing a MAHT

Establishing a MAHT in Amherst requires a majority vote of Town Meeting to accept the provisions of MGL as represented in Article 34, including the specification of number of members, initial length of terms, composition of the board, and powers of the board. Following an affirmative majority vote of Town Meeting, the Amherst Affordable Housing Trust Fund Board of Trustees is appointed by the Select Board.

MAHT Trustees

The Amherst Affordable Housing Trust Fund Board of Trustees would consist of seven members appointed by the Select Board. The Town Manager may be appointed as an eighth member but would be ex officio with no voting power. Per MGL, after the initial composition of one and two year terms, MAHT Trustees serve for a term not to exceed two years, but there is no limit on the number of terms served.

Note: The Housing and Sheltering Committee is seeking to amend the article to revise composition to reflect more at-large community representation. This will include removal of the requirement to have a board of commissioner from the Amherst Housing Authority serve on the trust and increase at-large membership from 4 to 5 members.

FREQUENTLY ASKED QUESTIONS

How is the Town of Amherst protected financially if the Amherst Affordable Housing Trust Fund Board of Trustees makes a bad decision?

The Town’s finances are completely separate from the MAHT’s according to Massachusetts General Law such that the Town is solidly protected. Any debt incurred by the Amherst Affordable Housing Trust Fund Board of Trustees shall not constitute a pledge of the full faith and credit of the Town of Amherst and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Amherst.

Can the Amherst Affordable Housing Trust Fund Board of Trustees make decisions regarding housing development that are not subject to our Town zoning bylaws and regulations?

No, the Amherst Affordable Housing Trust Fund Board of Trustees’ actions would be subject to Amherst zoning and all other applicable rules and regulations.

Would the Amherst Affordable Housing Trust Fund Board of Trustees be able to sell existing property owned by the Town without Town Meeting Action?

No. Transference of Town property to the Amherst Affordable Housing Trust Fund *requires a 2/3 vote of Town Meeting.*

Can the *Amherst Affordable Housing Trust Fund Board of Trustees* act to spend funds with just a majority vote?

Yes, although it takes at least five of the seven voting members to approve any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property. Four of seven voting members of the Amherst Affordable Housing Trust Fund Board of Trustees may incur debt, borrow money, grant mortgages and pledge MAHT assets, but only in an amount not to exceed 80% of the Amherst Affordable Housing Trust's total assets.

Can members of the *Amherst Affordable Housing Trust Fund Board of Trustees* be removed? How?

Yes, any member of the Amherst Affordable Housing Trust Fund Board of Trustees may be removed by their appointing authority, the Select Board, for cause after the opportunity of a hearing.

Is the *Amherst Affordable Housing Trust Fund Board of Trustees* required to report to the Select Board and Town Meeting on its actions?

While there is no required report to Town Meeting, the Amherst Affordable Housing Trust Fund Board of Trustees is required by Article 34 to provide a copy of the annual independent audit report to the Select Board. We would expect the Amherst Affordable Housing Trust Fund Board of Trustees to report periodically to the Select Board as needed.

Should there be additional oversight of the *Amherst Affordable Housing Trust Fund*?

The Massachusetts Housing Partnership (MHP) has indicated that communities that require a second approval (i.e. Town Meeting vote or approval by the Select Board) for the MAHT to take actions—spend money, buy property—severely limits the flexibility of the MAHT to respond to market conditions and act quickly enough to take advantage of potential savings or opportunities.

How does a community dissolve a MAHT?

Once established and operating, the MAHT will file a declaration of trust at the Registry of Deeds and may incur debt or financing. To dissolve, a MAHT would need to 1) resolve all financing so there are no outstanding balances, 2) vote to dissolve itself, 3) record action at the Registry, 4) have a Select Board vote to dissolve trust, 5) have a Town Meeting vote to dissolve trust.

How do funds move into and out of the MAHT?

Funds for a MAHT are deposited into general 'trust' funds that follow state law and requirements and are typically managed by the community's Treasurer. Funds from zoning, gifts, donations or CPA—first approved by their respective process—would go directly into the fund without a vote to approve this allocation. To disperse monies from the 'trust' fund, the MAHT would need to have an affirmative vote (4 or 5 members depending on purpose of spending) and then request funds from the Treasurer.

Will the *Amherst Affordable Housing Trust Fund* pay property taxes on land they own?

No, the Amherst Affordable Housing Trust Fund is exempt from property taxes per MGL.

Would Town staff provide support for the *Amherst Affordable Housing Trust Fund* and help manage assets or pay bills?

Town staff could manage the finances of the Amherst Affordable Housing Trust Fund, which would involve the Treasurer and Comptroller and others in the Finance and Accounting Department. Staff from Planning and Conservation could also help assist the Amherst Affordable Housing Trust Fund. However, the MAHT would have the ability to hire an accountant and consultants as needed. MAHT do not generally hire permanent staff (unlike the Amherst Housing Authority).

How many communities with a MAHT have also adopted the Community Preservation Act (CPA)?

Approximately 75% of the communities that have created a MAHT also have adopted the Community Preservation Act (CPA).

How would the *Amherst Affordable Housing Trust Fund* receive Community Preservation Act (CPA) funds?

The Amherst Affordable Housing Trust Fund would have to go through the annual CPA application process already defined by the Community Preservation Act Committee (CPAC). While MGL requires 10% of annual CPA funds to be dedicated to affordable housing, the existence of the Amherst Affordable Housing Trust Fund does not create any CPAC obligation to recommend use of any portion of CPA funds, including this 10% minimum, by the Amherst Affordable Housing Trust Fund. Like all CPAC recommendations, Town Meeting needs to approve CPAC's recommendation of any allocation of CPA funds to the Amherst Affordable Housing Trust Fund. Once those CPAC funds are under the control of the Amherst Affordable Housing Trust Fund, it can spend those funds without additional Town Meeting votes (similar to CPA funds approved by Town Meeting for the Kestrel Trust).

Would the *Amherst Affordable Housing Trust Fund* compete with smaller developers, such as Habitat for Humanity, for local funds and resources?

No, the Amherst Affordable Housing Trust Fund would be another resource that could be used by small developers, helping expand the amount of funds and expertise available for such projects. For instance, the Amherst Affordable Housing Trust Fund could fund a development off-cycle from other grant rounds if there was an immediate need for financing.

Will the *Amherst Affordable Housing Trust Fund* manage affordable housing, i.e., be a landlord?

There are many models of how MAHT operates. MGL gives a MAHT the ability to buy, sell, lease and improve property, and it can award grants and loans, or establish a local voucher program. A MAHT can also construct housing, receive gifts and grants, and borrow funds. MGL includes a broad range of powers so a MAHT can respond to the market and needs of the community, and to allow flexibility when trying to capitalize its investments. A MAHT can act as a landlord or solely as a funder. Some MAHTs have chosen not to hold title to property but instead operate only as a funding entity, providing grants to developers, loans to residents, and helping with soft costs (architectural and engineering) on affordable housing projects. The Amherst Affordable Housing Trust Fund would be allowed to exercise all seventeen powers outlined in MGL.

Does the Amherst Affordable Housing Trust Fund sell housing to eligible buyers?

A MAHT can establish policies to help guide its actions and it can sell or lease property for a range of affordability levels. Amherst has completed the Housing Production Plan (HPP) and Comprehensive Housing Market Study that clearly detail the needs and market demands of the community, and provides recommendations and strategies to meet these conditions. The Amherst Affordable Housing Trust Fund Board of Trustees would use these documents to help determine the range of affordable housing it would support, and would also need to comply with requirements of funding sources. For instance, CPA funds can be used to support affordable housing up to 100% Area Median Income (AMI), while CDBG defines moderate income as 80% of AMI.

Who can serve on the Amherst Affordable Housing Trust Fund Board of Trustees?

Any individual who lives in Amherst can volunteer to become a member of the MAHT by completing the Town's Citizen Activity Form (available online amherstma.gov). The Select Board appoints the MAHTees, and as the article states, encourages citizens with "experience in the fields of real estate, housing, banking, architecture, social services, or the like." This in no way limits the membership to those with *professional* rather than relevant personal experiences. While MGL only specifies a minimum of five members (and a maximum of nine), we chose seven to maximize diversity in the membership; we did not consider nine better because nine seats seemed harder to fill with a real range of candidates. While some other MAHT are "committees of committees" with no "at-large" representation, we chose to have a majority of at-large representation.

Will there be continuity of the Amherst Affordable Housing Trust Fund Board of Trustees to help ensure the success of long-term projects?

Yes. Although MGL specifies the term *length* – two years – there is no term *limit*.

What is affordable housing?

Affordable housing is not explicitly defined in either MGL c.44, s. 55C or Town Meeting Article 34 because the Commonwealth realizes that a MAHT needs flexibility when defining affordable housing to meet the needs of their individual community. Once established, a MAHT typically develops a policy regarding the definition of affordable housing. However, many funding sources do have their own definitions of affordable housing, so the Amherst Affordable Housing Trust Fund would be bound by these requirements. For example, CDBG regulations define affordable housing as households earning below 80% of Area Median Income (AMI) of the Springfield Metropolitan Statistical Area for Amherst, while CPA regulations defines it as up to 100% of AMI. Our Amherst Housing Production Plan (HPP) defines a need for affordable housing at a range of income levels. The Amherst Affordable Housing Trust Fund is not limited to working with housing that is included on the Subsidized Housing Inventory (SHI).

RESOURCES AND LINKS

MGL Municipal Affordable Housing Trust Fund

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter44/Section55C>

Massachusetts Housing Partnership (MHP) Information about Municipal Affordable Housing Trusts (MAHT)

http://www.mhp.net/community_initiatives/resources.php?page_function=list&resource_category_id=83