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Barney S. Heath
Director

MEMORANDUM

Date: July 23, 2021
From: Barney Heath, Director, Planning and Development Department
Amanda Berman, Director of Housing and Community Development
Lara Kritzer, Community Preservation Program Manager
To: Zoning and Planning Committee
RE: Draft Municipal Affordable Housing Trust Ordinance

Last year, Newton's City Council docketed an item to explore the possibility of creating a Municipal Affordable Housing Trust (MAHT) as a mechanism to encourage and to increase affordable housing in Newton.

The Planning and Development Department researched municipal housing trusts, how they are established, and how they were successfully implemented in communities throughout the Commonwealth. Department staff participated in several Massachusetts Housing Partnership (MHP) webinars, reviewed local and state legislation, and met with program administrators in other Massachusetts communities to better understand how the Trusts have worked in their communities. Staff also reviewed Affordable Housing Trust ordinances and the composition of their Trustee groups.

As an outcome of this research, an initial draft Newton MAHT ordinance has been developed based on available best practices to serve as a starting point for further discussions by the City Council and the community. This draft has also been reviewed by the Law Department to insure that it is in keeping with the City's existing ordinances.

The primary benefit of a Municipal Affordable Housing Trust for Newton lies in its ability to expedite and to simplify the affordable housing funding process by consolidating the number of required meetings and reviews. The Trust could serve as a mechanism for allocating City funds to affordable housing projects. The Trust is anticipated to be primarily funded with Community Preservation Act (CPA) funds designated for affordable housing with Inclusionary Zoning Funds as a potential secondary funding source when available. Federal housing and community development funding (i.e. CDBG and HOME funds) would continue to be allocated by the Planning Board using the approval process prescribed in the City's Consolidated Plan.

This draft ordinance establishes a simplified funding process for affordable housing projects, allowing applicants to more quickly and efficiently apply for Trust funding to move forward with land acquisitions and affordable housing project development. The Affordable Housing Trust Fund, as proposed would be governed by a seven member group of Trustees including the Mayor, a City Councilor, a Community Preservation Committee (CPC) member, and four Newton residents who have both a background in affordable housing and a deep understanding of its unique funding and procedural requirements. Members would be appointed by the Mayor and confirmed by the City Council. The Trust would meet a minimum of four (4) times annually. In keeping with state guidance, projects would be funded at the sole discretion of the Trust. The Trust would receive regular staff support, either from the Planning Department or on an as needed basis by a consultant hired to assist the Trust in its duties.

The draft ordinance as constituted gives the Trust the flexibility to purchase and develop sites. Trusts, however, are considered to be part of the municipal government and are subject to all the regulations and processes associated with any municipally conducted project. For this reason, at the state level, the Massachusetts Housing Partnership generally recommends that Trusts provide funding for affordable housing projects rather than develop the housing themselves. The Trust would be entirely separate from the Newton Housing Partnership, which would continue to provide counsel on affordable housing policy and implementation.

The process of reviewing the draft ordinance began on July 20 with an initial review by the Newton Housing Partnership. Discussion on the draft ordinance will continue at the Newton Housing Partnership's August meeting and a separate review of the proposed ordinance is also scheduled for the Community Preservation Committee's August 10 meeting.

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

July , 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

- 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

Part I ADMINISTRATION OF THE GOVERNMENT**Title VII** CITIES, TOWNS AND DISTRICTS**Chapter 44** MUNICIPAL FINANCE**Section 55C** MUNICIPAL AFFORDABLE HOUSING TRUST FUND

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:—

(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;
- (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.