

SENATE No. 873

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 relative to attainable housing in seasonal communities.

PETITION OF:

NAME:

Julian Cyr

DISTRICT/ADDRESS:

Cape and Islands

SENATE No. 873

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 873) of Julian Cyr for legislation relative to attainable housing in seasonal communities. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 789 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act relative to attainable housing in seasonal communities.

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. Notwithstanding any general or special law to the contrary, the department
2 of housing and economic development shall give special consideration to the following relative
3 to counting otherwise non-qualified projects as part of the overall percentage for a municipality
4 for the purposes of their subsidized housing inventory: (1) 1 bedroom housing units in
5 municipalities that can demonstrate their low income housing needs are not limited to 2, 3 and 4
6 bedroom units; (2) projects in municipalities within the commonwealth with an average home
7 price that is 100 per cent greater than the statewide median home price; (3) covenant housing
8 within the town of Nantucket; and (4) developments of low-income units in bordering
9 municipalities or a distinct geographic region where both municipalities have invested
10 community preservation act funds or funds from a municipal housing trust.

11 SECTION 2. Section 6 of chapter 44B is hereby amended by inserting after the word
12 “purpose”, in line X, the following words:- “; provided, however, that funds for open space or
13 historic preservation that have not been expended for not less than three consecutive fiscal years
14 may be transferred by the chief executive authority of the municipality for community housing,
15 waste water infrastructure or water infrastructure by a majority vote of the legislative body”

16 SECTION 3. Section 1A of chapter 40, as appearing in the 2016 Official Edition, is
17 hereby amended by adding the following definition:-

18 “Tiny house”, a detached structure containing a dwelling unit with no more than 600
19 square feet, excluding the area of any floor level located above the main floor, intended for year
20 round occupancy that meets the requirements of chapter 143, and may include single-room
21 structures, and which is built on either a permanent foundation or on a chassis that is suitable for
22 registration for transport on public highways of the state.

23 SECTION 4. Section 3 of chapter 40A, as appearing in the 2016 Official Edition, is
24 hereby amended by adding the following paragraph:-

25 “A municipality that permits accessory dwelling units pursuant to this section shall
26 permit a tiny house as a detached accessory dwelling unit; provided, however, that such land or
27 structures may be subject to reasonable regulations concerning dimensional setbacks, screening
28 and the bulk and height of structures; provided, however, that a tiny house used for habitation
29 shall be connected to a public water system or a private well, and to a public sewer system or a
30 subsurface wastewater disposal system that has been approved by the Massachusetts department
31 of environmental protection. A zoning ordinance or by-law may require that the principal
32 dwelling or the accessory dwelling unit be continuously owner-occupied and may limit the total

33 number of accessory dwelling units in the municipality to not less than 5 per cent of the total
34 non-seasonal single-family housing units in the municipality.”

35 SECTION 5. Chapter 40, as appearing in the 2016 Official Edition, is hereby amended by
36 inserting, after section 60B, the following section:-

37 60C. A city or town, by vote of its town meeting, town council or city council, with the
38 approval of the mayor where required by law, on its own behalf or in conjunction with one or
39 more cities or towns, may exempt from property taxation, under chapter 59, a dwelling unit that
40 is rented on a yearly basis, and occupied year-round, for an amount not to exceed 150 per cent
41 the fair market rent established by the United States Department of Housing and Urban
42 Development for the metropolitan statistical area. The owner of a dwelling qualifying for
43 exemption under this section shall submit to the municipality or its agent documentation,
44 including but not limited to a signed lease, necessary to confirm the eligibility of the rental.

45 The amount of the exemption shall be determined by the municipality, but shall not
46 exceed an amount equal to the tax otherwise owed on the property based on the assessed value of
47 the property, including accessory dwelling units, multiplied by the square feet of the living space
48 of all dwelling units on the property that qualify under this section, divided by the total square
49 feet of structures on the property.

50 SECTION 6. Chapter 23B is hereby amended by adding the following section:-

51 Section 31. (a) For purposes of this section:

52 “Affordable rental housing” means housing that serves persons with a household income
53 of less than 120 per cent of median income for a municipality; and

54 “Qualified developer” means a developer that has partnered with a school district or
55 municipality to create affordable rental housing for school district or municipal employees.

56 (b)The department, or any division within the department, may enter into long-term
57 financing agreements with school districts, municipalities and qualified developers for the
58 creation of affordable rental housing for municipal employees.

59 (c) Payment on a finance agreement under this section shall be deferred until the
60 affordable rental housing that is financed is put into service and the school district or
61 municipality begins collecting rent from the occupants of that affordable rental housing.

62 SECTION 7. Chapter 60 of the General Laws is hereby amended by inserting, after
63 section 37B, the following section:-

64 Section 37C. A property subject to sale under section 37 of this chapter that contains
65 three (3) or less units, the department of housing and community development, shall have a right
66 of first refusal to acquire the tax lien at tax sale, and may assist the owner to discharge the lien or
67 take title and acquire the property in its own name pursuant to regulations to be developed by the
68 corporation, consistent with its purposes. The corporation shall notify the collector of its
69 intention to exercise this right no later than 10 days before the date of sale or any adjournment of
70 the sale. Failure of the corporation to notify the collector as provided herein shall extinguish the
71 right of first refusal under this section.

72 SECTION 8. Chapter 59 of the General Laws is hereby amended by inserting after
73 section 5N the following 2 sections:-

74 Section 5O. In any city or town that accepts this section, the board of selectmen of a
75 town, or in a municipality having a town council form of government, the town council or the
76 mayor, with the approval of the city council in a city, may establish a bifurcated or progressive
77 tax rate on real property.

78 Section 5P. In any city or town that accepts this section, the board of selectmen of a town,
79 or in a municipality having a town council form of government, the town council, or in a city, the
80 mayor, with the approval of the city council, may establish a property tax exemption for
81 residential real estate in the city or town that is affordable for, and rented and occupied by,
82 persons whose household income is not more than the area median income. The exemption shall
83 be for an amount determined by each city or town; provided, however, that the amount shall not
84 be more than the tax otherwise due on the parcel based on the full and fair assessed value,
85 multiplied by the square footage of the housing units rented to and occupied by a persons whose
86 household income is not more than the area median income, divided by the total square footage
87 of a structure located on the parcel. For rental housing, assessment of such property, if by an
88 income approach to value, shall assume fair market rent for all units. To be eligible for the
89 exemption, the housing unit shall be leased to persons whose household income is not more than
90 area median income at rents for the entire fiscal year for which the exemption is sought. The
91 owner of the residential real estate shall submit to the city or town documentation including, but
92 not limited to, a signed lease and any other documentation necessary to confirm the eligibility of
93 the residential real estate.

94 A municipality shall have the power to create local rules and procedures for
95 implementing this section in a way that is consistent with the intent of this section

96 SECTION 9. Notwithstanding any general or special law to the contrary, a special
97 commission is hereby established for the purposes of making an investigation and study relative
98 to the impact of the state building code, fire code, health code, and sanitary code on the
99 availability of affordable housing in the Commonwealth and to whether or not the building code,
100 fire code, health code, or sanitary code may be amended to promote the development of housing
101 that is affordable for a majority of residents. The commission shall consist of: 2 members of the
102 senate to be appointed by the president of the senate; 2 members of the house to be appointed by
103 the speaker of the house; and 6 persons appointed by the governor, 1 of whom shall be a
104 representative of the Home Builders and Remodeler's Association of Massachusetts, 1 of whom
105 shall be a representative of the Massachusetts Association of Realtors, 1 of whom shall be a
106 representative of MassHousing, 1 of whom shall be a representative of the department of housing
107 and community development, 1 of who shall be a representative of the Building Code
108 Coordinating Council, 1 of whom shall be Massachusetts Association of Community
109 Development Corporations.

110 All appointments shall be made not later than 30 days after the effective date of this act.
111 Members shall not receive compensation for their services but may receive reimbursement for
112 the reasonable expenses incurred in carrying out their responsibilities as members of the
113 commission.

114 Not later than December 1, 2022, the commission shall report to the general court the
115 result of its investigation and study and its recommendations, if any, together with drafts of
116 legislation necessary to carry its recommendations into effect by filing the same with the clerk of
117 the house of representatives who shall forward the same to the joint committee on housing and
118 the joint committee on community development and small businesses.

119 SECTION 10. Chapter 44 of the General laws is hereby amended by inserting after
120 section 55C the following section: –

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

123 “Affordable Housing Restriction”, a recorded instrument held by a qualified holder which
124 encumbers or restricts a real property interest so that the real property interest is perpetually or
125 for a term of at least 30 years limited to use as a residence occupied by a low or moderate income
126 household which earns less than a specified income level, the upper limit of which may not
127 exceed 175 per cent of the city or town’s median income. A “qualified holder” is a governmental
128 body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an
129 affordable housing restriction.

130 "Eligible Applicants", non-profit and for-profit corporations and organizations,
131 individuals and public entities.

132 "Purchaser", the transferee, grantee or recipient of any real property interest.

133 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a
134 seller or the seller’s nominee, or for the seller’s benefit, for the transfer of any real property
135 interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid or
136 transferred; (ii) all cash or other property paid or transferred by or on behalf of the purchaser to
137 discharge or reduce any obligation of the seller; (iii) the principal amount of all notes or their
138 equivalent, or other deferred payments, given or promised to be given by or on behalf of the
139 purchaser to the seller or the seller’s nominee; (iv) the outstanding balance of all obligations of
140 the seller which are assumed by the purchaser or to which the real property interest transferred

141 remains subject after the transfer, determined at the time of transfer, but excluding real estate
142 taxes and other municipal liens or assessments which are not overdue at the time of transfer; (v)
143 the fair market value, at the time of transfer, of any other consideration or thing of value paid or
144 transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or
145 services paid, transferred or rendered in exchange for such real property interest.

146 "Real property interest", any present or future legal or equitable interest in or to real
147 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
148 which holds any legal or equitable interest in real property, the interest of a partner or member in
149 a partnership or limited liability company, the interest of a stockholder in a corporation, the
150 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
151 contract for purchase and sale of real property, and the transferable development rights created
152 under chapter 183A; but shall not include any interest which is limited to any of the following:
153 the dominant estate in any easement or right of way; the right to enforce any restriction; any
154 estate at will or at sufferance; any estate for years having a term of less than 30 years; any
155 reversionary right, condition, or right of entry for condition broken; and the interest of a
156 mortgagee or other secured party in any mortgage or security agreement.

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

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

163 (b) A city or town may impose a fee up to 2 per cent of the purchase price upon the
164 transfer of any real property interest in any real property situated in the city or town. Said fee
165 shall be the liability of the purchaser of such real property interest, and any agreement between
166 the purchaser and the seller or any other person with reference to the allocation of the
167 responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be
168 paid to the city or town, or its designee, and shall be accompanied by a copy of the deed or other
169 instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains
170 and penalties of perjury by the purchaser or the purchaser's legal representative and the seller or
171 the seller's legal representative, attesting to the true and complete purchase price and the basis, if
172 any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed
173 hereby. The city or town, or its designee, shall promptly thereafter execute and issue a certificate
174 indicating that the appropriate fee has been paid or that the transfer is exempt from the fee,
175 stating the basis for the exemption. The register of deeds for the county in which the city or town
176 is located, and the assistant recorder for the registry district of the county in which the city or
177 town is located, shall not record or register, or receive or accept for recording or registration, any
178 deed, except a mortgage deed, to which has not been affixed such a certificate executed by the
179 city or town or its designee. Failure to comply with this requirement shall not affect the validity
180 of any instrument. The city or town shall deposit all fees received hereunder with the city or
181 town's treasurer. The treasurer shall deposit such fees in the city or town's Municipal Affordable
182 Housing Trust Fund established pursuant to section 55C or any other affordable housing trust
183 fund established by a law of the commonwealth providing for the creation and preservation of
184 affordable housing in municipalities for the benefit of low and moderate income households or
185 for the funding of community housing, as defined in and in accordance with chapter 44B. If no

186 such fund exists in a city or town, the treasurer shall pay such funds to the treasurer and receiver
187 general of the commonwealth who shall deposit such funds in the Affordable Housing Trust
188 Fund established by chapter 121D.

189 The fee imposed hereunder shall be due simultaneously with the time of transfer of the
190 transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a
191 conveyance of real property interests and a conveyance of personalty related thereto at or about
192 the same time, the allocations of payments between real estate and personalty agreed to by the
193 purchaser and seller shall not determine the amount of the fee due pursuant to this section;
194 instead, the city or town may require payment of the fee referred to in real property interests so
195 conveyed as determined by the city or town.

196 (c) At any time within 7 days following the issuance of the certificate of payment of the
197 fee imposed by subsection 2, the purchaser or the purchaser's legal representative may return
198 said certificate to the city or town or its designee for cancellation, together with an affidavit
199 signed under oath or under the pains and penalties of perjury that the transfer, with respect to
200 which such certificate was issued, has not been consummated, and thereupon the fee paid with
201 respect to such transfer shall be forthwith returned to the purchaser or the purchaser's legal
202 representative.

203 (d) The following transfers of real property interests shall be exempt from the fee
204 established by subsection (i):

205 (i) Transfers to the government of the United States, the commonwealth and any of their
206 instrumentalities, agencies or subdivisions, including but not limited to transfers to the city or
207 town.

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

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

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

222 (v) Transfers made in partition of land and improvements thereto, under chapter 241.

223 (vi) Transfers to any charitable organization as defined in clause Third of section 5 of
224 chapter 59, or any religious organization, provided that the real property interest so transferred
225 will be held by the charitable or religious organization solely for its public charitable or religious
226 purposes.

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

230 (viii) Transfers made to a corporation or partnership or limited liability company at the
231 time of its formation, pursuant to which transfer no gain or loss is recognized under the
232 provisions of section 351 or 721 of the Internal Revenue Code of 1986, as amended; provided,
233 however, that such transfer shall be exempt only in the event that: (1) with respect to a
234 corporation, the transferor retains an interest in the newly formed corporation which is equivalent
235 to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or
236 limited liability company, the transferor retains after such formation rights in capital interests and
237 profit interests within such partnership or limited liability company which are equivalent to the
238 interest the transferor held prior to the transfer.

239 (ix) Transfers made to a stockholder of a corporation in liquidation or partial liquidation
240 of the corporation, and transfers made to a partner of a partnership or to a member of a limited
241 liability company in dissolution or partial dissolution of the partnership or limited liability
242 company; but the transfer shall be exempt only if: (1) with respect to a corporation, the transferee
243 receives property, including real property interests and other property received, which is the
244 same fraction of the total property of the transferor corporation as the fraction of the
245 corporation's stock owned by the transferee prior to the transfer or (2) with respect to a
246 partnership or limited liability company, the transferee receives property, including real property
247 interests and other property received, which is the same fraction of the property of the
248 partnership or limited liability company as the fraction of the capital and profit interests in the
249 transferor formerly owned by the transferee.

250 (x) Transfers consisting of the division of marital assets under the provisions of section
251 34 of chapter 208 or other provisions of law.

252 (xi) The first \$2,000,000 of the sale price of any transfer or series of transfers of real
253 property interests in a single transaction. Said exemption may be adjusted to a sale price over
254 \$2,000,000 as determined by the affirmative vote of a majority of voters of the city or town's
255 legislative body.

256 (xii) Transfers of minority interests in corporations, trusts, partnerships or limited liability
257 companies which are publicly traded, which trades are not part of a series of transfers which
258 together constitute a transfer of control of a corporation, trust, partnership or limited liability
259 company.

260 Except as otherwise provided, the purchaser shall have the burden of proof that any
261 transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in
262 the event that such transfer, by itself or as part of a series of transfers, was made for the primary
263 purpose of evading the fee imposed by subsection (i).

264 (e) The city or town's treasurer shall keep a full and accurate account stating when, from
265 or to whom, and on what account money has been paid or received relative to the activities of the
266 Affordable Housing Trust Fund.

267 Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of
268 partnerships filed with the Trust Fund for the purpose of determining or fixing the amount of the
269 fee imposed under section ten or for the purpose of determining the existence of any exemption
270 under section twelve shall not be public records for the purposes of section ten of chapter sixty-
271 six of the General Laws.

272 (f) A purchaser who fails to pay all or any portion of the fee established by subsection (b)
273 on or before the time when the same is due shall be liable for the following additional payments
274 in addition to said fee:

275 (i) Interest: The purchaser shall pay interest on the unpaid amount of the fee to be
276 calculated from the time of transfer at a rate equal to 14 per cent per annum.

277 (ii) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee
278 imposed by this section, fails to pay all or a portion of the fee within 30 days after the time of
279 transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the city or
280 town for each month or portion thereof thereafter that the fee is not paid in full; provided,
281 however, that in no event shall the amount of any penalty imposed hereunder exceed 25 per cent
282 of the unpaid fee due at the time of transfer. Whenever the city or town determines that all or a
283 portion of a fee due under this section was unpaid due to fraud with intent to defeat or evade the
284 fee imposed by this section, a penalty equal to the amount of said fee as determined by the city or
285 town shall be paid by the purchaser in addition to said fee.

286 (g) The city or town shall notify the purchaser and the seller by registered or certified
287 mail of any failure to discharge in full the amount of the fee due under this section and any
288 penalty or interest assessed. The city or town shall grant a hearing on the matter of the imposition
289 of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received
290 by the city or town within 30 days after the mailing of said notice. The city or town shall notify
291 the purchaser and the seller in writing by registered or certified mail of its determination
292 concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party
293 aggrieved by a determination of the city or town concerning a deficiency, penalty or interest

294 may, after payment of said deficiency, appeal to the district or superior court within 3 months
295 after the mailing of notification of the determination of the city or town. Upon the failure to
296 timely petition for a hearing, or appeal to said courts, within the time limits hereby established,
297 the purchaser and seller shall be bound by the terms of the notification, assessment or
298 determination, as the case may be, and shall be barred from contesting the fee, and any interest
299 and penalty, as determined by the city or town. All decisions of said courts shall be appealable.
300 Every notice to be given under this section by the city or town shall be effective if mailed by
301 certified or registered mail to the purchaser or the seller at the address stated in a recorded or
302 registered instrument by virtue of which the purchaser holds any interest in land, the transfer of
303 which gives rise to the fee which is the subject of such notice; and if no such address is stated or
304 if such transfer is not evidenced by an instrument recorded or registered in the public records in
305 the city or town, such notice shall be effective when so mailed to the purchaser or seller in care
306 of any person appearing of record to have a fee interest in such land, at the address of such
307 person as set forth in an instrument recorded or registered in the city or town.

308 All fees, penalties and interest required to be paid pursuant to this section shall constitute
309 a personal debt of the purchaser and may be recovered in an action of contract or in any other
310 appropriate action, suit or proceeding brought by the city or town; said action, suit or proceeding
311 shall be subject to the provisions of chapter 260.

312 If any purchaser liable to pay the fee established by this section neglects or refuses to pay
313 the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the
314 city or town upon all property and rights to property, whether real or personal, belonging to
315 either such purchaser or such seller. Said lien shall arise at the time of transfer and shall continue
316 until the liability for such amount is satisfied. Said lien shall in any event terminate not later than

317 6 years following the time of transfer. Said lien shall not be valid as against any mortgagee,
318 pledgee, purchaser or judgment creditor unless notice thereof has been filed by the city or town
319 (i) with respect to real property or fixtures, in the registry of deeds for the county in which the
320 city or town resides or (ii) with respect to personal property, in the office in which a security or
321 financing statement or notice with respect to the property would be filed in order to perfect a
322 nonpossessory security interest belonging to the person named in the relevant notice, subject to
323 the same limitations as set forth in section 50 of chapter 62C.

324 Purchasers applying for an exemption under subsection (d) shall be required at the time
325 of application for exemption to execute an agreement legally binding on purchasers and
326 separately legally binding upon any legal representative of the purchasers: (i) assuming complete
327 liability for any fee, plus interest and penalties if any, waived on account of an allowed
328 exemption subsequently determined to have been invalid, and (ii) submitting to the jurisdiction
329 of the trial court of the commonwealth sitting in the county where the city or town is located.
330 Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property
331 transfer. Execution of the above-described agreement shall not be required of any mortgagee,
332 pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed
333 by the city or town.

334 In any case where there has been a refusal or neglect to pay any fee, interest or penalties
335 imposed by this act, whether or not levy has been made, the city or town, in addition to other
336 modes of relief, may direct a civil action to be filed in a district or superior court of the
337 commonwealth to enforce the lien of the city or town under this section with respect to such
338 liability or to subject any property of whatever nature, of the delinquent, or in which he has any
339 right, title or interest, to the payment of such liability.

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

343 (h) The fee described by subsection (b) shall be of 5-year duration from the date this
344 section takes effect. The imposition of the fee and the fee amount shall be determined by a
345 majority vote by the city or town’s legislative body. This fee may continue for 5-year periods by
346 a majority vote of the city or town’s legislative body. The fee described by subsection (b) may
347 be: (i) decreased, or (ii) eliminated by a two-thirds vote of the city or town’s legislative body.
348 The threshold exemption described in clause (xiii) of subsection (d) may similarly be raised by
349 an affirmative majority vote of the city or town’s legislative body. In the event that the
350 legislative body does not renew the fee at the 10-year anniversary, or any subsequent 5-year
351 anniversary, or the legislative body votes to eliminate the fee, the balance of any fees previously
352 collected shall be transferred to the city or town and held by the treasurer in a separate account,
353 and shall first be used to satisfy any outstanding liabilities or obligations incurred by the city or
354 town or the Municipal Affordable Housing Trust as a result of imposition of the fee, and the
355 remainder may be expended without further appropriation by the legislative body for affordable
356 housing purposes. In the event that the liabilities and obligations of the city or town or the
357 Municipal Affordable Housing Trust exceed the amounts transferred to the city or town, the fee
358 shall remain in full force and effect until such liabilities and obligations have been satisfied.

359 (i) If the city or town has determined that a fee is due by asserting the application of the
360 evasion of fee doctrine described in subsection (b), then the purchaser shall have the burden of
361 demonstrating by clear and convincing evidence as determined by the city or town that the
362 transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than

363 avoidance of the fee set forth in subsection (b) and (ii) economic substance apart from the
364 asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of
365 demonstrating by clear and convincing evidence as determined by the city or town that the
366 asserted non-fee-avoidance business purpose is commensurate with the amount of the fee
367 pursuant to subsection (b) to be thereby avoided.