

# Town of West Newbury Draft Affordable Housing Trust Bylaw

ARTICLE XX - To see if the Town will establish a new bylaw for the administration of a Municipal Affordable Housing Trust Fund to support the development of affordable housing in West Newbury; or take any action related thereto.

## **Section 1. Authority and Name of Trust**

Pursuant to the vote on Article XX of the October 2021 Special Town Meeting, the Town of West Newbury (the "Town") voted to accept the provisions of Massachusetts General Laws c. 44, §55C and authorized the creation of a Municipal Affordable Housing Trust Fund to be known as the "West Newbury Affordable Housing Trust" (the "Trust").

## **Section 2. Purpose**

The purpose of the Trust shall be to provide for the preservation, creation and support of affordable housing in the Town of West Newbury for the benefit of low- and moderate-income households, and for the funding of community housing as defined by Massachusetts General Laws c. 44B (the "Community Preservation Act").

## **Section 3. Board of Trustees**

### **A. Composition.**

There shall be a Board of Trustees (Trustees) of the West Newbury Affordable Housing Trust composed of one ex officio non-voting member and seven voting members. The Town Manager or the Town Manager's designee shall serve as the ex officio member. The voting members shall include: a member of the Select Board (designated by the Select Board) and six members appointed by a majority vote of the Select Board. The voting members shall have relevant experience in the fields of affordable housing, zoning, real estate, banking, finance, law, architecture, social services, or other areas of expertise applicable to advancing the purpose and goals of the Trust.

Trustees shall be residents of West Newbury. Any Trustee whose resident status changes shall promptly notify the Trust and Town Clerk in writing and resign from the Trust. The Town Manager or designee need not be a resident of West Newbury.

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B. Appointment of Trustees.

Trustees shall serve for a term of two years, except that three of the initial Trustee appointments shall be for a term of one year. Select Board appointments will be made on the same schedule as other Town Boards and Committees for the coming fiscal year.

C. Meetings.

Meetings of the Trustees shall be held on a regular basis. Special meetings may be called by the Chairperson. The Trust is a governmental body for purposes of M.G.L. c. 30A, §§18-25, the Open Meeting Law; notice of any meeting of the Trust shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law.

The Trustees shall regularly elect a Chairperson, a Vice Chairperson, a Treasurer and a Clerk. The Chairperson may establish sub-committees and/or ad hoc task related committees to carry out the purposes of the Trust. Chairpersons of the subcommittees may be selected by the members of the sub-committees.

A majority of the number of authorized Trustees shall constitute a quorum.

D. Removal.

A Trustee may be removed by the Select Board for cause following a hearing. Absence from five consecutive, regularly scheduled meetings of the Trust will be considered grounds for removal. Any vacancy on the Trust shall be filled by the Select Board for the remainder of the unexpired term.

E. Declaration of Trust.

The Trustees are authorized to execute a Declaration of Trust and Certificate of Trust for the West Newbury Affordable Housing Trust Fund, to be recorded with the Essex County Registry of Deeds and filed with the Essex County District of the Land Court, following approval by the Select Board. The Declaration of Trust may be amended from time to time, except as to the powers of the Trustees and those other provisions specifically required under M.G.L. c. 44, §55C, in writing signed by the Town Manager and by seven of the Trustees and approved at a meeting called for that purpose, provided that in each case, a certificate of amendment has been recorded with the Registry of Deeds and filed with the Land Registration Office.

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F. Authority and Responsibilities.

- 1) The powers of the Trustees shall be carried out in furtherance of the purposes set forth in M.G.L. c.44, §55C, and inclusive of any future amendments, and pursuant to the provisions of a Declaration of Trust to be approved by the Select Board shall include the following:
  - a) 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 West Newbury Community Preservation Committee for inclusion in the community preservation initiatives report, form CP-3, to the Department of Revenue;
  - b) With Select Board approval, to purchase and retain real, personal or intangible property, including without restriction investments that yield a high rate of income or no income;
  - c) 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 Trustees deem advisable notwithstanding the length of any such lease or contract;
  - d) To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements to and from the Trust, make gifts or loans and execute other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;
  - e) To employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;

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- f) To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
- g) To apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- h) 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;
- i) To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;
- j) To carry property for accounting purposes other than acquisition date values;
- k) With Select Board and Town Meeting approval, to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge Trust assets as collateral;
- l) To make distributions or divisions of principal in kind;
- m) 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 Trustees may deem appropriate;
- n) To manage or improve real property and to abandon any property which the Trustees determine not to be worth retaining;
- o) To hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate; and
- p) To extend the time for payment of any obligation to the Trust.

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- 2) The powers and duties enumerated above are intended to encompass all powers and duties of the Trustees. Any action, power or duty not enumerated above shall require prior approval of the Select Board.
- 3) The powers of the Trustees may only be amended by a vote of West Newbury Town Meeting.
- 4 ) The Trustees shall prepare an annual report describing the activities of the Trust for each fiscal year. The annual report shall be submitted to the Select Board in accordance with the schedule set by the Town Clerk for inclusion in the Town's Annual Report. The annual report shall list all financial transactions conducted by the Trust including all revenues and costs, provide a balance sheet of liabilities and assets of the Trust, list an inventory of all affordable housing units created, sold, and/or managed by the Trust, and any other pertinent information related to the business of the Trust.

**Section 4. Acts of Trustees**

- A. A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees, with the exception that any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property, borrowing, and mortgaging and pledging of assets must be approved by at least two thirds of the appointed Trustees.
- B. No Trustee shall be required to post bond.
- C. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

**Section 5. Funds Paid to the Trust**

Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any zoning bylaw, exaction fee, or private contribution 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 these funds need not be further appropriated to be expended. All monies 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 set forth in M.G.L. c.44, §55C.

### **Section 6. Custodian of Funds**

The West Newbury Treasurer/Collector shall be the custodian of Trust's funds and shall maintain separate accounts and records for such funds. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust Fund. In accordance with M.G.L. c. 44, § 55C, the books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices or take any other action relative thereto. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Select Board. The Trustee designated as treasurer shall also liaise with the custodian of the funds on a monthly basis.

### **Section 7. Legal Status**

- A. The Trust is a public employer and the Trustees are public employees for the purposes of M.G.L. c. 258.
- B. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of M.G.L. c. 268A.
- C. The Trust is exempt from M.G.L. c. 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 subdivision thereto.
- D. The Trust is a governmental body for purposes of Sections 23A, 23B and 23C of M.G.L. c. 39.
- E. The Trust is a board of the Town for purposes of M.G.L. c. 30B and M.G.L. c. 40 § 15A but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the town shall be exempt from said Chapter 30B.

### **Section 8. Duration of the Trust**

This Trust shall be of indefinite duration, until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.