

# TOWN OF WESTFORD

## STORMWATER FUNDING AND FINANCING ALTERNATIVES

Final Report – December 2016



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# BACKGROUND

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As part of the Stormwater Management Master Plan project, the consultant team (Tighe & Bond with partner Raftelis Financial Consultants) is working with Town staff to quantify probably future stormwater program costs and considering options for the best way to fund the ongoing stormwater program. Currently, the Town spends about \$600,000 annually on this program; this cost includes elements of administration, drainage system operation and maintenance, capital improvement projects, and program management and compliance. About one third of this spending is staff salaries and benefits allocable to stormwater management. Funding for the stormwater program costs currently comes out of the general fund, which is mostly supported by property taxes. See the SWMMP Volume 2: Long-Term Capital Improvement Plan, Section 7 for details and Appendix A for a summary of current program costs.

In the next few years, with a new Massachusetts Small MS4 General Permit effective July 1, 2017, program costs will increase dramatically. Town staff and the consultant team have been working to evaluate the options available for supplementing existing stormwater funding or changing the funding method entirely to accommodate these increasing costs. The purpose of this report is to summarize this effort and contextualize the funding choices.

Three potential ways to meet the revenue requirements of the program are:

- ) Continued property tax funding, potentially with an increase in tax rates
- ) Establishing a Municipal Water Infrastructure Investment Fund
- ) Establishing an enterprise Stormwater Utility and charging user fees

The remainder of this report lays out the probable future stormwater program costs as well as detailing some of the factors that might influence the funding choices to be made between the three main options above.

## STORMWATER PROGRAM AND REVENUE REQUIREMENTS

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Key components of the Town's stormwater program include capital improvement projects and program management and compliance as well as operation and maintenance and staff salaries to support the stormwater program. The Town currently spends around \$600,000 annually on the stormwater program, funded primarily through property taxes. Moving forward, these stormwater program costs are expected to increase to at least \$840,000 per year, and depending on maintenance and capital needs that are still not fully quantified, the annual costs could be as high as \$2,500,000. Table 1 on the following page shows these ranges of increase and the various cost types that feed into the estimate, and Appendix A provides more information on the how these figures were built up. See the SWMMP Volume 2: Long-Term Capital Improvement Plan, Section 7 for details. For the purposes of evaluating the funding options herein, a near-term future stormwater program cost of \$1,500,000 is modeled in the



scenarios. It is important to note that this is simply a choice of convenience and the actual future costs could be different.

Table 1. Preliminary Future Stormwater Program Costs

Program	Staff Salaries	Operation & Maintenance	Program Management & Compliance	Capital Improvement Projects	Annual Program Cost
Existing	\$ 185,000	\$ 150,000	\$ 50,000	\$ 180,000	\$ 570,000
Future – Advanced Level of Service (A)	\$ 380,000	\$ 320,000	\$ 230,000	\$ 1,500,000	\$ 2,500,000
Future – Protective Level of Service (B)	\$ 371,000	\$ 240,000	\$ 170,000	\$ 700,000	\$ 1,500,000
Future – Minimum Compliance Level of Service (C)	\$ 250,000	\$ 160,000	\$ 130,000	\$ 300,000	\$ 840,000

## KEY CONSIDERATIONS

Typically, funding for a municipality’s stormwater management program is limited to two stable sources that can generate the amount of ongoing funding necessary: a tax rate increase or the introduction of a stormwater management user fee. In some cases, there are ancillary revenue sources such as development fees, fees-in-lieu or special assessments that can supplement these primary sources, but these are often severely limited in the amount of revenue they can generate and are often tied to specific activities or uses. In Massachusetts, there is a third option explained in more detail below that is a variation on traditional tax funding and that may avoid many of the limitations caused by Proposition 2-1/2. Thus, three funding options are considered, and for each, some key considerations are weighed. These are as follows:

- ) **Governance.** The chosen funding mechanism will have to fit within the Town’s existing governance structure, or could require a new structure.
- ) **Administration.** The Town will have to administer the funding mechanism, and some options are more administratively intensive.
- ) **Data & Systems Requirements.** The processes by which taxes or fees might be levied for the different funding mechanisms rely on different data and would be managed using different (in some cases new) software tools. Consideration of the availability of those data and tools is critical.
- ) **Public perception.** As with any local government decision, it is key that the public support a particular alternative. This support may be founded on the decision reflecting both public benefit and fairness across the citizen base.
- ) **Legal Availability.** There are a number of funding mechanisms that vary from state to state and even across smaller units of government. The Town must pursue an alternative that is compliant with the enabling legislation.
- ) **Financial Sufficiency and Stability.** The funding mechanism is most useful if it can fund the full set of program revenue requirements on an ongoing basis. Included in this financial sufficiency is the flexibility for collected revenues to be used for the program’s particular needs.
- ) **Rational Nexus to Service Provision.** Given the distinct nature of stormwater service provision and cost drivers for providing that service, a fair funding mechanism will be founded on the relationship between the two. Unfair mechanisms may lack public support or be unsupportable.



# FUNDING OPTIONS

A description of each funding option, along with an evaluation of how the option compares on the key considerations is provided below.

## PROPERTY TAXES

Property taxes make up the vast majority of Town’s current revenue. In FY 2016, the Town anticipates just over \$70 million in revenue from this source. There are minimal restrictions to the use of these funds, so if they are available, they can be put toward the stormwater program’s revenue requirements. However, the actual amount of funds is limited by Massachusetts’s Proposition 2 ½ (G.L. c.59 §21C)

- ) Requires that property tax levy ceiling not exceed 2.5% of total cash value
- ) Requires that property tax increase not exceed 2.5% of prior year levy (but for new construction and growth)
- ) Already has an exception for some water/sewer debt
- ) Voters can approve override by simple majority

Table 2 below shows a summary of Town revenue and revenue sources for FY2013 (Actual), FY2014 (Actual), FY2015 (Budgets, and Actual through December 31, 2014), and FY2016 (Projected).

*Table 2. Town of Westford Revenue Summary, adapted from that presented to the Board of Selectmen in Revenue Overview, January 29, 2015*

Revenue Source	FY2013 Actual	FY2014 Actual	FY2015 Budget	FY2015 Actual 12-31-14	FY2016 Projected	Budget Increase	Budget Increase %
Property Taxes*	61,929,283	64,828,935	67,843,888	33,711,266	70,430,159	2,586,271	3.81%
Local Revenue	7,993,823	8,497,342	8,077,362	2,383,258	8,224,071	146,709	1.82%
State Aid	19,846,627	19,742,866	20,330,882	9,195,826	20,279,854	(51,028)	-0.25%
Approp. From Free Cash**	697,000	769,934	4,134,165	4,134,165	3,641,557	(492,608)	-11.92%
Free Cash Applied**	1,851,116	1,995,414	149,339	149,339	874,670	725,331	485.69%
<b>Total General Fund</b>	<b>92,317,849</b>	<b>95,834,492</b>	<b>100,535,637</b>	<b>49,573,854</b>	<b>103,450,312</b>	<b>2,914,675</b>	<b>2.90%</b>
Enterprise Revenue	6,112,797	6,536,862	7,273,936	3,672,378	6,674,377	(599,559)	-8.24%
Other Available Funds**	3,262,513	2,960,492	2,065,401	2,960,492	1,355,708	(709,693)	-34.36%
<b>Total Revenue</b>	<b>101,693,159</b>	<b>105,331,845</b>	<b>109,874,974</b>	<b>56,206,724</b>	<b>111,480,397</b>	<b>1,605,423</b>	<b>1.45%</b>

\* These figures represent the levy limit, not the actual amount collected. \*\* Amounts included are appropriated at Town Meeting.

## Advantages

- A property tax can be used to bring in the \$1.5 million needed for the stormwater program, and the funding is flexible enough to be used for any stormwater-related purpose
- Existing mechanism – the processes are in place to levy and collect taxes
- Because relatively few properties in Westford are tax exempt, tax funding casts a broad net
- Tax funding is simplest to explain and administer



## Disadvantages

Tax value does not relate well to stormwater demand or impact, so tax funding for stormwater management is viewed as not particularly equitable. This does not necessarily mean the approach is untenable, and in Westford it may be a less significant issue than in some other jurisdictions, but it is notable in any event. For example, warehouses, retail stores, and parking lots may have large expanses of property and hard surfaces that prevent or impede infiltration, but with a low tax valuation. The impervious surface on these properties places a significant demand on the Town's drainage system since all or most of the rain that falls on these properties needs to enter the drainage system, potentially causing flooding, infrastructure damage, and pollution. Conversely, dense, small footprint properties may have little quantities of impervious area, but have comparatively high property tax valuations. Under a tax funding scheme properties with higher tax valuations will pay more toward stormwater management regardless of the actual demand they place on the Town.

Similarly, a second disadvantage of tax funding is that it does not provide a mechanism for payers to reduce their costs by undertaking various green practices on their properties.

## MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND (MWIIF)

In 2014, the Legislature enacted G.L. c.40 §39M, a statute allowing for a new municipal revenue stream for funding expenditures related to water, wastewater, and stormwater infrastructure maintenance and improvements, called the Municipal Water Infrastructure Investment Fund (MWIIF). This is structured as a surcharge on the Town's property tax rate of up to 3% of that rate. In the Town of Westford, since real property taxes bring in about \$70 million, the surcharge would be able to raise, in the near term, a maximum of approximately \$2.1 million in funds for that purpose. The MWIIF does not count toward the tax rate or tax revenue limits set forth in Proposition 2½. Establishing an MWIIF requires approval by the Town's legislative body and a majority vote by all voters in the next regular election.

The Town has accepted a similar statute and established a Community Preservation Fund in the past, so it is already familiar with the oversight, governance, and management of such a fund. Despite the similarities, however, the MWIIF is a fairly new funding mechanism. Town Counsel reviewed the statute and, in January 2016, provided an opinion on the authorized use of the funds, which was interpreted as being limited to infrastructure-related costs rather than staffing costs. The opinion letter from Town Counsel is included in this report as Appendix B. Shortly thereafter, the Massachusetts Department of Revenue released guidelines for the MWIIF (see Appendix C), clarifying the scope of allowable fund expenditures to include costs for planning, design and engineering as well as "actual construction or improvement of the assets. It also includes any debt service on debt issued to finance the projects." This expansion still excludes some costs the Town will incur, such as program compliance, staffing, water quality monitoring, and public education.



## Advantages

- An MWIF can be used to bring in the \$1.5 million needed for the stormwater program.
- The Town has used a similar mechanism in the Community Preservation Fund.
- The approach is relatively simple to explain and administer.

## Disadvantages

- Similar to regular tax funding, this approach does not provide for the fairest allocation of stormwater costs because based on tax value, not cost drivers.
- Preliminary legal opinions and guidance state that the funds can be used for limited purposes.
- Similar to regular tax funding, this approach does not provide a mechanism for payers to reduce their costs by undertaking various green practices on their properties.

## STORMWATER UTILITY

For many public water and wastewater utilities, costs associated with their operation and maintenance are paid for out of an enterprise fund, which is in turn funded by revenue from fees for that service. Similarly, stormwater management programs can use this structure and maintain a separate public enterprise fund. This fund, and the associated task of establishing a fee schedule, has been authorized by the Commonwealth [G.L. c.83 §16] as an acceptable way to raise money for stormwater management. Specifically, a fee can be charged to generate funds “to plan, construct, operate and maintain stormwater facilities and to conduct stormwater programs.”

Under this construct, the Town would charge a user fee to each property (a user of the Town’s stormwater service) based on the characteristic(s) of the property that drive(s) stormwater management costs, most commonly this would be impervious area. The Town could charge for a standardized unit of impervious area to simplify billing, resulting in a flat rate (or a series of flat rates) for residential customers and a per-unit charge for non-residential customers.

Figures 1, 2, and 3 show a single family residential property, a small commercial property, and a large commercial property, along with the measured impervious area for each (yellow outlines), derived from the aerial imagery. The Town would likely bill the stormwater fee on the existing water bill, creating new customers as needed. The normal approach would be to perform a rate study and set rates at a level that fully funds the program. However, the rates could be set to partially fund the program if desired, and the Town could



*Figure 1. Single Family Residential*



continue partial funding through other means, most likely property taxes.

As part of the fee structure, the Town could implement a stormwater fee credit program. A stormwater fee credit program allows customers the opportunity to reduce their stormwater fees by undertaking best management practices or tools (BMPs) on their properties.

Credit programs are common among stormwater fee programs across the nation. The credit program can be designed to incentivize private investment in stormwater best management practices or reward good practices that evolving regulations might actually require.



*Figure 2. Smaller Non-Residential*



*Figure 3. Larger Non-Residential*

## Advantages

- A stormwater utility fee can be used to bring in the \$1.5 million needed for the stormwater program.
- A fee is a flexible funding within broad definition of 'stormwater management.'
- This mechanism is considered the most fair, since it is the most closely related to cost drivers.
- Because the fee is driven by property characteristics, a fee allows for customers to positively impact their individual charge.

## Disadvantages

- A stormwater utility is more administratively intensive.
- It will require some effort to explain the (relatively) new concept to ratepayers.
- Because some Town properties are not water customers, the utility billing system will need some accounts to be added.



## GRANTS AND LOANS

While grants and loans are a way to leverage local funding with State or Federal dollars for occasional projects and Westford has been successful supplementing their program through grants in the past (e.g., Massachusetts Smart Growth Technical Assistance Grant to develop their stormwater bylaws), the consultant team did not consider this to be a reliable part of the Town's long-term stormwater management funding strategy. This is in part because, apart from their uncertainty, with the exception of the Massachusetts Clean Water State Revolving Fund low-interest loan program, the grants and loans available typically cannot be used to directly fund NPDES Small MS4 Program compliance. There is an added cost to prepare competitive grant applications as well as additional administrative costs associated with these funding sources.

In the SWMMP Volume 2: Long-Term Capital Improvement Plan, Section 7, Tighe & Bond describes and compares the applicability, advantages, and disadvantages of several alternative funding sources available to implement the SWMMP recommendations (including the Massachusetts Chapter 90 Program, Section 319 Nonpoint Source Competitive Grants Program, Statewide Water Management Act Grant, and others). Some grants, loans, or other alternative funding sources may supplement the primary source, but are not anticipated to fulfill the Town's funding needs. The Town will continue to take advantage of these opportunities to augment SWMMP implementation when appropriate.

### Advantages

- Additional funding sources could lessen the burden on the Town's taxpayers or ratepayers

### Disadvantages

- Grants and loans are not a reliable funding source.
- There are increased administrative costs associated with grant or loan application and management.

## TAXES VS. STORMWATER UTILITY FEE

If the Town's near-term stormwater funding need is \$1,500,000 per year, any of the three funding methods may generate the needed amount, although the MWIIF may not be useful to fund salaries and benefits, and although Proposition 2 ½ may influence property tax fund availability depending on other needs and priorities. However, the way that these costs would be spread across the rate or property base of the Town is different. To achieve \$1,500,000 through an MWIIF tax surcharge, the MWIIF would have to be set at about 2.1%. The average single family property tax for the Town is about \$7,312. Using 2.1% for the MWIIF and the average property tax, the average single family property would be assessed about \$150 in new taxes annually to help generate the revenues. This increment would be the same if generated through a routine tax increase. Tax exempt properties would not contribute, and those with high tax values would contribute substantially more. In some cases, portions of these increases would be blunted for taxpayers who were able to deduct property taxes from other tax payments they make.



The stormwater utility fee approach would likely use an impervious (hard surface) area rate structure. The consultant team has gathered, reviewed, and evaluated various parcel, impervious area, and aerial imagery data for Westford and determined that the Town has approximately 8,100 parcels (some vacant) with impervious area totaling over 47,200,000 square feet. For those parcels that are residential (more than 6,000), the average impervious area is about 3,800 square feet. In order to generate \$1,500,000 in revenue, an impervious area rate could be set, and simplified version of that rate could be applied to each parcel. Under this construct, and using the preliminary measurements shown above, the average single family home in Westford would pay about \$120 annually.

Note that this relative rate does not reflect the result of a thorough rate-setting process. Rather, it reflects a one-time revenue requirement fulfilled through two different means. Should the Town choose to pursue establishing an enterprise stormwater utility and implementing a fee, it should also embark on careful rate-setting that considers, at a minimum: rate stability, fund balances and emergency reserves, maintenance vs capital needs and the potential for issuing debt.

## RECOMMENDATION

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Both forms of tax funding, though simple, may place difficult limitations on the Town's stormwater program. When tax funding is used, tax value is the only metric used in determining a property's charge, and green practices that may aid the Town, or even be required by the Town, cannot be incentivized directly. In general, the rational nexus between the demand a property places on the Town for stormwater service and the charge for that property is weak. In addition to these two overarching limitations, the MWIIF may not be useful for funding personnel costs, which are a significant percentage of the expected future program burden.

Although the formation of a stormwater utility enterprise will have an initial cost that the other approaches can largely or completely avoid, and although administering such a fee will cause the Town to incur ongoing new costs for administration, this approach has none of the tax funding limitations. It is more equitable, more flexible, and can be scaled up or down as needed. If revenue requirements grew closer to \$2,500,000 such a fee could still generate the needed funds where the 2½% or MWIIF limits might prevent full funding through taxes. Use of this approach would preserve tax funds for other purposes and protect the MWIIF option for a future need if and when one is identified. Because of these advantages the stormwater utility fee should be strongly considered.



## Appendix A: Memorandum to Board of Selectmen Stormwater Management Funding Options



STORMWATER FUNDING AND  
FINANCING ALTERNATIVES  
REPORT

DECEMBER 2016





# TOWN OF WESTFORD

## ENGINEERING DEPARTMENT

*PAUL M. STARRATT, P.E.*  
Town Engineer  
*JEREMY R. DOWNS, P.E.*  
Assistant Town Engineer

**To:** Town Manager Jodi Ross

**From:** Paul Starratt, P.E.

**Re:** Stormwater Management Funding Options

**Date:** February 3, 2016

The Engineering Department has been working with our Stormwater Management Master Plan consultant, the Stormwater Advisory Group and Town Counsel to prepare the attached information regarding funding options for the town's drainage infrastructure. We would appreciate the opportunity to make a brief presentation to the Selectmen at their February 9<sup>th</sup> meeting in order to solicit their feedback and comments. For your further consideration, I have included the following documents in this memo:

- Board of Selectmen Briefing Document - Raftelis Financial Consultants, Inc.
- Preliminary Opinion of Probable Costs - Tighe & Bond, Inc.
- Municipal Water Infrastructure Investment Fund Memo – Kopelman and Paige, P.C.



As part of the Stormwater Management Master Plan project, the consultant team (Tighe & Bond and their partners Raftelis Financial Consultants) is working with Town staff to quantify probable future stormwater program costs and considering options for the best way to fund the stormwater program both as it ramps up and in perpetuity. Currently, the Town spends about \$600,000 annually on its stormwater program, which includes elements of administration, drainage system operation and maintenance, capital improvement projects, and program management and compliance. About 1/3 of this spending is staff salaries and benefits allocable to stormwater management. Funding for the stormwater costs currently comes out of the general fund. Stormwater costs are expected to increase dramatically in the near term. This briefing is to provide information to the Town’s elected officials and seek feedback on next steps for funding the expanding stormwater management program.

A list of the funding options is provided below, followed by a comparison table:

### Property Taxes

In FY 2017, the Town anticipates \$70 million in property tax revenues. If property tax funds are available, they can be put toward the stormwater program. Proposition 2 ½ could make funds availability a challenge.

### Municipal Water Infrastructure Investment Fund (MWIIF)

In 2014, the Commonwealth approved making available to municipalities a new revenue stream for funding local water, wastewater, and stormwater infrastructure called the Municipal Water Infrastructure Investment Fund (MWIIF). This is designed to function as a surcharge on the property tax rate of up to an additional 3%, and does not count toward the Proposition 2½ limits. Establishing an MWIIF requires a vote of the people.

Town Counsel has reviewed the statute and provided an opinion on the authorized uses of the funds, which may be limited to infrastructure-related capital and operation and maintenance costs rather than staffing costs, and which have very limited flexibility with regard to fine tuning the surcharge to accommodate special cases.

### Stormwater Utility

The Commonwealth of Massachusetts enables municipalities to establish enterprise utility funds for their stormwater programs, creating a dedicated funding stream from user fees. Under this approach, the Town would charge a user fee to each property (a user of the Town’s stormwater service) based on the characteristic of the property that drives stormwater management costs, impervious area. The Town would likely bill the stormwater fee on the existing water bill, creating new customers where properties are currently on well water.

	Financial Sufficiency	Advantages	Disadvantages
Property Taxes	<ul style="list-style-type: none"> <li>Limited by Prop 2 ½</li> </ul>	<ul style="list-style-type: none"> <li>Flexible funding</li> <li>Existing mechanism</li> <li>Simple to explain and administer</li> </ul>	<ul style="list-style-type: none"> <li>Does not provide fairest allocation of stormwater costs</li> <li>Customers can’t mitigate stormwater costs</li> </ul>
MWIIF	<ul style="list-style-type: none"> <li>Maximum of about \$2.1 million with current tax rate and tax base</li> </ul>	<ul style="list-style-type: none"> <li>Town has used similar mechanism in CPA</li> <li>Simple to explain and administer</li> </ul>	<ul style="list-style-type: none"> <li>Does not provide fairest allocation of stormwater costs</li> <li>Limited use of funds; legal guidance unclear</li> <li>Customers can’t mitigate stormwater costs</li> </ul>
Stormwater Utility	<ul style="list-style-type: none"> <li>Rates can be set at a level that fully funds operating costs and plans capital investments</li> </ul>	<ul style="list-style-type: none"> <li>Flexible funding</li> <li>Fair, based on cost of service and demand</li> <li>Customers can mitigate fees</li> </ul>	<ul style="list-style-type: none"> <li>More administratively intensive</li> <li>Requires more effort to explain</li> </ul>



# Westford Stormwater Management Master Plan

## Preliminary Opinion of Probable Costs

	Staff Salaries	Operation and Maintenance	Program Management and Compliance	Capital Improvement Projects	Annual Program Cost
<b>Existing</b>	\$185,000	\$150,000	\$50,000	\$180,000	\$570,000
<b>Future</b>					
<b>Level of Service</b>					
<b>A - Advanced</b>	\$380,000	\$320,000	\$230,000	\$1,500,000	\$2,500,000
<b>B - Protective</b>	\$370,000	\$240,000	\$170,000	\$700,000	\$1,500,000
<b>C - Minimum Compliance</b>	\$250,000	\$160,000	\$130,000	\$300,000	\$840,000

**Notes:** This Preliminary Opinion of Probable Costs was developed with the following assumptions. All costs will be refined during completion of the SWMMP and after the final NPDES Small MS4 General Permit is promulgated.

- Staff Salaries:** Existing staff salaries include the following staff at **15%** of FY17 salary: Town Engineer, Asst. Town Engineer, GIS Coordinator, Highway Superintendent, Crew Supervisor, Operations Supervisor, and Equipment Operators / Laborers.
- Future Staff Salaries:** Level C and Level B assume the same staff at **20%** and **30%** of FY17 salaries, respectively. This corresponds to the increasing staff time required to implement the new Small MS4 permit and SWMMP. Level A includes the addition of a full-time stormwater coordinator and additional Equipment Operators / Laborers.
- Operation & Maintenance:** Existing costs are based on current expenditures in the FY17 Highway budget including drainage maintenance, dam repairs, diesel fuel (15% of total), vehicle maintenance (25% of total), equipment maintenance (25% of total), pipe & pipe supplies, and other misc. supplies and expenses. Future Level C includes the cost to contract catch basin cleaning. Level B and C show a percent increase to be refined upon completion of the SWMMP.
- Program Management and Compliance:** The Existing costs are from FY17 budget line item for Stormwater Management. Future costs are for annual compliance costs for the anticipated Small MS4 General Permit compliance costs. Level C is compliance with minimal Permit Year 1 requirements. Level A and B are average annual costs depending on increased mapping and GIS data management expenditures.
- Capital Improvement Projects.** Existing costs are for drainage related, approved capital requests for equipment (10% of total excluding plows), dams, culverts, drainage improvements, and other related projects requested by Highway and Engineering. An average cost was used for Future Level C to include additional drainage or culvert improvement projects. Likewise, an average annual allowance was carried under Level B for purchase of a sweeper and catch basin truck (\$100k/yr.) and more substantial culvert reconstruction (such as Key Culvert Reconstruction), and studies/design for the three municipal dams. Level A assumed an increase for additional unapproved capital requests for drainage related projects and equipment and dam remediation.

## Appendix B: Town Counsel Opinion on the Municipal Water Infrastructure Investment Fund (MWIIF)



STORMWATER FUNDING AND  
FINANCING ALTERNATIVES  
REPORT

DECEMBER 2016





**KOPELMAN AND PAIGE, P.C.**

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January 28, 2016

**Gregg J. Corbo**  
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Paul Starratt, P.E.  
Town of Westford  
Engineering Department  
28 North Street  
Westford, MA 01886-1245

Re: Municipal Water Infrastructure Investment Fund

Dear Mr. Starratt:

I am writing in response to your request for an opinion regarding permissible uses for Municipal Water Infrastructure Investment Funds that may be established by municipalities pursuant to G.L. c.40, §39M. Specifically, you would like to know whether such a fund can be used to pay salaries and benefits for employees who perform services related to water, wastewater and stormwater infrastructure and whether the fund can be used for costs associated with stormwater planning, studies and education. You have also asked whether, if adopted, certain types of properties can be exempt from the surcharge authorized by the statute. I will address each of these questions, in turn, below.

As you are aware, G.L. c. 40, §39M is a local acceptance statute that was enacted by the Legislature on August 5, 2014. This newly enacted statute has not yet been interpreted by the Courts or the Department of Revenue, and I am not aware of any communities that have accepted the statute. There is, therefore, no guidance available beyond the terms of the statute itself. According to the terms of the statute, "expenditures of revenues from the fund shall be exclusively used for maintenance, improvements, and investments to municipal drinking, wastewater and stormwater infrastructure assets." No other limitations appear within the text of the statute. Therefore, it is my opinion that the Town may use such funds for any expenses that are reasonably related to the purposes set forth in the statute, which may include expenses related to stormwater planning, studies and education.

As the statute does not expressly address the issue of employee wages and benefits, I recommend that you approach the use of the fund for that purpose with caution. In other similar contexts, when the Legislature intended for funds to be used for the payment of wages and benefits, it expressly stated such intent. See, e.g. G.L. c. 44, §53E ½ (Revolving Funds). Thus, the absence of such a statement of intent in this statute may be interpreted as an intent to exclude such expenses. On the other hand, municipalities are generally given reasonable latitude in classifying expenses. Therefore, if you can clearly demonstrate that the salaries and benefits paid from the fund are exclusively related to maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets, it is my opinion that you will likely be permitted to use the fund for that purpose.

You have also asked whether there is any flexibility with respect to imposition of the surcharge so that properties that are not affected by water, wastewater or stormwater infrastructure projects can be

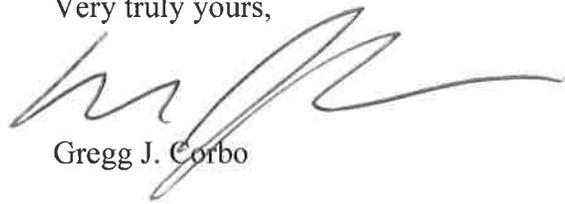
**KOPELMAN AND PAIGE, P.C.**

Paul Starratt, P.E.  
Town Engineer  
January 28, 2016  
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exempt from the surcharge. In my opinion, the statute does not provide for such flexibility. Once the statute is adopted, the Town “may impose a water infrastructure surcharge on real property at a rate up to, but not exceeding, 3 percent of the real estate tax levy against real property, as determined by the board of assessors.” The statute further provides that taxpayers entitled to exemptions or reductions of their real estate taxes are entitled to like exemptions or reductions in the surcharge. No other exemptions are set forth in the statute. Therefore, it is my opinion that the surcharge must be applied uniformly to all properties subject to taxation in the Town.

As the law in this area is still emerging, we will continue to monitor any guidance issued and will apprise you of any new developments we learn of. In the meantime, please do not hesitate to contact me if you have any questions in this regard.

Very truly yours,



Gregg J. Corbo

GJC/lem  
cc: Town Manager  
539303.2/WSFD/0001

## Appendix C: MA Department of Revenue Guidance on the Municipal Water Infrastructure Investment Fund (MWIIF)



STORMWATER FUNDING AND  
FINANCING ALTERNATIVES  
REPORT

DECEMBER 2016





# Informational Guideline Release

Bureau of Accounts  
 Informational Guideline Release (IGR) No. 16-103  
 January 2016

## MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND

(G.L. c. 40, § 39M)

This Informational Guideline Release (IGR) explains to local officials the procedures and requirements for establishing a special revenue fund with a dedicated surcharge on real estate taxes that may be appropriated and spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets.

Topical Index Key:

Accounting Policies and Procedures  
 Collection Procedures  
 Special Funds  
 Tax Bills

Distribution:

Assessors  
 Collectors  
 Treasurers  
 Clerks  
 Accountant/Auditors  
 Mayors/Selectmen  
 Managers/Administrators/Exec. Secys.  
 Finance Directors  
 City Solicitors/Town Counsels

## **MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND**

**(G.L. c. 40, § 39M)**

### **SUMMARY:**

These guidelines explain the municipal finance provisions of the Municipal Water Infrastructure Investment Fund (Fund), which is found in [G.L. c. 40, § 39M](#). Under this section, a city or town may establish a special revenue fund that may be appropriated for expenditures for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. To establish the Fund, a community must accept [G.L. c. 40, § 39M](#). Acceptance requires majority approval of both the community's legislative body and voters at the next regular municipal or state election.

The source of revenue for the Fund is a property tax surcharge of up to three percent that will be assessed on each parcel of taxable real estate within the community. Amounts generated by the surcharge are not subject to the levy limitations of Proposition 2½.

The municipality's legislative body must appropriate all monies in the Fund before they may be spent for Fund purposes.

This statute may be accepted, and a surcharge imposed, to take effect for fiscal years beginning on or after July 1, 2015.

### **GUIDELINES:**

#### **I. MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND ADOPTION**

##### **A. Acceptance by Legislative Body and Electorate**

Acceptance requires approval of both the legislative body of the city or town and the electorate at the next regular municipal or state election. [G.L. c. 40, § 39M\(f\)](#).

##### **1. Legislative Body Action**

A majority of the legislative body of the city or town must first approve a specific proposal to present to the voters. The legislative body of the city or town must accept G.L. c. 40, § 39M and approve the amount of the water infrastructure surcharge. The approved surcharge cannot exceed three percent. [G.L. c. 40, § 39M\(a\)](#). (See attached sample legislative body acceptance vote.)

2. Voter Action

The actions of the legislative body must be submitted to the voters for acceptance at the next regular municipal or state election.

a. Timing

After the legislative body accepts [G.L. c. 40, § 39M](#) and approves the amount of the surcharge, the acceptance question must be placed before the voters at the next regularly scheduled municipal or state election. [G.L. c. 40, § 39M\(f\)](#).

If the next regularly scheduled election is a municipal election, the legislative body must act in sufficient time to give the city or town clerk at least 35 days advance written notice of the ballot question. If the next election is a state election, the secretary of state must receive at least 60 days advance written notice of the ballot question. [G.L. c. 54, § 42C](#). The written notice must include the exact question as it will appear on the ballot and the summary as described in Section A-2-c below.

b. Question Form

The ballot question presented to the voters must read as follows:

Shall this (city or town) accept the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

[G.L. c. 54, § 58A](#).

c. Question Summary

A fair and concise summary of the Municipal Water Infrastructure Investment Fund provisions that are the subject of the ballot question must appear underneath the question, including the surcharge percentage approved by the legislative body. The summary is to be prepared by the community's city solicitor or town counsel. [G.L. c. 54, § 58A](#). (See attached sample summary for acceptance.)

d. Question Approval

The question is approved and [G.L. c. 40, § 39M](#) is accepted if a majority of the voters voting on the ballot question vote "yes."

**B. Effective Date**

The statute takes effect, and the surcharge is first assessed, for the fiscal year that begins on the July 1 after acceptance, unless the city or town designates a later year in its acceptance. [G.L. c. 40, § 39M\(f\)](#).

For example, unless a later fiscal year is designated in the acceptance vote, the surcharge is imposed as follows:

- If the question is approved by voters at a May election, the fiscal year beginning the following July 1.
- If the question is approved by voters at a November election, the fiscal year beginning the following July 1.
- If the question is approved by voters at an election held on July 2, the fiscal year beginning the following July 1.

**C. Amended Acceptance**

A city or town may amend the surcharge percentage in the same manner as acceptance. Amendment requires a majority vote of the legislative body and a ballot question approved by a majority of the voters voting on it. The surcharge may not be amended more than once in any 12 month period. [G.L. c. 40 § 39M\(j\)](#).

(See attached sample legislative body vote and ballot question and summary for amendment.)

**D. Revocation of Acceptance**

A city or town may revoke its acceptance in the same manner as acceptance, but must wait until at least three years after acceptance. [G.L. c. 4, § 4B](#). Revocation requires a majority vote of the legislative body and a ballot question approved by a majority of the voters voting on it. [G.L. c. 40 § 39M\(j\)](#).

(See attached sample legislative body vote and ballot question and summary for revocation.)

**E. Notification of Acceptance, Amendment or Revocation**

The city or town clerk must notify the Municipal Databank if it accepts or revokes [G.L. c. 40 § 39M](#), or amends the surcharge. See “[Notification of Acceptance, Revocation or Amendment](#).”) The notification should be made **as soon as possible** after the votes.

## **II. WATER INFRASTRUCTURE SURCHARGE**

In a city or town that accepts [G.L. c. 40, § 39M](#), a water infrastructure surcharge is assessed on the municipality's real estate taxes. (See Section I-B above for effective date of surcharge.) Taxes assessed on personal property, or by water, fire or other tax levying districts within the municipality, are not subject to the surcharge. Amounts generated by the surcharge are not subject to the levy limitations of Proposition 2½.

### **A. Surcharge Assessment and Billing**

The surcharge is imposed on every type of real estate tax assessment made by the community, including all preliminary, actual, omitted, revised and supplemental assessments. The surcharge must be displayed as a separate item on the tax bills, commitments and warrants issued for those assessments. Assessors should also forward a separate notice of commitment for the surcharge to the accounting officer.

If communities are unable to modify their billing software in time to bill the surcharge on the same semiannual or quarterly schedule as their property taxes in the first year it is imposed, the surcharge commitment and billing can be deferred to later in the fiscal year as needed to make the technical changes. The failure to bill a surcharge in the usual installments due to technical reasons does not change the surcharge owed for the fiscal year. The total surcharge for the year remains the same, but may be payable in fewer installments in that year.

A stuffer should be included with the first tax bill that displays the surcharge. It should explain the purpose and calculation of the surcharge and when it will ordinarily be billed and due. It should also inform taxpayers who are exempt from the surcharge of the procedures for seeking an abatement.

### **B. Surcharge Amount**

The surcharge is calculated by multiplying the real estate tax on the parcel by the adopted percentage. Therefore, real estate parcels that are fully exempt from property taxes for a fiscal year are not subject to any surcharge for that year.

### **C. Delinquent Surcharges**

Surcharges not paid by the due date accrue interest at 14 percent per year computed in the same manner as overdue property taxes in the community. [G.L. c. 40, §39M\(c\)](#). Interest on overdue surcharges belongs to the Fund.

### **D. Partial Payments**

If a taxpayer expressly directs the tax collector to apply a payment to the regular real estate tax and not the surcharge, the collector must apply the payment as directed. Otherwise, the collector may determine how to apply the payment.

**E. Collection**

Upon receipt of a warrant from the assessors, the tax collector must collect the surcharge in the amount and according to the computation specified in the warrant and pay over the amounts collected to the city's or town's treasurer in the same manner as regular real estate taxes. As with other local taxes committed to and collected by the tax collector, all books and accounts regarding the surcharge are subject to public disclosure. [G.L. c. 40, § 39M\(h\)](#).

Collectors may enforce collection of the surcharge with any or all of the remedies available for collection of regular real estate taxes, including a tax taking. [G.L. c. 40, § 39M\(i\)](#); [G.L. c. 60](#). The lien for the surcharge arises as of the January 1 assessment date of the fiscal year the surcharge relates to and terminates the same time as that year's real estate tax lien. Collectors should perform timely takings to ensure that both liens do not terminate. [G.L. c. 60, § 37](#); [G.L. c. 60, § 53](#).

A standard notation should be pre-printed on all municipal lien certificates that real estate taxes in the community are subject to the water infrastructure surcharge under [G.L. c. 40, § 39M](#). Collectors should list separately the amount of any outstanding surcharge on the certificate in the same manner as an outstanding district tax is shown.

**F. Exemptions and Abatements**

Real estate parcels that are fully exempt from property taxes are not subject to any surcharge.

A blind person, veteran, senior, surviving spouse or other individual who receives a personal exemption of taxes assessed on his or her domicile under a clause of [G.L. c. 59, § 5](#) specifically listed in the third paragraph of [G.L. c. 59, § 59](#) for any fiscal year is fully exempt from the surcharge for that year. The surcharge owed by a taxpayer who receives another exemption, or an abatement, under [G.L. c. 59](#) or any other law is reduced in proportion to the amount of the exemption or abatement. [G.L. c. 40, § 39M\(b\)](#).

A reduction in real estate tax liability under [G.L. c. 59, § 5K](#) (senior work-off abatement) and [G.L. c. 59, § 5N](#) (veteran work-off abatement), adopted by local option, is treated as an abatement for purposes of calculating the surcharge.

All committed surcharge amounts abated or exempted are charged to the water infrastructure surcharge receivable of the fiscal year. This includes reductions in committed surcharges resulting from an abatement or exemption of the real estate tax, or an abatement or exemption of the surcharge itself. The abatement or exemption certificate, as well as any abatement and exemption reports to other officers, should state separately the amount of any surcharge abatement or exemption granted.

**G. Exemption Administration and Applications**

1. Taxpayers Granted Personal Exemptions

Upon granting a blind person, veteran, senior, surviving spouse or other individual a personal exemption of the taxes assessed on his or her domicile under a clause of [G.L. c. 59, § 5](#) specifically listed in the third paragraph of [G.L. c. 59, § 59](#) for any fiscal year, the assessors should also exempt the taxpayer from the surcharge for that year. No further information is needed to establish eligibility for the surcharge exemption and it may be granted without requiring completion of a separate application.

2. Exemption Applications

If a taxpayer who is exempt from all or part of the surcharge in any fiscal year does not receive it, the taxpayer may apply to the assessors for the exemption. The application must be in writing on a form approved by the Commissioner of Revenue. A taxpayer may use the form approved by the Commissioner for property tax abatement applications for this purpose ([“Application for Abatement of Real/Personal Property Tax,” State Tax Form 128](#)). The application is due on or before December 15, or three months after the actual tax bill for the fiscal year is sent, whichever is later. [G.L. c. 40, § 39M\(d\)](#).

The assessors have three months to act on a taxpayer’s application for a surcharge exemption. An applicant aggrieved by the assessors’ action on the application may appeal to the state Appellate Tax Board, or the county commissioners if the applicant lives in a county where county government has not been abolished. The appeal must be filed within three months of the date the exemption was denied, or deemed denied if the assessors did not act within three months. [G.L. c. 59, §§ 64 and 65](#).

Applications for surcharge exemptions are not open to the public for inspection under the public records law. They are treated in the same manner as property tax abatement and exemption applications under [G.L. c. 59, § 60](#).

**H. Refund Accounting**

All refunds of surcharges are accounted for in the Fund.

**I. Surcharge Deferrals**

Taxpayers who are eligible to defer property taxes under [G.L. c. 59, § 5\(41A\)](#) may not defer the surcharge.

**J. Surcharge on Classified Land Taxes**

The surcharge assessed on classified forest land under [G.L. c. 61](#), agricultural or horticultural land under [G.L. c. 61A](#) and recreational land under [G.L. c. 61B](#) is calculated based on the real estate tax generated by the classified value of the property. The surcharge is not assessed on withdrawal, rollback or conveyance taxes imposed under G.L. c. 61, 61A or 61B.

**III. MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND**

**A. Special Revenue Fund**

The Fund is a receipts reserved for appropriation special revenue fund.

1. Receipts

The following receipts are credited to the Fund:

- a. All monies collected from the surcharge, including any interest paid on overdue surcharges.
- b. All income and interest earned on Fund monies.

[G.L. c. 40, § 39M\(e\)](#).

2. Investment

The treasurer is the custodian of the Fund. The treasurer may invest the monies of the Fund in the same manner as general funds under [G.L. c. 44, §§ 55, 55A](#) and [55B](#). [G.L. c. 40, § 39M\(e\)](#). The treasurer may pool the cash and does not have to establish a separate bank account for the Fund.

Interest earned on Fund monies belongs to the Fund.

**B. Expenditures**

An appropriation is required to spend any monies in the Fund. Appropriations are by majority vote of the legislative body and are limited to the actual unencumbered balance of the Fund at the time of the appropriation. Anticipated receipts cannot be appropriated.

Fund monies may be appropriated solely for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. This would include expenses typically incurred:

1. To maintain water, wastewater and stormwater infrastructure, such as the costs of materials, supplies and labor used to inspect, repair or otherwise keep the assets in good condition.
2. As part of water, wastewater and stormwater infrastructure projects, such as the cost of acquiring any land, easements or other property interests needed for the infrastructure, as well as any materials, supplies and labor involved in the planning, design and engineering of the project and actual construction or improvement of the assets. It also includes any debt service on debt issued to finance the projects.

Payment of bills charged to appropriations from the Fund must follow the same process used for payment of other municipal expenses. [G.L. c. 41, §§ 52 and 56](#). A payment voucher with appropriate supporting documentation is submitted to the accounting officer for placement of the bill on the treasury warrant. [G.L. c. 40, § 39M\(e\)](#).

**C. Accounting**

The accounting officer must establish and maintain the Fund as a separate account and record all activity in the Fund. [G.L. c. 40, § 39M\(e\)](#).

1. The assessors will issue a separate notice of commitment for the surcharge, which must be recorded in the Fund.
2. Surcharge collections and investment earnings are recorded directly into the Fund.
3. Expenditures are recorded as direct expenditures in the Fund.
4. The unspent and unencumbered balance of an appropriation for a particular infrastructure project or purpose is closed to the Fund.
5. The balance in the Fund at the end of a fiscal year carries forward to the next fiscal year.

**D. Supplemental Appropriations**

Appropriations may be made from other municipal funding sources, such as the tax levy, free cash or other available funds, to supplement and carry out infrastructure projects funded by the Fund. However, monies from these sources may not be appropriated directly into the Fund. Appropriations for these infrastructure projects or purposes would ordinarily be special purpose appropriations and not close out at the end of the fiscal year.

**E. Surcharge Revocation**

Appropriations from the Fund balance remaining after revocation of the Fund are still restricted to Fund purposes.

**SAMPLES**

**(Samples should not be used without the advice of municipal counsel.)**

**MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND  
ACCEPTANCE**

**Legislative Body Vote**

**ARTICLE/ORDER:** To see if the city/town will accept [General Laws Chapter 40, Section 39M](#), which establishes a special “Municipal Water Infrastructure Investment Fund” that may be appropriated and spent for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets, and will approve a property tax surcharge in an amount not to exceed three percent of the taxes assessed annually on real property, which will be dedicated to the fund, the surcharge to be imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_ or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town accept [General Laws Chapter 40, Section 39M](#), which establishes a special “Municipal Water Infrastructure Investment Fund” that may be appropriated and spent for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets, and approve a property tax surcharge in the amount of \_\_\_ percent of the taxes assessed annually on real property to be dedicated to the fund, the surcharge to be imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_.

**Ballot Question - Acceptance**

Shall this (city or town) accept the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

Yes \_\_\_\_\_ No \_\_\_\_\_

**Summary**

Section 39M of chapter 40 of the General Laws of Massachusetts establishes a special “Municipal Water Infrastructure Investment Fund” with a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. (Town meeting/city/town council upon recommendation of mayor/manager) must approve all spending from the fund.

In (city/town), the funding source is a surcharge of (\_\_\_)% on the annual property tax assessed on real property starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_. The surcharge is calculated by multiplying the real estate tax on the parcel by the adopted percentage. Real estate parcels that are fully exempt from property taxes are not subject to a surcharge. In addition, taxpayers who receive partial exemptions of the real estate taxes assessed on their domiciles, including certain seniors, veterans, blind persons and surviving spouses, are fully exempt from the surcharge. Taxpayers who receive other exemptions or abatements of their real estate taxes will receive a pro rata reduction in their surcharges.

## MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND SURCHARGE AMENDMENT

### Legislative Body Vote

**ARTICLE/ORDER:** To see if the city/town will amend the amount of the surcharge imposed under [General Laws Chapter 40, Section 39M](#) from \_\_\_ percent to \_\_ percent of the taxes assessed annually on real property, effective for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_ or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town amend the amount of the surcharge imposed under [General Laws Chapter 40, Section 39M](#) from \_\_\_ percent to \_\_ percent of the taxes assessed annually on real property, effective for the fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_.

### Ballot Question – Surcharge Amendment

Shall this (city or town) amend its acceptance of the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

Yes \_\_\_\_\_ No \_\_\_\_\_

### Summary

City/town accepted section 39M of chapter 40 of the General Laws of Massachusetts and established a special “Municipal Water Infrastructure Investment Fund” with a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. The funding source is a surcharge on the annual property tax assessed on real property. The surcharge accepted by the city/town is (\_\_\_)%.

This amendment will (reduce/increase) the surcharge from (\_\_\_)% to (\_\_\_)%, starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_.

The surcharge will continue to be calculated in the same manner by multiplying the real estate tax on the parcel by the adopted percentage. There is also no change in surcharge exemptions. Real estate parcels that are fully exempt from property taxes are not subject to a surcharge. In addition, a taxpayer receiving an exemption of real property under a clause of G.L. c. 59, section 5, which exemption is also listed in G.L. c. 59, section 59, is fully exempt from the surcharge. A taxpayer receiving any other exemption or abatement of tax on real property receives a pro rata reduction in surcharge.

**MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND  
REVOCATION**

**Legislative Body Vote**

**ARTICLE/ORDER:** To see if the city/town will revoke its acceptance of [General Laws Chapter 40, Section 39M](#), effective for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_, or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town revoke its acceptance of [General Laws Chapter 40, Section 39M](#), effective for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_.

**Ballot Question - Revocation**

Shall this (city or town) revoke its acceptance of the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

Yes \_\_\_\_\_ No \_\_\_\_\_

**Summary**

City/town accepted section 39M of chapter 40 of the General Laws of Massachusetts and established a special “Municipal Water Infrastructure Investment Fund” with a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. The funding source is a surcharge on the annual property tax assessed on real property. The surcharge accepted by city/town is (\_\_\_\_)%.

A revocation of acceptance will eliminate the surcharge and funding for the Municipal Water Infrastructure Investment Fund, starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_.

If acceptance is revoked, any monies remaining in the Municipal Water Infrastructure Investment Fund must still be appropriated and spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets.