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Barney S. Heath
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MEMORANDUM

Date: November 12, 2021
From: Barney Heath, Director, Planning and Development Department
Amanda Berman, Director of Housing and Community Development
Lara Kritzer, Community Preservation Program Manager
Andrew Lee, Assistant City Solicitor
To: Zoning and Planning Committee
RE: Answers to questions raised during Draft Municipal Affordable Housing Trust Ordinance discussion on November 8

The following memorandum is intended to address the questions raised by the Zoning and Planning Committee during their review of the Draft Municipal Affordable Housing Trust (MAHT) Ordinance on November 8, 2021. Also attached is an updated draft of the ordinance with the changes suggested at the November 8 meeting.

1) What is the land disposition process for properties acquired by an MAHT?

Pursuant to the enabling act for Municipal Affordable Housing Trusts, a Housing Trust has the power to obtain and hold real property by purchase, gift or grant. A Housing Trust also has the authority to sell or lease real property. It is important to note that when a Housing Trust acquires real property, they are not holding the property in the name of the city. As such, when selling or leasing real property, a Housing Trust established in Newton would not need to comply with the requirements of City Ordinance 2-7 Disposition of interests in city owned real property. However, a Housing Trust is a public entity and is subject to Massachusetts General Laws Chapter 30B that sets forth required solicitation procedures for the disposition of property.

2) Should there be a cap on administrative costs?

The Community Preservation Act (CPA) limits administrative expenses to no more than 5% of annual funding. No information has been found to date, however, on similar funding caps used for MAHT programs. It is anticipated that there will be very few initial administrative expenses involved in the program, but that a Trust may wish to use funding in the future for staffing or consultant services. Because the Trust will primarily be using CPA community housing funds for this work, it will already need to confirm that those expenses are directly related to the support, creation, acquisition, preservation, restoration, or rehabilitation of Community Housing before the funding can be used. It

is up to the City Council as to whether additional requirements should also be placed on the use of these funds.

3) Staffing

Since all or the majority of the Trust's funding will come from the CPA program, it is anticipated that the Trust and its programs would be staffed by Community Preservation Program Manager Lara Kritzer. The Trust would have the ability to hire affordable housing consultants as needed for specific project reviews or questions.

4) Request for a brief narrative from other MAHT communities on how they operate

Below are brief narratives on five Trust communities which were interviewed as part of the initial information gathering process for this project.

Amherst – Conversation with MAHT Chair John Hornik

Amherst's MAHT was established four years ago and replaced the Town's Housing and Shelter Committee. Amherst's Trust does not develop projects but does supports other developers and dispenses funds. The Trust recently purchased a 2.5-acre site and plans to combine it with an adjacent Town site to create 45 affordable and market units. In this case, the property was offered to the Town and the Trust was brought in to handle the project by Amherst's Assistant Town Manager. The MAHT plans to issue an RFP for a developer to take over the project, which is the process that the Trust had previously used to create a 28-unit SRO development. In 2020, the Trust also created an emergency rental housing program using their banked CPA funds and Amherst's CARES Act funds.

Amherst provides a Planning Dept. staff person to assist the Trust, and the Trust also hires a housing consultant to assist in drafting their RFPs and with other technical assistance. The consultant services are generally \$20,000/annually depending on the year and projects. The Town also provides legal assistance through the Town Attorneys. Nearly 100% of the Trust's funding comes from the CPA. Amherst's Trust applies annually for \$500,000 (Amherst's CPA funding is a little over a million in recent years). Their Trust has also worked with their Community Preservation Committee to bond \$600,000 which they used to purchase the 2.5 acres. With the exception of the Town Manager, all of their Trust members are at-large and because of the difficulty of finding new members, they have not been able to meet their bylaw's membership requirements. Members serve for 2-year terms and most come to the Trust with no housing experience. Mr. Hornik is currently the chair and estimates that he puts 20-25 hours a week into Trust work.

Beverly - Conversation with Director of Planning and Community Development Darlene Wynne

In 2006, Beverly passed an inclusionary housing ordinance which assigns any funds received directly to its MAHT. Beverly's MAHT primarily reviews projects for funding from the \$600,000 raised through this funding source. The Trust completed its first funding found in 2018 using a rolling application process. This process begins with a Notice of Availability for the funding round and a request for Letters of Interest. Letters are due by the last day of each month, and the MAHT lets applicants know within 45 days if they will be awarded funding. The Trust has awarded funding to four projects (three in 2018 and one in 2020), including a partnership with their YMCA and

Harborlight Community Partners to develop new units. To date, the Trust has not denied funding to any project applicant. Funding allocations have ranged between \$100,000 to \$250,000 but there is no limit currently set on how much can be requested.

Beverly's Trust does not receive any funding from its Community Preservation Act Program but could in the future. Instead, Beverly's Community Preservation Committee also reviews housing projects and established an Emergency Rental Housing program without the Trust last year.

Cambridge Conversation with Cambridge Housing Director Chris Cotter

Cambridge's Trust predates the existing MAHT enabling legislation and as such, has powers and responsibilities that go well beyond those seen in other communities. Cambridge established their Housing Trust in 1988-89 to utilize impact fees, Cambridge's version of linkage fees, but today their CPA program is the Trust's primary funding mechanism (their Trust receives 80% of Cambridge's annual 3% CPA surcharge).

The Cambridge Trust meets monthly to review project applications, sometimes serving as the first funder to get projects started as well as the last funder to fill in any project gaps. Cambridge's Trust works to evaluate potential project ideas, provide funding to preserve and protect existing housing units, create new units, and finance the purchase of sites for future affordable housing development. Mr. Cotter noted that the Trust often works for 2-3 years on individual projects and funding sites. This comprehensive approach is possible because the Trust is staffed by three people in Cambridge's Housing Division who are focused on housing development. This Division also oversees the City's other housing funding programs and has developed a one step process for seeking affordable housing funds. While the Trust funds and federal funds are approved separately, they are both reviewed by the Housing Division using the same application and review process, and the City Manager ultimately signs off on both. Cambridge's Trust also serves as Cambridge's housing partnership, advocates for 40B and affordable housing projects in general, and is relied on by their City Council for advice on housing policies.

Salem - Conversation with Senior Planner/Trust Staff Person Amanda Chiancola

Salem's Trust also predates the MAHT enabling legislation and was initially created in 2003. Today their Trust has very little funding and exists primarily as an advocacy group focusing on policy issues and advocacy, as well as studying potential uses for public land. The program currently has about \$5,000 in funding which it uses to provide technical assistance. Ms. Chiancola explained that Salem has a very competitive CPA funding program and the community's very active housing non-profits generally go directly to their Community Preservation Committee for funds. Because their Community Preservation Committee enjoys reviewing housing proposals, there has been no interest in delegating those reviews to the Trust.

Salem's Trust is currently working with the City on three zoning ordinances, advocating for housing projects, and completing a 2021 Housing Production Plan which will help to plan for the long-term actions of the Trust as well as future projects. The Trust has inserted itself into the Planning Board's review process and has been advocating for inclusionary zoning, with the goal of reaching a requirement of 10% of units at 60% AMI. The Trust has also been helpful in negotiating with developers on individual projects towards this goal.

Somerville - Conversation with CPA Manger Judith Tumusiime

Somerville is another community with an Affordable Housing Trust that predates the MAHT legislation. Somerville's Trust had already been in place for twenty-five years when the CPA program was established in 2014, and so Somerville's Community Preservation Committee (CPC) chose to designate the Trust as the administrator of its CPA Community Housing funds rather than establish a duplicate process. The amount allocated to the Trust varies every year – their CPC undertakes an annual public review process to create its list of priorities and determine minimum funding per category, and the housing allocation is based on public input and perceived need. In 2019, the Trust received 45% of Somerville's annual CPA funding and in 2020, it was increased to 50%. In addition to this annual allocation, the Trust may also apply to the CPC for additional program funding at any time.

Somerville's Trust allocates its available funding during an annual funding round which is timed to match the CPC's annual funding process for all other CPA categories. CPC staff work directly with the Trust liaison (a member of City staff) to ensure that the funding is used correctly, and the Trust submits a biannual report (April and November) to the CPC on explain how the CPA funds have been used. While the Trust is considered to be an applicant for CPA funds, the application itself is automatic and Somerville uses as a Memorandum of Agreement between the CPC and Trust to secure the funding.

5) What is the CPA funding process for the Trust?

The Trust would be subject to the same review and approval process used for all CPA funding applications. On an annual basis, the Trust would submit a proposal for Community Housing funds for their future use in specific affordable housing projects that meet the CPA legislative requirements. The proposal would be reviewed as usual by the CPC at a public hearing before their vote on a recommendation, after which it would be sent to the City Council for their review and approval of the funding recommendation. The Trust could also apply to the CPC for additional project funding at any time during the year if a large project or new opportunity becomes available.

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

November , 2021

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON That:

1. Section 55C of Massachusetts General Laws Chapter 44 be and is hereby accepted; and
2. The Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **the creation of the Newton Affordable Housing Trust Fund** by INSERTING after Sec. __ in Chapter ____ as follows:

Sec. __. Establishment and purpose

There is hereby established under General Laws Chapter 44, Section 55C a Municipal Housing Trust Fund (the "Trust") for the purpose of the creation and preservation of affordable housing for the benefit of low and moderate income households as defined by the Department of Housing and Urban Development (HUD) and for the funding of community housing, as defined in and in accordance with the provisions of chapter 44B, the Community Preservation Act. Preservation and creation of affordable housing shall include but not be limited to programs designed to further housing rehabilitation and/or development opportunities and those that are designed to directly assist low and moderate homeowners and renters.

Sec. . Board of trustees – Composition; eligibility; appointment; terms of office; term limits .

- A. There shall be a board of trustees which shall consist of seven (7) trustees, including the Mayor, a City Councilor designated by the City Council President, and the remaining five (5) Trustees to be appointed by the Mayor and confirmed by City Council as follows:
 1. A member of the Community Preservation Committee; and
 2. Four (4) Newton residents. In making such appointments, the Mayor shall be guided by the goal that the board of trustees be geographically, culturally,

ethnically, and linguistically diverse and each appointee have one or more of the following qualifications:

- a. Experience with affordable housing production, planning, architecture, law, lending, business, property management, social and human services, capital planning, and construction management;
 - b. Professional experience in affordable housing finance and development;
 - c. Professional participation as a funder, developer or consultant in successfully completed projects that include deed-restricted affordable housing;
 - d. Experience with all-affordable, mixed-income housing, and/or mixed-use development projects that include housing; and
 - e. Familiarity with Massachusetts and HUD affordable housing funding sources and regulatory requirements, specifically CDBG and HOME, LIHTC, and 40B.
- B. Trustees shall serve without compensation.
- C. Trustees shall serve for terms of two (2) years or until their successors shall take office. Initial appointments shall be so appointed that, as nearly as possible, the terms of an equal number of members shall expire every year. Any odd numbered initial appointment shall be for a term of one year.
- D. The Trust shall annually elect one of its members to serve as chairperson and may elect such other officers, adopt procedural rules and regulations, and establish any subcommittees as it deems appropriate. (Ord. No. W-66, 11-19-01; Rev. Ord. 2007, § 2-350)
- E. Trustees who remove their residence from the City shall be considered to have resigned from the board of trustees.
- F. The Trustees shall consider the state of housing needs in Newton across the affordability spectrum. It may make recommendations to the Mayor and City Council on the options available to the City to create new affordable housing to address those needs and to maintain existing affordable housing stock. The Trust may support implementation of these recommendations as appropriate and measure progress toward their fulfillment.

Sec. ____ . Powers and duties

The board of trustees shall be possessed of all the powers and subject to duties in accordance with the provisions of General Laws Chapter 44, Section 55C, as it may be amended from time to time.

Sec. __. Funding Sources and Uses

- A. The Trust may receive funding from any or all of the following sources:
 - 1. Community Preservation Act (CPA) funds
 - 2. Inclusionary zoning payments
 - 3. Negotiated developer fees
 - 4. Payments from special bylaws/ordinances
 - 5. Private donations
 - 6. Grants

- B. Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any zoning ordinance 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 trustees within one year of the date they were appropriated into the Trust, remain Trust property.

- C. The Trust will submit an annual application for CPA funding for all community housing uses allowed by the CPA legislation. Once the City Council has approved CPA funding for Trust activities, no further review or approval will be necessary for the Trust to expend the funding so long as the proposed use is an allowed use for community housing funds under the Community Preservation Act legislation.

- D. The Trust is authorized to expend any or all of its allocated funding to meet the affordable housing goals of the City by a majority vote of the Trustees. No further reviews or approvals are necessary for the expenditure of Trust funds.

- E. The Trust will submit annual reports to the CPC and City Council on how and where Trust funding has been used. In the case of CPA funding, the Trust will work closely with the Community Preservation Program Manager to see that all CPA funding is documented and the uses confirmed as required by the CPA funding legislation.

Sec. Administration and operations

- A. The Trust shall meet on a regular basis at least four (4) times a year or as needed to enact the duties of the Trust.

- B. The Trust shall establish an application process for projects requesting Affordable Housing Trust funds and develop clear review requirements and procedures for all projects based on the established program guidelines and the City’s affordable housing goals.

- C. The Trust may expend funding on an annual or rolling basis at the Trustees discretion so long as it follows an established funding process.
- D. The Trust shall evaluate all requests for project funding from the Affordable Housing Trust fund in the established process, in accordance with the goals of the City and the guidelines and procedures established by the Trust.
- E. The City shall provide staff support to the Trust to oversee all of the administrative duties and requirements for operating and administering the Trust Fund as stated above.

Sec. Legal Status

- A. The Trust is a public employer and Trustees are public employees for purposes of Chapter 258 of the Massachusetts General Laws.
- B. The Trust shall be deemed a municipal agency and the Trustees shall be deemed as special municipal employees for purposes of Chapter 268A of the Massachusetts General Laws.
- C. The Trust is exempt from Chapters 59 and 62 of the Massachusetts General Laws, 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.
- D. The Trust is a governmental body for purposes of Sections 23A, 23B and 23C of Chapter 39 of the Massachusetts General Laws.
- E. The Trust is a Board of the City for the purposes of Massachusetts General Law Chapter 30B and MGL c. 40, § 15A; but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the City shall be exempt from said Chapter 30B of the Massachusetts General Laws.

Sec. The provisions of this Article shall be interpreted and applied at all times consistently with the provisions of Chapter 44, Section 55C, of the General Laws, as may be from time to time amended, and with the provisions of any relevant general or special law.

Secs. . Reserved.

Approved as to legal form and character:

City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

City Clerk

Mayor

DRAFT