

Article 15 - Municipal Affordable Housing Trust Frequently Asked Questions

Why is the creation of a local housing trust a benefit to the Essex?

A housing trust can advance the Town's local affordable housing goals. By establishing designated funds and creating a board to oversee their use, Essex can provide a local way to advocate for and facilitate the development of affordable housing. Many current and future residents cannot afford to purchase or rent a home in town because of the high cost of housing; the trust can establish a locally-directed and coordinated process to help meet this need.

Importantly, the trust can act swiftly to take advantage of opportunities in the housing market.

What can a local housing trust do?

A local housing trust allows municipalities to collect funds for affordable housing, separate them from the general fund into a trust fund, and designate and use the funds for local initiatives to create and preserve affordable housing.

Examples of what a local affordable housing trust fund can do include:

- Provide financial support for the construction of affordable homes by private developers (non-profit or for-profit)
- Rehabilitate existing homes and apartments to convert to affordable housing
- Increase affordability in existing and future housing developments
- Develop surplus municipal property for affordable housing
- Preserve properties faced with expiring affordability restrictions
- Create programs to assist low- and moderate-income homebuyers
- Create programs to help low- and moderate-income families make health and safety repairs
- Educate and advocate to advance affordable housing initiatives.

Further, it is often the case when developing affordable housing that local funds are the first committed funds to a project. A Trust can serve as a vehicle to aggregate existing resources as well as leverage new public and private resources to support the creation and preservation of affordable units by entities such as the Essex Affordable Housing Trust.

The Massachusetts Housing Partnership regularly collects and disseminates information about Municipal Affordable Housing Trusts through their Community Assistance Team. [The most recent guidebook](#) provides additional background and information about Trusts, including examples of Trusts in practice.

What controls the limits of the Trust's authority?

Although the concept of local housing trusts is not new, the state legislature concluded that – due to increased availability of local funding through inclusionary zoning, negotiated development fees, and state and federal funding – there was a need to provide specific legislation to allow communities to form their own municipal affordable housing trust funds. In 2005, the Massachusetts legislature passed the Municipal Affordable Housing Trust Fund Law (MGL c.44 s.55C), which effectively simplified the process of establishing a local housing trust and allowed it to be created through the Town Meeting process. Prior to 2005, municipalities were required to file Home Rule petitions to establish Trusts. This law also set guidelines on what local housing trusts can do, specifies who can serve on a local housing trust board, and establishes the powers a community can grant the board. Since the new law passed, 115 communities in Massachusetts have established municipal affordable housing trust funds. Should Essex Town Meeting accept the legislation and adopt the proposed bylaw, the Trust would be required to comply with the local bylaw.

Who would be members of the Trust?

The proposed Trust will consist of seven voting Trustees appointed by the Select Board. One of the Trustees shall be a member of the Board of Selectmen, one of the Trustees shall be a member of the Planning Board, one of the Trustees shall be a member of the Housing Authority, one of the Trustees shall be a member of the Community Preservation Committee, one of the Trustees shall be a member of the Finance Committee (provided that said member is authorized to serve pursuant to a unanimous vote of the Board of Selectmen and the Finance Committee pursuant to Section 2-4.1 of the Town of Essex Bylaws) or a former member of the Finance Committee, and there shall be two Trustees at large, who, to the extent possible, shall have backgrounds or experience in affordable housing, and specifically those with financial, legal, real estate or development expertise. An at-large member may also be any former member of the Essex Board of Selectmen.

Only persons who are residents of the Town of Essex shall be eligible to hold the office of Trustee and the term of any Trustee who no longer resides in the Town of Essex shall immediately expire. Trustees shall serve for a term of two years, except that three of the initial Trustee appointments shall be for a term of one year. The Board of Selectmen may reappoint Trustees for succeeding terms, and there is no limit on the number of terms that a Trustee can serve

Who will manage any properties developed or acquired?

The Affordable Housing Trust facilitates funding but is not responsible for property management. That function would fall to a third party.

Are the Trustees subject to the Conflict-of-Interest Law and are Trust meetings subject to the Open Meeting Law?

The Trust and the Trustees would be subject to General Laws Chapter 268A, the Conflict-of-Interest Law, and the Open Meeting Law.

What funds can be used in a local housing trust?

The sources vary among housing trusts. Under MGL c.44 s.55C sources of funding for trusts include: Community Preservation Act (CPA) funds, inclusionary zoning payments, negotiated developer fees, the Town's general fund, payments or fees from special bylaws such as short term rentals, grants, gifts, and private donations. However, any funding from the Town's general fund or from the CPA would require Town Meeting action. Approximately 77% of the communities with a housing trust have also adopted the CPA.

Please note that establishing the Affordable Housing Trust does not create any new taxes or fees on residents. Instead, it establishes a fund into which gifts and appropriations (such as Community Preservation Funds) may be directed for use in affordable housing opportunities.

What financial oversight of the trust will be required?

The Trustees will work with the Essex Treasurer/Collector, who will be custodian of the funds. The Trustees will also need to work with the Essex Town Accountant. The books and records of the Trust are required to be audited annually by an independent auditor in accordance with accepted accounting practices and are available to the public. All funds, property and other assets will be accounted for by the Town Accountant who shall issue quarterly reports to the Trustees, Select Board, Town Administrator and the Finance Committee, and in an annual report to the Town Meeting.

Will the Trust's activities (including potential borrowing or property purchase) have the potential to negatively affect the Town, the Town's financial stability, bond rating or borrowing capacity?

A trust is a separate legal entity from the municipality, and as such, its financial actions would not impact the Town's financial actions.

What neighboring communities have Affordable Housing Trusts? All neighboring communities have Trusts, including Beverly, Manchester, Ipswich, Gloucester and Rockport.

How do you convert housing to be affordable vs builders and investors for profit that is not affordable?

Trust funds are used to support non-profit or for-profit developers in building housing that is affordable. Any development that receives Trust funds will sign an agreement that units will be restricted as affordable, as a condition of receiving the funds. This will be managed through deed restrictions and mortgage documents.

If the town or the Trust owns the affordable housing unit and the courts decide that the tenant does not have to pay rent (as happened during the COVID pandemic) how does the town or Trust protect itself? How does it pay whatever costs (water/sewer, etc.) it incurs over that period of time?

The goal of establishing the Trust will be to **NOT OWN** the housing unit. The Affordable Housing Trust will just be one of several funding sources that make any individual project work. Usually, the Trust's limited funds are used to leverage State and/or Federal grants and an organization with the mission of managing housing or a developer that holds the title and manages the units. The Trust is just a catalyst—not the owner or the main source of funding. The Town's money helps to secure the affordable restriction in perpetuity.

The owner of the property will most likely be a developer, not the town. If property taxes are not paid, the town can put a tax lien on the property just like any other home in Essex.

If someone is unable to work or has no means to pay their portion of the rent, what happens and how does the town ensure a steady stream of income to cover costs?

As the town will not own the property, this will not have an impact on our town budget. The property owner/manager will be responsible for this. Note that all income eligible tenants will have access to state programs such as RAFT and other emergency assistance programs, just like any other income-eligible tenant.

Can you explain the eviction process?

This is not a town issue. The Town partners with a property developer to build, manage, and ensure that deeds are restricted in perpetuity, but the property owner/manager will handle any necessary evictions through the same process they would with any tenant.

Where I can I learn more?

- The Housing Toolbox has a wealth of information on municipal affordable housing trusts:
<https://www.housingtoolbox.org/local-tools/housing-trust-funds>
- The Massachusetts Housing Partnership's Municipal Affordable Housing Trust Guidebook:
https://www.housingtoolbox.org/writable/files/resources/MAHTGuidebook_2018.pdf