

SENATE No. 104

The Commonwealth of Massachusetts

PRESENTED BY:

Marian Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to community preservation.

PETITION OF:

NAME:

Marian Walsh

DISTRICT/ADDRESS:

Suffolk and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00157 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO COMMUNITY PRESERVATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of Chapter 44B of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by inserting after the word “destruction,” in line 54, the
3 following words: - including but not limited to capital improvements necessary to extend the
4 useful life of the property and to thereby prevent the property from deteriorating or falling into
5 disrepair,

6 SECTION 2. Said chapter 44B, as so appearing, is hereby amended by inserting after
7 said section 2 of said chapter 44B the following section: -

8 Section 2A. The general court hereby finds that there is a critical need to protect and
9 preserve the fundamental character of the communities of the commonwealth which are currently
10 at risk as a result of the loss of open space and park land, the loss and deterioration of historic
11 resources and the inadequate supply of decent and affordable housing for persons and families of
12 low and moderate income. The disproportionately high value of real estate throughout the

13 commonwealth has resulted in market incentives to develop open spaces, to construct new
14 buildings in place of older historic buildings, and to build high-priced residential housing; it has
15 resulted in sprawl into previously undeveloped areas of the commonwealth at the expense of
16 open spaces and historic resources in the urban centers of the commonwealth; and it has resulted
17 in increased housing costs and the inability of persons and families of low and moderate income
18 to obtain decent and affordable housing in the community in which they are personally
19 connected and invested. The loss of open space and park land, the loss and deterioration of
20 historic resources and the lack of affordable housing for persons and families of low and
21 moderate income threaten the fundamental character of cities and towns throughout the
22 commonwealth; they threaten the right of the citizens of such cities and towns to clean air and
23 water, to freedom from excessive and unnecessary noise, to the natural scenic, historic and
24 esthetic qualities of their environment and to the conservation and utilization of their agricultural,
25 forest, water, air and other natural resources; they threaten the ability of the citizens of such cities
26 and towns to congregate and to recreate as a community in open spaces and park lands; they
27 threaten the historical, archeological, architectural, and cultural character of cities and towns;
28 they threaten the socio-economic diversity of cities and towns throughout the commonwealth and
29 the accommodation of persons and families of low and moderate income who make significant
30 contributions to the well-being and character of the cities and towns; and for all of these reasons,
31 they threaten the strength, richness, well-being, diversity, and uniqueness of each of the cities
32 and towns throughout the commonwealth.

33 It is hereby further found that in cities and towns throughout the commonwealth there is
34 an inadequate supply of decent and affordable rental housing and housing which provides an
35 opportunity for home ownership, either directly or through a condominium or cooperative form

36 of ownership, for persons and families of low and moderate income. The high cost of land and
37 buildings as well as restrictive zoning and other approvals has produced a critical shortage of
38 adequate housing in the commonwealth adversely affecting the economy of the commonwealth
39 and the well-being of its cities and towns and of its residents. Private enterprise without the
40 assistance contemplated by this act cannot achieve the creation or preservation of an adequate
41 supply of housing for persons and families of low and moderate income, and the alternative of
42 forcing such families to live in substandard housing is undesirable since it tends to decrease the
43 interest of such families in their communities, the maintenance of their property and the
44 preservation of their neighborhoods. A large and significant number of commonwealth residents
45 have and will experience hardship in finding decent and affordable housing unless new housing
46 is created and existing housing, where appropriate, is preserved. Unless the supply of housing is
47 increased significantly and expeditiously, a large number of residents of the commonwealth will
48 be compelled to pay a disproportionate amount of their income for housing to the detriment of
49 the health, welfare and well-being of these persons and of the whole community of which they
50 are a part. By increasing the housing supply of the commonwealth, the critical shortage of
51 affordable housing will be ameliorated.

52 It is hereby further found that traditional financing mechanisms have not provided an
53 adequate dedicated funding source for communities attempting to preserve their fundamental
54 character in the face of the risks and dangers set forth above and that traditional financing
55 mechanisms have been inadequate to provide a means whereby cities and towns may acquire,
56 create and preserve open space, acquire, preserve, rehabilitate and restore historic resources, and
57 create, preserve and support community housing for persons and families of low and moderate
58 income.

59 It is hereby further found that the authority and powers conferred under this act and the
60 expenditure of public moneys pursuant thereto constitutes a serving of a valid public purpose and
61 that the enactment of the provisions hereinafter set forth is in the public interest and is hereby so
62 declared to be such as a matter of determination by the general court.

63 SECTION 3. Subparagraph (2) of paragraph (e) of section 3 of said Chapter 44B, as so
64 appearing, is hereby amended after the word “rates;” by deleting the word: - or.

65 SECTION 4. Paragraph (e) of said section 3 of said chapter 44B, as so appearing, is
66 hereby further amended by striking out subparagraph (3) and inserting in place thereof the
67 following new subparagraph: -

68 (3) for an amount not exceeding \$100,000 of the value of each taxable parcel of
69 residential real property; or

70 SECTION 5. Said paragraph (e) of said section 3 of said chapter 44B, as so appearing,
71 is hereby further amended by inserting after subparagraph (3) of said paragraph (e) the following
72 new subparagraph: -

73 (4) for an amount not exceeding \$100,000 of the value of each taxable parcel of class
74 three, commercial, and class four, industrial, property as defined in section 2A of said chapter 59.

75 SECTION 6. Subparagraph (2) of paragraph (b) of section 5 of said chapter 44B, as so
76 appearing, is hereby amended by inserting after the word “sites” at the end of the last sentence
77 the following words: - , the committee shall make recommendations with respect to community
78 housing based on the objectives set forth in section 12A(b), and, prior to making any

79 recommendation to the legislative body with respect to community housing, the committee shall
80 make the findings required pursuant to section 12A(f).

81 SECTION 7. Said section 5 of said chapter 44B, as so appearing, is hereby amended by
82 inserting after paragraph (f) the following paragraph: -

83 (g) The community preservation committee shall annually but not later than October 15
84 submit a report to the secretary of the executive office of environmental affairs identifying the
85 parcels of land that were acquired, improved or preserved with monies in the Community
86 Preservation Fund in the preceding fiscal year, the community preservation purpose for which
87 each such parcel is used, and any other information which the secretary requests for purposes of
88 developing and maintaining a database of the parcels throughout the commonwealth that are
89 acquired, improved or preserved under this chapter for community preservation purposes.

90 SECTION 8. Section 6 of said chapter 44B, as so appearing, is hereby amended by
91 striking out the second sentence and inserting in place thereof the following sentence: -

92 In each fiscal year, the legislative body shall make such appropriations from the Community
93 Preservation Fund as it deems necessary for the administrative and operating expenses of the
94 community preservation committee and for other administrative and operating expenses incurred
95 by the city or town resulting from its implementation of this chapter, but the annual
96 appropriations for such expenses shall not exceed an amount equal to 5 per cent of the annual
97 revenues deposited in the Community Preservation Fund.

98 SECTION 9. Section 7 of said chapter 44B, as so appearing, is hereby amended by
99 inserting after the word “committee” at the end of the last sentence of the second paragraph the
100 following words: - and to the city or town as permitted pursuant to section 6.

101 SECTION 10. Paragraph (b) of section 9 of said chapter 44B, as so appearing, is hereby
102 amended by striking out the first sentence and inserting in place thereof the following sentence: -
103 The state treasurer shall deposit or invest the fund in such manner as will secure the highest
104 interest rate available consistent with the safety of the fund and with the requirement that all
105 amounts on deposit be available for withdrawal without penalty for such withdrawal at any time.

106 SECTION 11. Said section 9 of said chapter 44B, as so appearing, is hereby further
107 amended by striking out paragraph (c) and inserting in place thereof the following: -

108 (c) The state treasurer shall make all disbursements and expenditures from the fund
109 without further appropriation, as directed by the commissioner of revenue in accordance with
110 this section and with section 10. The department of revenue shall report by source all amounts
111 credited to said fund and all expenditures from said fund. The commissioner of revenue shall
112 assign personnel of the department as it may need to administer and manage the fund
113 disbursements and any expense incurred by the department for such purposes and any expense
114 incurred by the registers of deeds and the assistant recorders to administer and collect the
115 surcharges pursuant to section 8 shall be deemed an operating and administrative expense of the
116 program. The commissioner of revenue shall annually on October 15 direct the state treasurer to
117 disburse an amount not to exceed one-half of one percent of the annual total revenue received in
118 the preceding fiscal year from a register of deeds or an assistant recorder pursuant to the

119 provisions of section 8 to such register of deeds or assistant recorder to pay operating and
120 administrative expenses of the program certified to the commissioner by the register of deeds or
121 assistant recorder and to disburse an amount not to exceed 5 percent of the annual total revenue
122 received by the state treasurer in the preceding fiscal year under the provisions of said section 8
123 to the department to pay operating and administrative expenses of the program.

124 SECTION 12. Paragraph (b) of section 10 of said chapter 44B, as so appearing, is hereby
125 amended by striking out the first sentence and inserting in place thereof the following sentence: -
126 The commissioner shall multiply the amount remaining in the fund after any disbursements made
127 for operating and administrative expenses pursuant to section 9(c) by 80 percent.

128 SECTION 13. Paragraph (g) of said section 10 of said chapter 44B, as so appearing, is
129 hereby amended by striking out the following words in the first sentence: - “and any necessary
130 administrative expenses have been paid in accordance with section 6,”.

131 SECTION 14. Section 12 of said chapter 44B, as so appearing, is hereby amended by
132 striking out paragraph (a) and inserting in place thereof the following paragraph: -

133 (a) Any real property interest acquired either in whole or in part with monies from the
134 Community Preservation Fund shall be bound by a permanent deed restriction that meets the
135 requirements of section 32 of chapter 184, limiting the use of the interest to the purpose for
136 which it was acquired; provided, however, that any permanent deed restriction solely concerning
137 a fee interest in real property that is acquired either in whole or in part with monies from the
138 Community Preservation Fund shall be exempt from the administrative approval requirements of
139 said section 32 of said chapter 184. The deed restriction shall run with the land and shall be

140 enforceable by the city or town or the commonwealth. A right to enforce the deed restriction
141 may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the
142 city or town. Notwithstanding the provisions of this section to the contrary, if any portion of
143 community housing is financed by one or more third parties, public or private, that are secured
144 by a mortgage on the property, the deed restriction on any real property interest acquired under
145 this chapter for the purpose of creating, preserving or supporting such community housing may
146 be made subordinate to any such mortgage provided that any party with the right to enforce the
147 deed restriction shall be given a reasonable opportunity to cure the default prior to termination of
148 the deed restriction.

149 SECTION 15. Said section 12 of said chapter 44B, as so appearing, is hereby further
150 amended by striking out paragraph (b) and inserting in place thereof the following paragraph: -

151 (b) Real property interests acquired under this chapter for the purpose of acquiring,
152 creating, preserving, rehabilitating or restoring open space or for the purpose of acquiring,
153 preserving, rehabilitating or restoring historic resources shall be owned and managed by the city
154 or town, but the legislative body may delegate management of such real property interests to the
155 conservation commission, the historical commission or the board of park commissioners, as
156 applicable, or to a nonprofit organization created under chapter 180 or chapter 203, or, in the
157 case of interests to acquire sites for future wellhead development, such real property interests
158 may be owned and managed by a water district, a water supply district or a fire district. Real
159 property interests acquired under this chapter for the purpose of creating, preserving, supporting,
160 rehabilitating or restoring community housing may be owned or managed or both by the city or
161 town, the housing authority, any nonprofit organization established by special act of the general

162 court the principal purposes of which include the creation, preservation or support of housing for
163 persons or families of low or moderate income, any nonprofit organization certified by the
164 United States Department of Housing and Urban Development as a community housing
165 development organization, any community development corporation any limited equity
166 cooperative housing corporation established pursuant to chapter 157B of the General Laws or
167 any persons or families of low or moderate income, subject to the provisions of section 12A.

168 SECTION 16. Said chapter 44B, as so appearing, is hereby further amended by inserting
169 after section 12 the following section: -

170 Section 12A. (a) An objective of each undertaking for the creation, preservation or
171 support of community housing that is funded in whole or in part under this chapter shall be to
172 provide for decent and affordable housing for persons or families of low or moderate
173 income. Toward this end, community housing created, preserved or supported in whole or in
174 part under this chapter shall be made available only to persons or families of low or moderate
175 income at a rental cost or purchase price that is affordable for such individuals or families based
176 on then current affordability standards for persons or families of low or moderate income used
177 by the commonwealth or the federal government for programs established to finance affordable
178 housing. Cities and towns shall, to the extent reasonably able without jeopardizing financial
179 feasibility, take steps to ensure the continued occupancy of any community housing created,
180 preserved, supported, rehabilitated or restored in whole or in part under this chapter by persons
181 or families of low or moderate income or to recoup their investment in the property if the
182 housing is resold and occupied by persons or families who are not of low or moderate income.

183 (b) The community preservation committee shall seek to achieve and shall give
184 preference to opportunities for the creation, preservation, support, rehabilitation or restoration of
185 community housing that satisfy one or more of the following additional objectives: (1) the reuse
186 of existing buildings or the construction of new buildings on previously developed sites; (2) the
187 leveraging of community preservation funds to maximize other sources of funding; and (3) the
188 maximization of the number of housing units created, preserved or supported for persons and
189 families of low or moderate income.

190 (c) The community preservation committee shall adopt a policy for selecting tenants and
191 purchasers of community housing created, preserved, supported, rehabilitated or restored from
192 funding under this chapter. The policy shall state: (i) the eligibility and application requirements
193 for persons or families of low or moderate income interested in renting or purchasing community
194 housing created, preserved, supported, rehabilitated or restored under this chapter; (ii) in the case
195 of rental housing, the eligibility and reporting requirements for continued tenancy of such
196 community housing; (iii) and the priorities to be observed by the owner or manager of the
197 community housing in selecting residents or purchasers, including any local preferences allowed
198 under law. The resident and purchaser selection policy shall be subject to, and the
199 implementation of such policy shall be carried out in accordance with, the anti-discrimination
200 provisions of G.L. c.151B. Notwithstanding the provisions of this section to the contrary, rental
201 community housing owned or managed by the housing authority shall be subject to the tenancy
202 selection and continued occupancy requirements set forth in section 32 of chapter 121B.

203 (d) Except as otherwise provided in this chapter, any funds provided to a housing
204 authority under this chapter, or any real property or interest therein acquired under this chapter

205 and transferred to the housing authority for its ownership or management thereof, for the purpose
206 of creating, preserving, supporting, rehabilitating or restoring community housing shall be
207 applied by the housing authority to create, preserve, support, rehabilitate or restore community
208 housing pursuant to the powers granted to, and subject to the conditions and requirements
209 imposed upon, the housing authority under chapter 121B of the General Laws.

210 (e) Prior to providing any loans, grants or other financial assistance to another entity or
211 person for the creation, preservation, support, rehabilitation or restoration of community housing,
212 the board of selectmen or the comparable executive body or officer of a town or the mayor or the
213 comparable executive body or officer of a city shall enter into an agreement with such other
214 entity or person to ensure that the loan, grant or other financial assistance will be applied for the
215 creation, preservation, support, rehabilitation or restoration of community housing, that any
216 benefit to any private entity or person resulting from such loan, grant or financial assistance will
217 be merely incidental to such primary public purpose, and that the other requirements and
218 objectives of this chapter are satisfied.

219 (f) Prior to recommending any funding for the creation, preservation, support,
220 rehabilitation or restoration of community housing to the legislative body of the city or town
221 pursuant to section 5(b)(2) of this chapter, the community preservation committee shall make the
222 following findings with respect to the proposed community housing: (i) that there exists a
223 shortage of decent and affordable housing available to persons and families of low and moderate
224 income within the city or town; (ii) that private enterprise alone cannot provide decent and
225 affordable housing to persons and families of low or moderate income without governmental
226 assistance; (iii) that the amount of city or town funding recommended for the undertaking is

227 reasonable in light of the number and quality of units of community housing to be created,
228 preserved or supported and in light of the other sources of funding likely to be available for the
229 undertaking; (iv) that the community housing created, preserved or supported as a result of the
230 undertaking will be affordable for persons or families of low or moderate income; (v) if the
231 undertaking involves the construction of new housing on a previously undeveloped site, that, in
232 the opinion of the community preservation committee, no reasonable opportunity then exists to
233 create an equal or greater number of units of community housing at the same cost to the city or
234 town by reusing an existing building then available or constructing the community housing on a
235 previously developed site within the city or town then available for the undertaking; and (vi) if
236 the community housing is to be owned or managed by a private entity or person, that any benefit
237 received by such entity or person as a result of the financial contribution made under this chapter
238 will be merely incidental to the public purpose served by such financial contribution.