

Town of Lexington
Motion
2022-3 Special Town Meeting

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TOWN CLERK
LEXINGTON MA

ARTICLE 12 CREATION OF HOUSING TRUST

MOTION:

- a. That the Town establish a municipal affordable housing trust pursuant to Massachusetts General Laws Chapter 44, Section 55C; and
- b. That the Code of the Town of Lexington be amended by adding a new Chapter 132, as follows, and that the Town Clerk be permitted to make edits to the Bylaw so that its numbering conforms to the format for the Code:

Chapter 21

AFFORDABLE HOUSING TRUST BYLAW

§ 132-1. MUNICIPAL AFFORDABLE HOUSING TRUST

There shall be in the Town of Lexington an Affordable Housing Trust created pursuant to the authority set forth in Massachusetts General Laws c. 44, § 55C and Article 12 of the 2022 Fall Special Town Meeting.

§ 132-2. NAME of the TRUST

The Trust shall be called the "Lexington Affordable Housing Trust" (the "Trust").

§ 132-3. PURPOSE

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Lexington for the benefit of low and moderate income households and for the funding of community housing, as defined in G.L. c. 44B (the "Community Preservation Act").

§ 132-4. TRUSTEES

There shall be a Board of Trustees (the "Board"), which shall include no less than five and no more than nine Trustees, including one member of the Select Board, each of whom, to the extent possible, shall have a background or interest in affordable housing, including a resident with a low- or moderate-income, and who, together, shall have a background in finance, law, real estate or real estate development.

- A. A majority of the Board shall constitute a quorum.
- B. All Trustees shall be appointed by the Select Board.

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- C. Trustees shall serve for a term of two (2) years, except that one less than a majority of the initial Trustee appointments shall be for a term of one (1) year. Trustees may be reappointed on terms to be determined by the Trust.
- D. Only persons who are residents of Lexington shall be appointed as a Trustee. Any Trustee who ceases to be a resident of Lexington shall cease to be a Trustee hereunder within three months thereafter and shall promptly provide a written notification of change in residence to the Board and to the Town Clerk; provided, however that if a person fails to give such notice, their participation or vote on a matter shall not void the Board's decisions with respect to that matter.
- E. A Trustee may be removed by the Select Board for cause. Any Trustee may also resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. Vacancies shall be filled by the Select Board for the remainder of an unexpired term.
- F. If any Trustee is absent from five (5) consecutive, regularly-scheduled meetings of the Trust or all meetings over any six (6) month period, except in the case of illness, such Trustee's position shall be deemed vacant and shall be filled with a new appointment as set forth above.
- G. The Trustees shall elect officers annually consisting of a Chair, Vice Chair and Clerk. The Trustees may establish subcommittees or ad hoc related committees to carry out the purpose of the Trust.
- H. A majority of Trustees then serving 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. No Trustee shall be required to give bond. 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.
- I. No Trustee shall be liable for the acts, negligence, or defaults of any other Trustee or any employee, agent, or representative of the Trustees selected with reasonable care, not for errors in judgment, nor mistakes of law or facts made in good faith, nor in reliance in good faith on advice of counsel, nor any other acts or omissions in good faith.
- J. Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town of Lexington.

§ 132-5. MEETINGS OF THE TRUST

- A. The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine.

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- B. The Trust is a governmental body for purposes of G.L. c. 30A, §§ 18-25 (the “Open Meeting Law”). Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, as may be amended from time to time, including provisions regarding remote participation.
- C. The Clerk shall prepare minutes of meetings of the Trust and shall maintain records thereof. A quorum at any meeting shall be a simple majority of the Trustees then serving.

§ 132-6. POWERS OF THE TRUSTEES

- A. The powers of the Board, all of which shall be carried out in furtherance of the purposes set forth herein, shall include the following powers, except that the Board shall require prior approval of the Select Board to make purchases of real estate that exceed the average sale price of a single-family home in the Town of Lexington as determined annually by the Assessor’s office.
 - 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 bylaw or any general or special law or any other source, including money appropriated pursuant to G.L. c. 44B, provided, however, that any such money received from chapter 44B shall be used in accordance with the provisions of G.L. c. 44, § 55C(1);
 - 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;

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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 income 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 transaction; 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, but any mortgage or pledge of assets as collateral greater than the extent of the Trust's assets requires approval by a two-thirds vote of an Annual or Special Town Meeting;
12. to make distributions or divisions of principal in kind;
13. to compromise, 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 Trust, 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;
16. to extend the time for payment of any obligation to the Trust;

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17. to make recommendations on proposals or Town Meeting warrant articles which affect housing.
 18. to develop policy goals and statements to serve as guidelines for the Trust, subject to approval by the Select Board and consistent with the Town's housing goals and plans as may be adopted and amended by the Select Board from time to time;
 19. to exercise such additional powers consistent with the provisions of this bylaw and G.L. c. 44, § 55C, as may be amended from time to time.
 20. to compensate the Town for services provided to the Trust in connection with the Trust's activities, including but not limited to dedicated staff to Trustees, engineering support for project-specific activities, and other Town services, as such services are requested by the Trustees to the Town Manager and authorized by the Town Manager or designee;
 21. to establish criteria and qualifications for recipients and expenditures in accordance with Trust's stated purposes;
 22. to serve as a lottery and monitoring agent for affordable housing, and to accept compensation for providing such services into the Trust.
- B. Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any Town bylaw or regulation, 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 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.

§ 132-7. TREASURER AS CUSTODIAN OF FUNDS

- A. The Town Treasurer shall be the custodian of the Trust's funds and shall maintain separate accounts and records for the Trust's funds.
- B. The Treasurer shall invest the funds in the manner authorized by G.L. c. 44, § 55 (Public Funds on Deposit; Limitations; Investments,) § 55A, (Liability of Depositor for Losses Due to Bankruptcy), and § 55B (Investment of Public Funds), as such laws may be amended or replaced.
- C. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.

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- D. Expenditures by the Trust shall be processed through the Town's payment warrant but shall be subject to the provisions of G.L. c. 44, § 55C. The Trust's approved annual budget, and any approved budget revisions, shall be submitted to the Select Board.
- E. As custodian, the Treasurer shall issue checks as directed by the Trustees. In accordance with 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 for municipalities. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Select Board.
- F. The Trustees shall keep a record of its activities and at the close of every fiscal year, shall make a report thereof to the Select Board. The report shall include a description and source of funds received and expended and the type of affordable housing programs or properties assisted with the funding.

§ 132-8. MISCELLANEOUS

- A. The Trust is a public employer and the members of the Board are public employees for purposes of G.L. c. 258.
- B. Trustees are designated as public agents for purposes of the constitution of the Commonwealth.
- C. The Trust shall be considered a municipal agency and the Trustees shall be considered special municipal employees and shall be subject to the provisions of G.L. c. 268A.
- D. The Trust is exempt from G.L. c. 59 and c. 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.
- E. The Trust is a Board of the Town for purposes of procurement under G.L. c. 30B and c. 40 § 15A; but agreements and conveyances between the Trust and agencies, Boards, commissions, authorities, departments and public instrumentalities of the Town of Lexington shall be exempt from G.L. c. 30B.

§132-9. RECORDINGS; AMENDMENTS

The Trustees are authorized to record a Declaration of Trust and a Certificate of Trustees for the Trust with the Middlesex South District Registry of Deeds and the Registered Land Division of the Land Court Registration Office. The Declaration of Trust may be amended from time to time

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except as to those provisions specifically required under G.L. c. 44, § 55C, by an instrument in writing signed by all of the Trustees then serving and approved at a meeting called for that purpose, and approved by the Select Board provided that in each case, a certificate of amendment shall be recorded with the Middlesex South District Registry of Deeds and, if necessary, the Registered Land Division of the Land Court.

§ 132-10. DURATION OF THE TRUST

- A. The Trust shall continue so long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, The Trust may be terminated by a majority vote of the Town Meeting in accordance with G.L. c. 44, § 55C, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded with the Middlesex South District Registry of Deeds and, if necessary, the Registered Land Division of the Land Court.
- B. 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 Trust's assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

§ 132-11. RECORD TO BE CONCLUSIVE, CERTIFICATE AS TO FACTS

Every contract, deed, mortgage, lease and other instrument executed by a majority of the Trustees then serving as appears from instruments or certificates recorded with the Registry of Deeds and Registered Land Division of the Land Court to be Trustees hereunder shall be conclusive evidence in favor of any person relying thereon or claiming thereunder, that at the time of the delivery thereof this Trust was in full force and effect and that the execution and delivery of such instrument was duly authorized by the Trustees except that instruments of amendment pursuant to Section 9 and an instrument of termination pursuant to Section 10 hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by all of the Trustees then serving. Any person dealing with the Trust property or the Trustees may rely on a certificate signed by any person appearing from instruments or certificates so recorded to be a Trustee hereunder as to the identity of the then current serving Trustees or as to the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the Trustees or in any other manner germane to the affairs of the Trust.

(Revised 10/28/2022)