HOUSE DOCKET, NO. 4381 FILED ON: 7/28/2021

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:
Sarah K. Peake	*4th Barnstable*	*7/28/2021*
Julian Cyr	*Cape and Islands*	*7/28/2021*

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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:

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

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

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

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

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

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

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

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

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

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

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

“Town” shall refer to the Town of Chatham acting by and through its Select Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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