



City of Lowell - Law Department

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MEMORANDUM

TO: Eileen M. Donoghue, City Manager *EMD*

FROM: Christine P. O'Connor, City Solicitor

CC: Elliot Veloso, Assistant City Solicitor

RE: Motion: C. Nuon – Req. City Mgr. and Law Department, due to Covid-19 crisis, consult with Non-Profit Housing Organizations (CTI, CBA, Merrimack Valley Housing Partnership) in order to use Community Preservation Act (CPA) for rental assist programs.

I write in response to the City Council's motion regarding whether Community Preservation Act ("CPA") funds can be used to support certain rental assistance programs in response to the COVID-19 pandemic.

On November 5, 2019 residents approved adoption of a CPA. The ballot question stated the annual tax levy was to be assessed beginning in fiscal year 2020. While the CPA levy has been assessed and collected, it cannot yet be expended. Pursuant to M.G.L. c.44B, Section 10, the Trust Fund distribution is on or before November 15 of each year, and distributions will be made from the trust fund to each city or town that imposed a surcharge for the fiscal year that ended on the preceding June 30.

Under the CPA, each fiscal year a municipality's legislative body shall spend at least 10% of the annual revenues from its Community Preservation Fund for community housing based upon the recommendations of the municipality's Community Preservation Committee (the "Committee"). M.G.L. c. 44B, §6. "Community housing" is defined by the CPA as "low and moderate income housing for individuals and families, including low or moderate income senior housing." M.G.L. c. 44B, §2. "Support for community housing" is defined as including, but not limited to, "programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable." Id.

Once monies are collected the Community Preservation Committee will study the needs, possibilities and resources of the City regarding community preservation. Under Section 5 of

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the CPA and Article XIV, Chapter 9 of the Lowell Code of Ordinances, the Committee shall annually study the City's needs, possibilities and resources in consultation with municipal boards, commissions, the City Manager, the Mayor and City Council, and other City agencies and personnel. As part of the study, the Committee shall hold one or more public informational hearings, notice of which shall be posed two (2) weeks preceding in a newspaper of general circulation in the City. Id. The Committee shall recommend proposals to the City Manager, to be conveyed to the Mayor and City Council, for approval and appropriation. Article XIV, c. 9, §9-50(b). Such recommendations may include "... [a]cquisition, creation, preservation, and support for community housing or the rehabilitation or restoration of community housing acquired or created pursuant hereto..." Article XIV Chapter 9, §9-50 (b)(4).

Based on these recommendations, the City Council shall approve appropriations from the Community Preservation Fund and additional non-Community Preservation Fund appropriations as it deems necessary. Chapter 9, §9-50(c). CPA also requires that each fiscal year at least 10% of the annual revenues in the Community Preservation Fund must also be either spent or set aside for later spending for open space and for historic resources respectively. M.G.L. c. 44B, §6.

Based on the above, the City is not yet in a position to expend funds. Further, once funds are available the expenditures recommendations will come from the Community Preservation Committee. The motion can, however, be forwarded for their consideration.