MUNICIPAL REAL ESTATE ACQUISITION
(See also G.L.c.30B, §16)

Purpose	Statutory Authorization	City Council/ Town Meeting Vote	Board Authorized to Acquire	Notes
General Purpose	c.40, §14	Required[1]	Board of Selectmen or Mayor	Limited to land within city or town not already in public use
Common Landings[4]	c.88, §14 c.82, §21 - 24	Required to accept layout[5] and acquire[1]	City Council or Board of Selectmen	Layout must be filed with city/town clerk, county commissioners, dept. of environmental management and registry of deeds.
Conservation	c.40, §8C	Not required for purchase[2] or gift	Conservation Commission	City Council or Board of Selectmen approval required for gift; ⅔ vote of city council/ town meeting required for eminent domain taking and taking must be made by Board of Selectmen/Mayor
Drains for Highways	c.83, §4	Not required[2]	Officers having charge of highways	County commissioners are authorized to acquire for drains and ditches in county ways and the department of highways for those in state highways
Footways, Bicycle Paths, sidewalks[4]	c.82, §33-35 c.82, §21-24 c.83, §25	Required to accept layout[5] and acquire land[1]	City Council/ Board of Selectmen	Or Road Commissioners[6] of Town; G.L.c.82, §34 must be accepted by the City Council or Town Meeting prior to layout of bicycle paths within sidelines of public ways
Historic Protection	c.40C, §10(h)	Required[1]	Board of Selectmen or Mayor through c.40, §14	Historic Commission may "administer" property, if Town Meeting or City Council so votes
Park, Common, Parkway	c.45, §3 & 4	Required for purchase or eminent domain taking, not gift	Park Commission or Board of Selectmen acting as Park Commission	Acquisition of parkways requires consent of public authority controlling way and written consent of a majority of abutters
Playground	c.45, §14	Required	Park Commission or School Committee	Or Planning Board, or Playground or Recreation Commission
Public Way	c.82, §21-24	Required to accept layout[5] and acquire[1]	City Council or Board of Selectmen	Or Road Commission[6] of Town
Public Water Supply/Public Water Supply Protection	c.40, §§39B & 39D[3]	Not Required[2]	Water Commission	Or Selectmen acting as Water Commission[6]; Department of Environmental Protection approval required
Sewer	c.83, §1[3]	Not Required[2]	Sewer Commission or Selectmen or Road Commission[6].	Special legislation establishing particular board may vary or supersede these requirements

[1] 2/3 vote required if an appropriation is necessary
[2] Required if appropriation of funds is necessary
[3] Special legislation establishing particular board may vary or supersede these requirements
[4] Procedure for laying out public ways must also be followed
[5] City Council votes to layout; no further vote is required to accept layout
[6] Or Board of Public Works is such exists

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MUNICIPAL REAL ESTATE PURCHASE/GIFT CHECKLIST

- ☐ Identify land to be acquired through RFP or a Uniqueness Determination under G.L. c.30B, §16 (not required for a gift or value under $25,000)
- ☐ Enter into a Purchase and Sale or Donation Agreement conditioned upon a favorable Town Meeting or City/Town Council vote
- ☐ Obtain Town Meeting or City/Town Council vote authorizing the acquisition and appropriation of funds, if necessary (2/3 vote required, if appropriation)
- ☐ Obtain "Disclosure of Beneficial Interest Statement" from Seller (G.L. c.7, §40J) and file with the Division of Capital Planning and Operations (DCPO)
- ☐ Obtain a title examination for the property
- ☐ Obtain a survey of the property and approval of the planning board if you are acquiring a portion of a larger tract of land (usually Seller's obligation). Ensure that the property is properly zoned for the intended municipal use
- ☐ Obtain a G.L. c.21E site inspection of the property by a licensed site professional, if history or view indicates hazardous materials may be an issue
- ☐ Obtain Title V certification from seller, if subsurface disposal is necessary. Perform any other testing or inspections necessary to determine whether the property is suitable for the intended municipal use
- ☐ Comply with relocation obligations under G.L. c.79A
- ☐ Request Seller/Donor to provide a draft deed for the property
- ☐ Obtain municipal lien certificate from tax collector (taxes must be paid to date of closing unless tax abatement is authorized by the DOR Commissioner)
- ☐ Obtain documents necessary to clear title, e.g., discharge of mortgage. Consult with Town Counsel concerning checks necessary for purchase
- ☐ Appropriate board votes to accept property and sign acceptance form
- ☐ Arrange for closing, final inspection, and title rundown. Record deed and release funds to Seller
- ☐ Send copy of recorded deed to appropriate Board and request abatement of taxes from assessors. Send original recorded deed to City/Town Clerk
- ☐ Obtain title insurance, if desired

EMINENT DOMAIN TAKING CHECKLIST G.L. c.79

- ☐ Identify land or easements to be acquired
- ☐ Obtain plan of land or easement from Municipality's Engineer
- ☐ Obtain appraisal before taking is made unless Owners waiver appraisal and damages
- ☐ Determine whether betterments are to be assessed
- ☐ Obtain Town Meeting or City/Town Council authorization and appropriation. (2/3 vote is required, if appropriation)
- ☐ Obtain title examination for property to confirm names of owners and determine mortgagees or other parties of interest
- ☐ Draft order of taking, notices, offers and other associated documents
- ☐ Comply with relocation obligations under G.L. c.79A
- ☐ Authorized board or official executes order of taking
- ☐ Record order of taking and plan - MUST be recorded at Registry of Deeds within 30 days of execution. Title vests upon recording
- ☐ Consult with accountant/treasurer relative to time of payment of pro tanto amount to property owner. Set time and place for payment
- ☐ Execute and serve notice of taking and pro tanto offer on owner and any mortgagee by: personal service, service at residence or registered mail. Offer must be made within 60 days of taking
- ☐ Send copy of recorded order of taking to tax collector. Send original recorded order of taking to City/Town Clerk
- ☐ Make pro tanto payments upon application by property owner, making sure that owner and mortgagee have agreed to payee

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(OVER)

THE 187TH GENERAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

General Laws

PART I	ADMINISTRATION OF THE GOVERNMENT (Chapters 1 through 182)
TITLE VII	CITIES, TOWNS AND DISTRICTS
CHAPTER 40	POWERS AND DUTIES OF CITIES AND TOWNS
Section 8C	Conservation commission; establishment; powers and dutie

Section 8C. A city or town which accepts this section may establish a c
commission, hereinafter called the commission, for the promotion and
natural resources and for the protection of watershed resources of said
commission shall conduct researches into its local land areas and shall
activities of unofficial bodies organized for similar purposes, and may a
and distribute books, maps, charts, plans and pamphlets which in its ju
necessary for its work. Among such plans may be a conservation and p
recreation plan which shall be, as far as possible, consistent with the tc
with any regional plans relating to the area. The commission may, from
such plan. Such plan shall show open areas including marsh land, swar
wetlands, and shall show which areas are subject to restrictions or wet
and any other matters which may be shown on a plat index under secti
chapter one hundred and eighty-four. Acquisitions of interests in land u
other municipal open lands shall be shown thereon as well as lands ow

kept open through any legal requirement. Such plan shall show other a
necessity requires to be retained for conservation and passive recreatic
accurate records of its meetings and actions and shall file an annual re
printed in the case of towns in the annual town report. The commissior
director, clerks, consultants and other employees, and may contract fo
within available funds insofar as the same are not supplied by other de
commission shall consist of not less than three nor more than seven m
members shall be appointed by the mayor, subject to the provisions of
that in cities having or operating under a Plan D or Plan E form of city
appointments shall be by the city manager, subject to the provisions o
towns they shall be appointed by the selectmen, excepting towns havir
government, in which towns appointments shall be made by the town
approval of the selectmen. When a commission is first established, the
shall be for one, two or three years, and so arranged that the terms of
third of the members will expire each year, and their successors shall
of three years each. Any member of a commission so appointed may,
requested, be removed for cause by the appointing authority. A vacanc
than by expiration of a term shall in a city or town be filled for the une
manner as an original appointment. Said commission may receive gifts
personal property or interests in real property of the kinds mentioned
the city or town, subject to the approval of the city council in a city or
town. It may purchase interests in such land with sums available to it.
available or other reasons so require, a city council or a town meeting
funds so that the commission may acquire in the name of the city or to
purchase, lease or otherwise the fee in such land or water rights, conse
easements or other contractual rights including conveyances on conditi
or reversions, as may be necessary to acquire, maintain, improve, prot
of or otherwise conserve and properly utilize open spaces in land and w
city or town, and it shall manage and control the same. For the purpos
or town may, upon the written request of the commission, take by emi
chapter seventy-nine, the fee or any lesser interest in any land or wate
or town, provided such taking has first been approved by a two-thirds
or a two-thirds vote of an annual or special town meeting, which land a
thereupon be under the jurisdiction and control of the commission. Upc

town may expend monies in the fund, if any, established under the pro
for the purpose of paying, in whole or in part, any damages for which s
be liable by reason of any such taking. The commission may adopt rule
governing the use of land and waters under its control, and prescribe p
a fine of one hundred dollars, for any violation thereof. No action taken
shall affect the powers and duties of the state reclamation board or any
other project operating under or authorized by chapter two hundred an
any established public access. Lands used for farming or agriculture, as
A of chapter one hundred and twenty-eight, shall not be taken by emin
authority of this section.

A city or town may appropriate money in any year to a conservation fu
treasurer shall be the custodian. Prior to the adoption of any rule or re
further regulate matters established by section forty of chapter one hu
regulations authorized thereunder relative to agricultural or aquacultur
commission shall, no later than seven days prior to the commission's p
adoption of said rules and regulations, give notice of the said proposed
to the farmland advisory board established pursuant to section forty of
and thirty-one. He may deposit or invest the proceeds of said fund in s
companies incorporated under the laws of the commonwealth, banking
incorporated under the laws of the commonwealth which are members
Insurance Corporation, or national banks, or invest it in paid up shares
co-operative banks or in shares of savings and loan associations or in s
savings and loan associations doing business in the commonwealth, an
therefrom shall be credited to the fund. Money in said fund may be exp
commission for any purpose authorized by this section; provided, howe
expenditure for a taking by eminent domain shall be made unless such
approved in accordance with this section.

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