

HOUSE No. 4060

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake

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

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

An Act establishing a real property transfer fee in the town of Chatham.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>7/28/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>7/28/2021</i>

HOUSE No. 4060

By Ms. Peake of Provincetown, a petition (accompanied by bill, House, No. 4060) of Sarah K. Peake and Julian Cyr (by vote of the town) that the town of Chatham be authorized to establish a real property transfer fee in said town. Revenue. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing a real property transfer fee in the town of Chatham.

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

1 SECTION 1. For purposes of this act, the words and phrases set forth in this section shall
2 have the following meanings:

3 “Affordable housing” is defined for purposes of this Act as housing developments that
4 meet the needs of households with incomes up to 100 per cent area median household income as
5 most recently determined by the United States Department of Housing and Urban Development,
6 adjusted for household size.

7 “Attainable housing” is defined for purposes of this Act as housing developments that
8 meet the needs of households with incomes up to 200 per cent of the area median household
9 income as most recently determined by the United State Department of Housing and Urban
10 Development, adjusted for household size.

11 “Housing Fund” shall refer to any special purpose fund or funds authorized and
12 established pursuant to the provisions of Chapter forty-four of the General Laws or any other

13 general or special law for the purpose of creating and preserving affordable housing and/or
14 attainable housing in the Town.

15 "Purchaser, shall refer to the transferee, grantee or recipient of any real property interest.

16 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a
17 seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall
18 include, but not be limited to, all cash or its equivalent so paid or transferred; all cash or other
19 property paid or transferred by or on behalf of the purchaser to discharge or reduce any
20 obligation of the seller; the principal amount of all notes or their equivalent, or other deferred
21 payments, given or promised to be given by or on behalf of the purchaser to the seller or his
22 nominee; the outstanding balance of all obligations of the seller which are assumed by the
23 purchaser or to which the real property interest transferred remains subject after the transfer,
24 determined at the time of transfer, but excluding real estate taxes and other municipal liens or
25 assessments which are not overdue at the time of transfer; the fair market value, at the time of
26 transfer, of any other consideration or thing of value paid or transferred by or on behalf of the
27 purchaser, including, but not limited to, any property, goods or services paid, transferred or
28 rendered in exchange for such real property interest.

29 "Real property interest", shall refer to any present or future legal or equitable interest in
30 or to real property, and any beneficial interest therein, including the interest of any beneficiary in
31 a trust which holds any legal or equitable interest in real property, the interest of a partner or
32 member in a partnership or limited liability company, the interest of a stockholder in a
33 corporation, the interest of a holder of an option to purchase real property, the interest of a buyer
34 or seller under a contract for purchase and sale of real property, and the transferable development

35 rights created under chapter 183A of the General Laws; but shall not include any interest which
36 is limited to any of the following: the dominant estate in any easement or right of way; the right
37 to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of
38 less than 30 years; any reversionary right, condition, or right of entry for condition broken; and
39 the interest of a mortgagee or other secured party in any mortgage or security agreement.

40 "Seller", shall refer to the transferor, grantor or immediate former owner of any real
41 property interest.

42 "Time of transfer" of any real property interest shall mean the time at which such transfer
43 is legally effective as between the parties thereto, and, in any event, with respect to a transfer
44 evidenced by an instrument recorded with the appropriate registry of deeds or filed with the
45 assistant recorder of the appropriate registry district, not later than the time of such recording or
46 filing.

47 "Town" shall refer to the Town of Chatham acting by and through its Select Board.

48 SECTION 2. There is hereby imposed a fee equal to one half per cent (1/2%) of the
49 purchase price paid upon the transfer of any real property interest in any real property situated in
50 the Town of Chatham for consideration of two million dollars (\$2,000,000) or more. Said fee
51 shall be the liability of the purchaser of such real property interest, and any agreement between
52 the purchaser and the seller or any other person with reference to the allocation of the
53 responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be
54 paid to the Town of Chatham, or its designee, and shall be accompanied by a copy of the deed or
55 other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the
56 pains and penalties of perjury by the purchaser or his legal representative and the seller or his

57 legal representative, attesting to the true and complete purchase price and the basis, if any, upon
58 which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The
59 Town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the
60 appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the
61 exemption. The register of deeds for Barnstable County, and the assistant recorder for the
62 registry district of Barnstable County, shall neither record nor register, or receive or accept for
63 recording or registration, any deed, except a mortgage deed, to which has not been affixed such a
64 certificate executed by the Town or its designee. Failure to comply with this requirement shall
65 not affect the validity of any instrument. The Town shall deposit all fees received hereunder with
66 the Town treasurer. The treasurer, upon consultation with and direction from the Town board or
67 officer authorized to expend and make distributions from a Housing Fund, shall deposit such fees
68 in the Housing Fund for the purpose of creating and preserving affordable and/or attainable
69 housing in the Town. The fee imposed hereunder shall be due simultaneously with the time of
70 the transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a
71 conveyance of real property interests and a conveyance of personal property related thereto at or
72 about the same time, the allocations of payments between real estate and personal property
73 agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to
74 this section; instead, the Town may require payment of the fee referred to in real property
75 interests so conveyed as determined by the Town.

76 SECTION 3. At any time within seven days following the issuance of the certificate of
77 payment of the fee imposed by section two, the purchaser or his legal representative may return
78 said certificate to the Town or its designee for cancellation, together with an affidavit signed
79 under oath or under the pains and penalties of perjury that the transfer, with respect to which

80 such certificate was issued, has not been consummated, and thereupon the fee paid with respect
81 to such transfer shall be forthwith returned to the purchaser or his legal representative.

82 SECTION 4. The following transfers of real property interests shall be exempt from the
83 fee established by section two. Except as otherwise provided, the purchaser shall have the burden
84 of proof that any transfer is exempt under this section and any otherwise exempt transfer shall
85 not be exempt in the event that such transfer (by itself or as part of a series of transfers) was
86 made for the primary purpose of evading the fee imposed by Section 6(b).

87 (a) Transfers to the government of the United States, the commonwealth, and any of their
88 instrumentalities, agencies, or subdivisions, including but not limited to transfers to the Town of
89 Chatham.

90 (b) Transfers which, without additional consideration, confirm, correct, modify, or
91 supplement a transfer previously made.

92 (c) Transfers made as gifts without consideration. In any proceedings to determine the
93 amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less
94 than fair market value of the real property interest transferred was made as a gift without
95 consideration to the extent of the difference between the fair market value of the real property
96 interest transferred and the amount of consideration claimed by the seller to have been paid or
97 transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal
98 descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be
99 presumed that consideration was paid in an amount equal to the fair market value of the real
100 property interest transferred, at the time of transfer.

101 (d) Transfer to the trustees of a trust in exchange for a beneficial interest received by the
102 purchaser in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

103 (e) Transfers by operation of law without actual consideration, including but not limited
104 to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
105 interest.

106 (f) Transfers made in partition of land and improvements thereto, under chapter two
107 hundred and forty-one of the General Laws.

108 (g) Transfers to any charitable organization as defined in clause Third of section five of
109 chapter fifty-nine of the General Laws, or any religious organization, provided that the real
110 property interest so transferred will be held by the charitable or religious organization solely for
111 its public charitable or religious purposes.

112 (h) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and
113 transfers of the property subject to a mortgage to the mortgagee in consideration of the
114 forbearance of the mortgagee from foreclosing said mortgage.

115 (i) Transfers made to a corporation or partnership or limited liability company at the time
116 of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of
117 section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue
118 Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the
119 event that (1) with respect to a corporation, the transferor retains an interest in the newly formed
120 corporation which is equivalent to the interest the transferor held prior to the transfer, or (2) with
121 respect to a partnership or limited liability company, the transferor retains after such formation

122 rights in capital interests and profit interests within such partnership or limited liability company
123 which are equivalent to the interest the transferor held prior to the transfer.

124 (j) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of
125 the corporation, and transfers made to a partner of a partnership or to a member of a limited
126 liability company in dissolution or partial dissolution of the partnership or limited liability
127 company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee
128 receives property (including real property interests and other property received) which is the
129 same fraction of the total property of the transferor corporation as the fraction of the
130 corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a
131 partnership or limited liability company, the transferee receives property (including real property
132 interests and other property received) which is the same fraction of the property of the
133 partnership or limited liability company as the fraction of the capital and profit interests in the
134 transferor formerly owned by the transferee.

135 (k) Transfers consisting of the division of marital assets under the provisions of section
136 thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

137 (l) Transfers of property consisting in part of real property interests situated in Chatham
138 and in part of other property interests, to the extent that the property transferred consists of
139 property other than real property situated in Chatham; provided that the purchaser shall furnish
140 the Town with such information as it shall require or request in support of the claim of
141 exemption and manner of allocation of the consideration for such transfers.

142 (m) Transfers of minority interests in corporations, trusts, partnerships, or limited liability
143 companies which are publicly traded, which trades are not part of a series of transfers which

144 together constitute a transfer of control of a corporation, trust, partnership, or limited liability
145 company.

146 (n) Intra-family transfers of property between parties of the following relationships: (1)
147 between current spouses; (2) between parents and their children or stepchildren; (3) between full
148 siblings; and (4) where the grantor transfers the real property to be held in a revocable or
149 irrevocable trust, where at least one of the designated beneficiaries is a parent, full sibling, child,
150 or stepchild of the grantor.

151 SECTION 5. (a) The Town treasurer shall keep a full and accurate account stating when,
152 from or to whom, and on what account money has been paid or received relative to the activities
153 of the Housing Fund. Said account(s) shall be subject to examination by the director of accounts
154 or his/her agent pursuant to section forty-four of chapter thirty-five of the General Laws.

155 (b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of
156 partnerships filed with the Town for the purpose of determining or fixing the amount of the fee
157 imposed under section two or for the purpose of determining the existence of any exemption
158 under section four shall not be public records for the purposes of section ten of chapter sixty-six
159 of the General Laws.

160 SECTION 6. A purchaser who fails to pay all or any portion of the fee established by
161 section two on or before the time when the same is due shall be liable for the following
162 additional payments in addition to said fee:

163 (a) Interest: The purchaser shall pay interest on the unpaid amount of the fee to be
164 calculated from the time of transfer at a rate equal to fourteen per cent per annum.

165 (b) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee
166 imposed by this chapter, fails to pay all or a portion of the fee within thirty days after the time of
167 transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the
168 Town for each month or portion thereof thereafter that the fee is not paid in full; provided,
169 however, that in no event shall the amount of any penalty imposed hereunder exceed twenty five
170 per cent of the unpaid fee due at the time of transfer. Whenever the Town determines that all or a
171 portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the
172 fee imposed by this chapter, a penalty equal to the full amount of said fee as determined by the
173 Town shall be paid by the seller in addition to said fee.

174 SECTION 7. (a) The Town Clerk shall notify the purchaser and the seller by registered or
175 certified mail of any failure to discharge in full the amount of the fee due under this Act and any
176 penalty or interest assessed. The Town shall grant a hearing before the Select Board on the
177 matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting
178 such hearing is received by the Town Clerk within thirty days after the mailing of said notice.
179 The Select Board shall notify the purchaser and the seller in writing by registered or certified
180 mail of its determination concerning the deficiency, penalty, or interest within fifteen days after
181 said hearing. Any party aggrieved by a determination of the Select Board concerning a
182 deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or
183 superior court within three months after the mailing of notification of the determination of the
184 Select Board. Upon the failure to timely petition for a hearing, or appeal to said courts, within the
185 time limits hereby established, the purchaser and seller shall be bound by the terms of the
186 notification, assessment, or determination, as the case may be, and shall be barred from
187 contesting the fee, and any interest and penalty, as determined by the Town. Every notice to be

188 given under this section by the Town shall be effective if mailed by certified or registered mail to
189 the purchaser or the seller at the address stated in a recorded or registered instrument by virtue of
190 which the purchaser holds any interest in real property, the transfer of which gives rise to the fee
191 which is the subject of such notice; and if no such address is stated or if such transfer is not
192 evidenced by an instrument recorded or registered in the public records in Barnstable County,
193 such notice shall be effective when so mailed to the purchaser or seller in care of any person
194 appearing of record to have a fee interest in such land, at the address of such person as set forth
195 in an instrument recorded or registered in Barnstable County.

196 (b) All fees, penalties and interest required to be paid pursuant to this chapter shall
197 constitute a personal debt of the purchaser and may be recovered in an action of contract or in
198 any other appropriate action, suit or proceeding brought by the Town; said action, suit or
199 proceeding shall be subject to the provisions of chapter two hundred and sixty of the General
200 Laws.

201 (c) If any purchaser liable to pay the fee established by this act neglects or refuses to pay
202 the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the
203 Town upon all property and rights to property, whether real or personal, belonging to such
204 purchaser. Said lien shall arise at the time of transfer and shall continue until the liability for such
205 amount is satisfied. Said lien shall in any event terminate not later than six years following the
206 time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or
207 judgment creditor unless notice thereof has been filed by the Town (i) with respect to real
208 property or fixtures, in the registry of deeds for Barnstable County, or (ii) with respect to
209 personal property, in the office in which a security or financing statement or notice with respect
210 to the property would be filed in order to perfect a nonpossessory security interest belonging to

211 the person named in the relevant notice, subject to the same limitations as set forth in section
212 fifty of chapter sixty two C of the General Laws.

213 (d) Purchasers or sellers applying for an exemption under subsections (a) through (n) of
214 section four shall be required at the time of application for exemption to execute an agreement
215 legally binding on the applicant: (1) assuming complete liability for any fee, plus interest and
216 penalties if any, waived on account of an allowed exemption subsequently determined to have
217 been invalid, and (2) submitting to the jurisdiction of the trial court of the commonwealth sitting
218 in Barnstable County. Fees, plus interest and penalties if any, shall be calculated as of the date of
219 the initial property transfer. Execution of the above-described agreement shall not be required of
220 any mortgagee, pledge, purchaser, or judgment creditor unless notice of the agreement has been
221 recorded or filed by the Town.

222 In any case where there has been a refusal or neglect to pay any fee, interest or penalties
223 imposed by this act, whether or not levy has been made, the Town, in addition to other modes of
224 relief, may file a civil action in a district or superior court of Barnstable County to enforce the
225 lien of the Town under this section with respect to such liability or to subject any property of
226 whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment
227 of such liability.

228 The Town may issue a waiver or release of any lien imposed by this section. Such waiver
229 or release shall be conclusive evidence that the lien upon the property covered by the waiver or
230 release is extinguished.

231 SECTION 8. The fee described by Section two shall be of ten-year duration from the date
232 this legislation takes effect. This fee may continue for additional five-year periods upon a

233 majority vote at Town Meeting reauthorizing the fee. The fee described by Section two 1) may
234 be decreased or increased, 2) the threshold transfer consideration amount may be revised, or 3)
235 the fee may be eliminated by a two-thirds vote of Town Meeting. In the event that Town Meeting
236 does not renew the fee at the ten-year anniversary, or any subsequent five year anniversary, or
237 Town Meeting votes to eliminate the fee, the balance of any fees previously collected shall be
238 used to satisfy any outstanding liabilities or obligations incurred by the Town of Chatham or the
239 Housing Fund as a result of imposition of the fee, and the remainder may be expended without
240 further appropriation at the direction of the Select Board for affordable or attainable housing
241 purposes. In the event that the liabilities and obligations of the Town of Chatham or the Housing
242 Fund exceed the amounts transferred to the Town, the fee shall remain in full force and effect
243 until such liabilities and obligations have been satisfied.

244 SECTION 9. The provisions of this act are severable, and if any provision hereof,
245 including without limitation any exemption from the fee imposed hereby, shall be held invalid in
246 any circumstances such invalidity shall not affect any other provisions or circumstances. This act
247 shall be construed in all respects so as to meet all constitutional requirements. In carrying out the
248 purposes and provisions of this act, all steps shall be taken which are necessary to meet
249 constitutional requirements whether or not such steps are required by statute.

250 SECTION 10. If the Town has determined that a fee is due by asserting the application of
251 the evasion of fee doctrine described in Section six (b), then the purchaser shall have the burden
252 of demonstrating by clear and convincing evidence as determined by the Town that the transfer,
253 or series of transfers, possessed both: (i) a valid, good faith business purpose other than
254 avoidance of the fee set forth in Section two and (ii) economic substance apart from the asserted
255 fee avoidance benefit. In all such cases, the purchaser shall also have the burden of

256 demonstrating by clear and convincing evidence as determined by the Town that the asserted
257 non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to
258 Section two to be thereby avoided.

259 SECTION 11. This act shall take effect ninety (90) days following the date of passage.