

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Accepting the provisions of Massachusetts General Law Chapter 40, Section 5B (4<sup>th</sup> Paragraph).

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Massachusetts General Laws Chapter 40, Section 5B (4<sup>th</sup> Paragraph) may dedicate, without further appropriation, all, or a percentage not less than 25 per cent, of a particular fee, charge or other receipt to any stabilization fund established pursuant to this section; provided, however, that the receipt is not reserved by law for expenditure for a particular purpose. For purposes of this paragraph, a receipt shall not include taxes or excises assessed pursuant to Chapter 59, 60A, 60B, 61, 61A of 61B or surcharges assessed pursuant to section 39M or Chapter 44B; and

Massachusetts General Laws Chapter 40, Section 5B (4<sup>th</sup> Paragraph) must be accepted by majority vote of the Lowell City Council in order to be effective in the City of Lowell; and

The City Council, pursuant to Council Rule 28, must hold a public hearing on this matter.

NOW, THEREFORE, IT IS VOTED BY MAJORITY VOTE AS FOLLOWS:

That the City Council of the City of Lowell hereby accepts the provisions of Massachusetts General Laws Chapter 40, Section 5B (4<sup>th</sup> Paragraph), for the purpose of dedicating without further appropriation, all, or a percentage not less than 25 per cent, of a particular fee, charge or other receipt to any stabilization fund established pursuant to this section; provided, however, that the receipt is not reserved by law for expenditure for a particular purpose. For purposes of this paragraph, a receipt shall not include taxes or excises assessed pursuant to Chapter 59, 60A, 60B, 61, 61A of 61B or surcharges assessed pursuant to section 39M or Chapter 44B, a copy of which is attached and marked "A".

Notwithstanding section 53 of chapter 44 or any other general or special law to the contrary, a city, town or district that accepts this paragraph may dedicate, without further appropriation, all, or a percentage not less than 25 per cent, of a particular fee, charge or other receipt to any stabilization fund established pursuant to this section; provided, however, that the receipt is not reserved by law for expenditure for a particular purpose. For purposes of this paragraph, a receipt shall not include taxes or excises assessed pursuant to chapter 59, 60A, 60B, 61, 61A or 61B or surcharges assessed pursuant to section 39M or chapter 44B. A dedication shall be approved by a two-thirds vote of the legislative body of the city, town or district, subject to charter, and may be terminated in the same manner. A vote to dedicate or terminate a dedication shall be made before the fiscal year in which the dedication or termination is to commence and shall be effective at least for 3 fiscal years.

11A"



Eileen M. Donoghue  
City Manager

February 7, 2019

Mayor William J. Samaras  
And  
Members of the Lowell City Council

Dear Mayor Samaras and Members of the Lowell City Council,

I am hereby requesting that the City Council vote to establish a new, special purpose stabilization fund to aid in the city's efforts to improve and maintain our municipal facilities. At the City Council meeting on January 29, 2019, the Council approved a motion requesting the law department draft the necessary language to establish the fund and dedicate twenty-five percent (25%) of revenue collected from the local option excise into the fund. It is important to note that the dedicated revenue will come only from the three percent (3%) local option excise and not from the three percent (3%) community impact fee, which is to be dedicated towards mitigating the impact of these types of facilities through expenditure on certain public safety and public health expenses.

This action will set a precedent in the Commonwealth for utilization of this new revenue stream from recreational marijuana and the City Council is to be commended for coming up with an innovative approach to addressing an issue that has plagued the city for decades. Because the new revenue source is not currently built into the budget, it will not have a detrimental effect on the city's finances; rather, it will demonstrate a commitment by the city to investing in our ageing facilities. The first step in this process will be to accept the new language in the statute, which will require a public hearing. Then, the Council can vote to create the new fund on the night of the public hearing.

Enclosed with this letter is the response by the Chief Financial Officer to Councilor Nuon's motion, outlining the details of the city's financial strategy for using these funds. Please do not hesitate to let me know if there are any questions.

Sincerely,

Eileen M. Donoghue  
City Manager

CC: Conor Baldwin, Chief Financial Officer



Conor Baldwin  
Chief Financial Officer

## MEMORANDUM

**TO:** Eileen Donoghue, City Manager

**FROM:** Conor Baldwin, Chief Financial Officer/ Acting Treasurer/ Collector 

**DATE:** January 17, 2019

**SUBJECT: MOTION RESPONSE: C. Nuon – 1/8/2019 -** Req. City Mgr. Explore Possibility Of Using Revenues From Recreational Marijuana Sales To Repair Municipal Buildings.

In response to the motion made by Councilor Nuon, the finance team has researched the relevant guidance documentation issued by the Department of Revenue (“DOR”) on the treatment and use of revenue generated by municipalities from the sale of recreational marijuana. These types of revenue at the local level fall into two distinct categories: (1) so-called “impact fees” or other payments under a community host or other agreement with a marijuana establishment or medical marijuana treatment center in connection with its siting and operation in the municipality; and (2) tax revenue generated due to the imposition of a local excise on the retail sales of marijuana for adult use. On May 15, 2018, the Lowell City Council accepted G.L. c. 64N § 3, the local excise option on recreational marijuana. The two categories of revenue are accounted for differently under the rules established by the DOR.

As a general rule in Massachusetts municipal finance, all money received or collected must be credited to the general fund and can only be spent after appropriation unless a general or special law provides for an exception and different treatment (i.e. a general or special law expressly reserves the revenue stream for expenditure for a particular purpose or allows expenditure by a municipal or district department or officer without appropriation - G.L. c. 44 § 53). It is important to note that, unlike the host agreement “impact fees”—which carry restrictions on the use for certain public safety and public health expenses—there is currently no general law that establishes a different accounting treatment for tax revenue from the local option. Therefore, the money belongs to the general fund and can only be spent by appropriation.

Because the receipts associated with marijuana establishments are a new revenue source for the city, however, there is a method, prescribed under state law, that Lowell could dedicate payments made by a marijuana establishment or medical marijuana treatment center for later appropriation for particular purposes. The City Council could accomplish this by using a local acceptance option to dedicate all, or a portion of **at least 25%**, of the collections of the excise on retail sales of marijuana or payments from a community host and other agreement payments to a general or special purpose stabilization fund established under G.L. c. 40 § 5B. Under this option, these collections and payments may be dedicated to stabilization funds because they are not earmarked for a particular purpose under current state law. In addition, the excise on marijuana retail sales is not a locally assessed tax or excise specifically excluded from dedication. Changes made by the



Conor Baldwin  
*Chief Financial Officer*

Municipal Modernization Act to the stabilization fund legislation under G.L. c. 40, § 5B, eliminated caps on stabilization fund balances and the amount of annual appropriations into stabilization funds, changed the quantum of vote for appropriations into stabilization funds, and allowed the dedication of certain revenue streams into stabilization funds and expanded the depositories and investment options for stabilization fund reserves.

Lowell would be a trailblazer in utilizing these specific receipts in this manner, so the finance team has reviewed the proposal closely with our representative at the DOR and received confirmation that this innovative solution is consistent with their guidance. The City Council could therefore establish—by a two-thirds vote—a new, special purpose stabilization fund for the repair and maintenance of municipal facilities or, more specifically, school buildings. Two votes would be required to do so; the first to establish the fund pursuant to Chapter 40 § 5B and the second, to set the funding source from marijuana revenue. The City Council could dedicate any percentage between twenty five percent (25%) and one hundred percent to be automatically dedicated to the stabilization fund. The fund would carry over from one fiscal year to another and any interest earned on the principal balance would remain with the special fund. The monies on deposit in the stabilization fund could only be spent for the specific purpose set forth in the stabilization vote by a two-thirds appropriation vote and the fund must remain in existence for at least three years after adoption. However, the City Council could re-purpose the funds for any other legal expenditure upon another two-thirds vote. The recommendation from the finance department would be to start by dedicating twenty-five percent (25%) of the marijuana revenue into the stabilization fund.

Alternatively, if a special fund is not created, the receipts would remain with the general fund and at the close of the fiscal year; any excess receipts would be certified as free cash by the DOR. At such time that the full number of recreational marijuana establishments are open for business in Lowell and the finance department has time to analyze several years' worth of actual receipts, the city can estimate those receipts as part of the annual budget process as general revenue. The finance team, as it does with all other existing sources of revenue, could craft the financing plan for the lands and buildings division of DPW such that the excise tax receipts become a component of any increased expenditures on maintaining school buildings. The potential drawback of this method is that in the future, competing priorities in the budget may pull funding from investment in the municipal facilities.

If it is the will of the Council to move forward with the option to create a special purpose stabilization fund, I will work with the Law Department to prepare the necessary votes.

Please let me know if there are any questions.