

ARTICLE 18. To see if the Town will vote to accept the provisions of Massachusetts General Laws Chapter 44, Section 55C, and to establish a trust to be known as the Manchester-by-the-Sea Affordable Housing Trust Fund, whose purpose shall be to provide for the creation and preservation of affordable housing in the Town of Manchester-by-the-Sea for the benefit of low and moderate income households, and in implementation thereof will vote to amend the Town's Manchester-by-the-Sea General By-Laws by adding the following as Article XXI, or to take any other action relative thereto.

Town of Manchester-by-the-Sea General By-laws Article XXI

Section 1 Affordable Housing Trust

There shall be a Manchester-by-the-Sea Affordable Housing Trust, the purpose of which shall be to provide for the preservation and creation of affordable housing in the Town Manchester-by-the-Sea for the benefit of low and moderate income households. The Trust shall be governed by Trustees in accordance with Massachusetts General Laws Chapter 44, Section 55C and the authority granted by Town Meeting, as revised from time to time.

Section 2 Name of the Trust

This trust shall be called the "Manchester-by-the-Sea Affordable Housing Trust", herein referred to as the Trust.

Section 3 Purposes

The purpose of this Trust shall be to provide for the creation and preservation of affordable housing in the Town of Manchester-by-the Sea for the benefit of low and moderate income households and in furtherance of this purpose, to acquire by gift, purchase, or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property, both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that all property comprising this Trust and the net earnings thereof shall be used only in the Town exclusively for the benefit of all of the inhabitants of the Town of Manchester-by-the-Sea for the creation and preservation of affordable housing for which this Trust was formed and no part of the activities of the Trust shall consist of propaganda or otherwise attempting to influence legislation or participation in or intervention in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office and no part of the net earnings of this Trust shall inure or be payable to or for the benefit of any private individual or corporation.

Section 4 Board of Trustees

There shall be a Board of Trustees (the "Board") consisting of seven (7) Trustees who shall be appointed by the Board of Selectmen (5 members) and the Town Moderator (2 members). The members of the Board shall be comprised of as follows:

- one (1) member of the Board of Selectmen, or its designee;
- one (1) member of the Community Preservation Committee or its designee;
- one (1) member of the Manchester Housing Authority or its designee;
- one (1) member of the Planning Board or its designee;
- one (1) member of the Finance Committee or its designee; and
- two (2) citizens at large selected by the Town Moderator

Section 5 Tenure of Trustees

Only persons who are residents of the Town shall be eligible to hold the office of Trustee. Trustees shall serve for a term not to exceed two years and may be re-appointed at the discretion of the Board of Selectmen or Town Moderator, as applicable. Any Trustee who ceases to be a resident of the Town shall cease to be a Trustee hereunder provided that a written notification of the change in residence has been filed with the Town Clerk. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk and recorded with the Registry of Deeds and filed with the Land Registration Office. If a Trustee shall

die, resign, or for any other reason cease to be a Trustee hereunder before his/her term of office expires, a successor shall be appointed by a joint meeting of the appointing authority and the remaining Trustees to fill such vacancy, provided that in each case the said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk and recorded with the Registry of Deeds and filed with the Land Registration Office. Upon the appointment or election of any succeeding Trustee and the filing of such appointment or a certificate of such election the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder. Of the original Trustees, four shall hold office until July 1, 2017 and three shall hold office until July 1, 2018.

Section 6 Meetings of the Trust

Meetings of the Trust shall be held not less than quarterly and at all other times deemed advisable at such time and at such place as the Trustees shall determine. A written notice stating the place, day, hour and agenda of each Meeting of the Trust shall be posted at Town Hall at least two (2) business days before the date of such meeting. A quorum at any meeting shall be a majority of the Trustees qualified. Meetings may be scheduled as needed in conformance with the requirements of the Massachusetts open meeting laws.

Section 7 Powers of Trustees

The Trustees, for the carrying out of the above purposes and except as herein otherwise specifically provided, shall have the same powers with respect to all real and personal estate at any time held by them as if they were the absolute owners thereof, and without limiting the foregoing generality:

- a) to solicit and accept grants, gifts, devises and bequests or otherwise acquire real or personal property;
- b) to invest any of the trust property in such manner as they may deem advisable without being limited as to the kind or amount of any investment;
- c) to sell and exchange any real or personal property or any interest therein for such consideration and upon such terms and conditions as they deem advisable;
- d) to join with others in the acquisition of real property or any interest therein;
- e) to borrow money and mortgage or pledge any part of the trust estate assets and issue notes or other indebtedness;
- f) to join with others in borrowings, mortgages and pledges and to guarantee and become surety on obligations of others, in transactions in which the Trust has an interest;
- g) to execute, as lessor or lessee, leases;
- h) to restore, construct, repair and maintain buildings and other improvements and establish such reserves as they deem necessary therefore;
- i) to pay, compromise or adjust all obligations incurred and rights acquired in the administration of the Trust;
- j) to obtain advice of counsel and to rely thereon;
- k) to employ such other persons, agents, brokers, managers, accountants, or advisors as they may deem advisable;
- l) and to execute, acknowledge and deliver all such contracts, deeds, mortgages, leases, discharges, and partial releases of mortgages, or other instruments as they may deem advisable in the course of the administration of the Trust.

The Trustees shall refrain from exercising any powers in such manner as to violate the provisions of said Chapter 44, Section 55C.

Section 8 Limitations on the Powers of Trustees

These powers shall be subject to the following limitations:

- a) any purchase, sale, lease, exchange, transfer, or conveyance of any interest in real property must be approved by five of the seven voting members.
- b) the Trustees may incur debt, borrow money, grant mortgages, and pledge Trust assets only in an amount not to exceed 80% of the Trust's total assets.
- c) no debt incurred by the Trustees shall constitute a pledge of the full faith and credit of the Town of Manchester-by-the-Sea and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Manchester-by-the-Sea with an acknowledgement of said statement by the holder.

Section 9 Acts of Trustees

A majority of Trustees 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. The Trustees may, by instrument executed by all the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including power to execute, acknowledged or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust. The Trustees shall not delegate the authority to amend or terminate the Trust and no such delegation shall be effective. 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. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do or see to the application of anything paid to or upon the order of the Trustees. 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, nor for errors in judgment, nor mistakes of law or fact made in good faith nor in reliance in good faith on advice of counsel not for other acts or omissions in good faith.

Section 10 Liability

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town of Manchester-by-the-Sea. The Trust is a public employer and the Trustees are public employees for the purposes of G. L. Chapter 258. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G.L. Chapter 268A.

Section 11 Amendments

This Declaration of Trust may be amended from time to time except as to those provisions specifically required under G. L. Chapter 44 Section 55C and Manchester-by-the-Sea By-laws, by an instrument in writing signed by all of the Trustees and approved at a meeting called for that purpose, provided that in each case, a certificate of amendment has been recorded with the Registry of Deeds and filed with the Land Registration Office.

Section 12 Accounts

The books and records of the Trust shall be maintained by the Town Treasurer and audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the Town.

Section 13 Duration of the Trust

This Trust shall be of indefinite duration. However, it may be terminated by a vote of Town Meeting provided that an instrument of termination, together with a certified copy of the Town Meeting vote, are duly recorded with the Registry of Deeds and the Land Registration Office.

Upon termination of the Trust, subject to the payment of or making provision 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 of Manchester-by-the-Sea and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

Section 14 Authority shown by Record to be Conclusive; Certificate as to Facts

Every contract, deed, mortgage, lease and other instrument executed by a majority of the Trustees as appears from instruments or certificates recorded with said Registry of Deeds and Land Registration Office 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 delegations of authority pursuant to Section 9 hereof and instruments of amendment pursuant to Section 10 hereof and an instrument of termination pursuant to Section 12 hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by all of the Trustees. Any person dealing with the Trust property or the Trustees may always 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 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.

Section 15 Titles

The titles to the various Sections herein are for convenience only and are not to be considered part of said Sections nor shall they affect the meaning or the language of any such Section.

Per petition of the Board of Selectmen

WE RECOMMEND APPROVAL (WITH A VOTE OF 5-4)

The Board of Selectmen will make its recommendation on the Town Meeting Floor