

**Amendment ID: S2834-242**

## **Amendment 242**

### **Local Option Transfer Fee**

Ms. Comerford, Ms. Miranda, Messrs. Gomez and Lewis, Ms. Jehlen and Messrs. Cyr, Oliveira and Eldridge move that the proposed new text be amended by adding the following sections:-

“SECTION XX. Paragraph (1) of subsection (c) of section 55C of chapter 44, as appearing in the 2022 Official Edition, is hereby amended by inserting in line 35, after the words “money from chapter 44B”, the following words:- and section 55D; provided, however, that any such money received from section 55D shall be used exclusively for adaptive reuse, production or preservation of affordable housing, uses allowed by the municipal affordable housing trust fund established hereunder or a regional affordable housing commission fund established by general or special law, for assistance to a housing authority as defined under section 1 of chapter 121B or other affordable housing purposes as determined by the Executive Office of Housing and Livable Communities.

SECTION XX. Said section 55C of said chapter 44, as so appearing, is hereby further amended, by inserting after the word “fee,”, in line 99, the following words:- transfer fee pursuant to section 55D.

SECTION XX. Said chapter 44 is hereby further amended by inserting after section 55C the following section:-

Section 55D. (a) For purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by the settlement agent that attests to (i) the true and complete purchase or sale price of the transfer of the real property interest; (ii) the amount of the transfer fee owed or the basis, if any, upon which the transfer is exempt from the fee imposed by said transfer; (iii) the amount that the seller shall pay as required by the bylaw, ordinance or regulation; and (iv) the obligation of the settlement agent to make payment of the transfer fee to the city or town.

“Affordable housing purposes”, uses allowed by the municipal affordable housing trust fund or regional affordable housing commission fund into which funds are deposited hereunder, which shall include the acquisition, construction, rehabilitation, and preservation of affordable housing for the benefit of low- and

moderate-income households as defined in such municipal affordable housing trust fund or regional affordable housing commission fund, assistance to a housing authority as defined under section 1 of chapter 121B or other affordable housing purposes pursuant to regulations promulgated by the executive office of housing and livable communities.

“Affordable housing restriction”, a recorded instrument held by a qualified holder which encumbers or restricts a real property interest so that the real property interest is perpetually or for a term of at least 30 years limited to use as a residence occupied by a low or moderate income household with area median income, as defined by the United States Department of Housing and Urban Development, not to exceed the income limits to which the municipal affordable housing trust fund or regional affordable housing commission fund is subject.

”Member cities and towns”, cities or towns that are members of a regional affordable housing commission.

“Municipal affordable housing trust fund”, a municipal affordable housing trust fund established pursuant to section 55C, or any other municipal trust fund established pursuant to a law of the commonwealth providing for the creation and preservation of affordable housing in a particular city or town for the benefit of low- and moderate-income households or for the funding of community housing, as defined in and in accordance with chapter 44B.

“Purchaser”, the transferee, grantee, or recipient of any real property interest.

“Purchase price” or “sale price”, all consideration paid or transferred by or on behalf of a purchaser to a seller or the seller’s nominee, or for the seller’s benefit, for the transfer of any real property interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid or transferred; (ii) all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; (iii) 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 the seller’s nominee; (iv) 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; (v) 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.

“Qualified holder”, a governmental body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an affordable housing restriction.

“Real property interest”, 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 purchaser or seller under a contract for purchase and sale of real property, and the transferable development rights created under chapter 183A; 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.

“Regional affordable housing commission”, a regional planning and land use commission created by any general or special law with authority to prepare and oversee the implementation of a regional land-use policy plan for a region of the Commonwealth comprising at least one county, and whose membership includes all of the cities or towns in such region; provided, that the regional commission’s statutory purposes and authority shall include promoting the creation of fair affordable housing for low-income and moderate-income persons; provided further, that a regional affordable housing commission may be an agency within the structure of a regional government, including, but not limited to the Cape Cod regional government, known as Barnstable county; and provided further, that said regional government may require additional procedures for member cities and towns to adopt a transfer fee that are not inconsistent with this section, including, but not limited to procedures for adopting bylaws and ordinances, establishing a transfer fee and administering the collection of a transfer fee established pursuant to this section.

“Regional affordable housing commission fund”, a fund established by general or special law for the creation and preservation of affordable housing, as defined in the general or special law establishing such fund, in a particular region comprising at least one county.

“Seller”, the transferor, grantor, or immediate former owner of any real property interest.

“Settlement Agent”, an escrow agent, real estate attorney, or representative of a lender or title company that conducts the closing or settlement of the sale or transfer of a real property interest including the coordination of the attendance and document signing for all the parties, verification that each party to the transfer has performed their required responsibilities as outlined in the contract and the disbursement of all funds, along with the title and deed, to the appropriate parties after checking that all conditions are met at the close of the transfer transaction.

“Time of transfer”, the time at which a transfer of a real property interest 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.

“Transfer fee”, a fee, to be paid by the seller pursuant to this section, upon the transfer of a real property interest between a seller and a buyer.

(b) (1) A city or town that has established a municipal affordable housing trust fund, or a regional affordable housing commission that has established a regional affordable housing commission fund, as applicable, may, pursuant to subsection (e), impose a fee upon the transfer of any real property interest in any real property situated in the city or town, or real property situated in the member cities and towns, as described and as subject to conditions and exemptions described herein; provided, that a city or town that is an MBTA community as defined in section 1A of chapter 40A shall not impose a transfer fee pursuant to this section unless such city or town has been determined by the executive office of housing and livable communities to be in compliance with section 3A of chapter 40A; and provided further, that member cities and towns shall not impose a fee pursuant to this section if a transfer fee is in effect pursuant to the adoption of such fee by the applicable regional affordable housing commission under subsection (e).

(2) A city, town or regional affordable housing commission, as applicable, may establish different transfer fee rates for different classifications of properties, defined by the tax classification of such properties, and the purchase price of a property; provided, however, that any transfer fee shall be not less than 0.5 per cent and not more than 2 per cent of either (i) the full amount of the purchase price of such real property interest, (ii) the portion of the purchase price of such real property interest in excess of the exemption threshold

established pursuant to paragraph (1) of subsection (c), or (iii) a different amount between (i) and (ii) at the discretion of the city, town, or regional affordable housing commission, as applicable.

(3) The city or town or regional affordable housing commission, as applicable, shall have the authority to designate whether the transfer fee shall be borne by the purchaser, the seller or how it will be allocated between the two. The transfer fee shall be borne by the seller.

(4) The seller or settlement agent shall, in advance of the time of transfer, request and the city or town or regional affordable housing commission, as applicable, shall provide to said seller or settlement agent in advance of the time of transfer a certificate indicating the dollar amount of the transfer fee owed based on the agreed upon purchase price as evidenced by an executed purchase and sale agreement, contract for sale or other document evidencing the agreed upon purchase price or that the transfer is exempt from the transfer fee, stating the basis for the exemption.

(5) Whenever the transfer of a real property interest will occur at or about the same time as a conveyance of personalty related thereto, the calculation of the fee with respect to such transfer shall be determined by the city or town or regional affordable housing commission, as applicable; provided, that the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the calculation of the transfer fee due pursuant to this section.

(6) The transfer fee shall be paid within 7 days of the time of transfer by the settlement agent to the city or town, or its designee, or to the regional affordable housing commission or its designee, as applicable and shall be accompanied by a copy of the deed or other instrument recorded or registered with the registry of deeds for the county in which the real property interest is located, or the assistant recorder for the registry district of the county in which the real property interest is located, and a copy of the affidavit of transfer fee. The city or town, or its designee, or the regional affordable housing commission, or its designee as applicable, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid.

(7) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall deposit the transfer fee in the city or town's municipal affordable housing trust fund. Upon receipt of a transfer fee by a regional affordable housing commission, or its designee, the regional affordable housing commission, or its designee, shall deposit the transfer fee into the regional affordable housing commission fund.

(8) A city or town may authorize the chief executive of a city or town to suspend a transfer fee adopted pursuant to this section in any year where there has been a declared public health emergency or state of emergency in the commonwealth, or any other similar declared emergency applicable to the commonwealth.

(c)(1) The following transfers of real property interests shall be exempt from a transfer fee established pursuant to this section:

(i) Transfers for less than the greater of \$1,000,000 or 100 per cent of the median single family home sales price for that county; provided, that a municipality or regional affordable housing commission, as applicable, may adopt a higher threshold pursuant to this section. The county median sales price for a single-family home shall be determined annually by April 1st of each calendar year by the executive office of housing and livable communities.

(ii) Transfers made as gifts with consideration of less than \$100;

(iii) Transfers from the government of the United States, the Commonwealth and any of their instrumentalities, agencies, or subdivisions, including but not limited to transfers from the city, town, local housing authority or regional housing commission;

(iv) Distributions by the trustees of a trust to the beneficiaries of such trust;

(v) Transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust;

(vi) Transfers between family members as defined by bylaw, ordinance or regulations adopted by a city, town or regional affordable housing commission, as the case may be;

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

(viii) 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;

(ix) Transfers made in partition of land and improvements thereto, pursuant to chapter 241;

(x) Transfers to any charitable or religious organization, as defined pursuant to section 5 of chapter 59; provided, however, that the real property interest so transferred will be held by the charitable or religious organization

solely for affordable housing-related uses that are consistent with the uses allowed by the municipal affordable housing trust fund or regional affordable housing commission fund, as applicable; and provided, further, that such housing shall be subject to an affirmative fair housing marketing plan approved by the executive office of housing and livable communities;

(xi) 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;

(xii) Transfers consisting of the division of marital assets under the provisions of section 34 of chapter 208 or other provisions of law; and

(xiii) Transfers of an interest in real property containing not less than 3 residential units in which not less than 1 residential unit or 25 per cent of the residential units, whichever is greater, is governed by affordable housing restrictions; provided, however, that if less than 100 per cent of the residential units are governed by affordable housing restrictions, the exemption shall apply only to the portion of the property that is governed by affordable housing restrictions and the transfer fee imposed pursuant to this section shall be proportionately reduced based on the percentage of residential units subject to affordable housing restrictions, as compared to the total number of units located on that property.

(2) Any city, town or regional affordable housing commission, as applicable, may adopt further exemptions in addition to those provided herein.

(3) The payor of the transfer fee shall have the burden of proving that an exemption applies to a transfer of real property interest pursuant to this section; and provided further, that 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 established pursuant to this section.

(d) The city or town's treasurer, or the treasurer or other person designated by the regional affordable housing commission, as applicable, 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 municipal or regional affordable housing trust fund.

(e)(1) The adoption of any transfer fee pursuant to subsection (b), or any amendment thereto, shall be determined by either (i) a majority vote by the city or town's legislative body or (ii) with respect to a regional affordable housing commission, by the terms of, or in accordance with, the procedures established by such commission; provided, that member cities and towns may adopt a transfer fee pursuant to clause (i) if a transfer fee is not in effect for the applicable regional affordable housing commission pursuant to clause (ii); and provided further, that a transfer fee adopted by any member cities and towns shall have no force or effect upon the effective date of a transfer fee adopted by the applicable regional affordable housing commission pursuant to clause (ii).

The adoption of a transfer fee pursuant to subsection (b) shall take effect on the first day of the calendar quarter following 30 days after its acceptance pursuant to this subsection or on the first day of a later calendar quarter as the city or town or regional housing commission, as applicable, may designate.

(2) A city, town or any of the member cities or towns of a regional affordable housing commission may provide for the enforcement and collection of a transfer fee established pursuant to this section, including, but not limited to the denial, revocation or suspension of local licenses and permits pursuant to section 57 of chapter 40 and the authority to impose a lien on real property pursuant to section 58 of chapter 40.

(3) A city, town or regional affordable housing commission enacting a real estate transfer fee pursuant to this section, may issue rules, policies and procedures to effectuate its terms.

(4) A city, town or regional affordable housing commission that adopts this section shall submit an annual report to the executive office of housing and livable communities and the department of revenue detailing the total fees collected and the amounts used or planned to be used for affordable housing purposes in accordance with this section.

(5) A city, town or regional affordable housing commission that adopts this section shall adopt a bylaw, ordinance or regulation, as the case may be, which establishes a procedure by which an aggrieved person may appeal the transfer fee amount, in whole or in part, or the denial of an exemption.

(6) Any person aggrieved by a denial of relief pursuant to a bylaw, ordinance or regulation established pursuant to paragraph (5) may, within 60 days from the receipt of the notice of such denial, petition the appellate tax board under the provisions of chapter 58A.

(f) The executive office of housing and livable communities, in consultation with the department of revenue, shall promulgate regulations to carry out the provisions of this section, which shall include, but not be limited to regulations that provide for the forfeiture of revenue collected pursuant to this section to said executive office if such revenue has not been used for affordable housing purposes within a reasonable amount of time.

(g) Notwithstanding any general or special law to the contrary, the secretary of administration and finance may prohibit the enforcement and collection of a transfer fee in the commonwealth in any year where there has been a declared public health emergency or state of emergency in the commonwealth, or any other similar declared emergency applicable to the commonwealth.”.