

City of Cambridge

Tabled
Item #

MASSACHUSETTS

9

In City Council 4-14, 1997

*Draft B Transfer Tax as Amended
to substitute 300,000 for 100,000 wherever it appears*

	YEA	NAY	ABSENT	PRESENT
V.M. Kathleen L. Born	✓			
Ms. Henrietta Davis	✓			
Mr. Francis H. Duehay	✓			
Mr. Anthony Galluccio		✓		
Mr. Kenneth E. Reeves	✓			
Mr. Michael A. Sullivan		✓		
Mr. Timothy J. Toomey, Jr.		✓		
Ms. Katherine Triantafillou	✓			
Mayor Sheila T. Russell		✓		

5 4 0 0

City of Cambridge

*Tabled Item
#9*

MASSACHUSETTS

In City Council 4-14, 1997

*Substitute
KB amendments to Transfer Tax Draft B*

	YEA	NAY	ABSENT	PRESENT
V.M. Kathleen L. Born	✓			
Ms. Henrietta Davis	✓			
Mr. Francis H. Duehay	✓			
Mr. Anthony Galluccio	✓			
Mr. Kenneth E. Reeves	✓			
Mr. Michael A. Sullivan				✓
Mr. Timothy J. Toomey, Jr.		✓		
Ms. Katherine Triantafillou	✓			
Mayor Sheila T. Russell		✓		

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2

1

City of Cambridge

MASSACHUSETTS

In City Council 4-7, 1997

Mgr's Agenda ~~HAAR~~ # 3

YEA	NAY	ABSENT	PRESENT	
✓				V.M. Kathleen L. Born
✓				Ms. Henrietta Davis
✓				Mr. Francis H. Duehay
✓				Mr. Anthony Galluccio
✓				Mr. Kenneth E. Reeves
	✓			Mr. Michael A. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
✓				Ms Katherine Triantafillou
	✓			Mayor Sheila T. Russell

6 3 0 0



City of Cambridge

Calendar #9

IN CITY COUNCIL

April 14, 1997

VICE MAYOR BORN
COUNCILLOR DAVIS
COUNCILLOR DUEHAY
COUNCILLOR REEVES
COUNCILLOR TRIANTAFILLOU

ORDERED: That the City Council petition the General Court of the Commonwealth of Massachusetts to enact the attached home rule petition entitled, "AN ACT PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE OF REAL PROPERTY INTEREST IN THE CITY OF CAMBRIDGE."

In City Council April 14, 1997
Adopted by a ye and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script, reading "D. Margaret Drury".

D. Margaret Drury
City Clerk

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

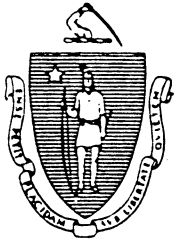
The undersigned, citizens of **CAMBRIDGE** respectfully
petition for the passage of the accompanying bill or resolve, and /or for legislation.

**AN ACT PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE OF REAL
PROPERTY INTEREST IN THE CITY OF CAMBRIDGE.**

Petitioners are requested to sign names and addresses legibly.

Kathleen L. Born
Kenneth G. Jones
Lee H. Smith
Catherine Triantafyllou

36 Walnut Ave Cambridge 0214
340 Harvard Street Camb
26 Lowell St Cambridge 02138
120 Chestnut St Cambridge 0213
90 Reed St Cambridge, MA. 02140



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- SEVEN

AN ACT

PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE
OF REAL PROPERTY INTERESTS IN THE CITY OF
CAMBRIDGE.

*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 Trust Fund" or "Trust", shall refer to the
"Cambridge Affordable Housing Trust Fund", as enacted, chapter four
hundred and eighty-two of the Acts of nineteen hundred and ninety-
one.

"Board", shall refer to the Board of Trustees of the
Affordable Housing Trust Fund as established by section two of
chapter four hundred and eighty-two of the Acts of nineteen hundred
and ninety-one.

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

"Purchase Price", all consideration paid or transferred by or
on behalf of a purchaser to a seller or his nominee, or for his

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

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 the transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; the fair market value, at the time of the 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", 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 interests in real property; but shall not include any interest which is limited to any or all 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, and any estate of years having a term of less than thirty years; any reversionary right, condition, or right

of entry for condition broken; the interest of a mortgage or other secured property in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

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

"Time of transfer", of any real property interests 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.

SECTION 2. There is hereby imposed a fee on the transfer or conveyance of any real property interests in real property in the City of Cambridge used in whole or in part for residential purposes. Said fee shall be in the amount of one percent of the purchase price, on the amount in excess of three hundred thousand dollars. Notwithstanding any general or special law to the contrary, no adjustment shall be made pursuant to section four of chapter sixty-two F of the General Laws on account of revenues received from any fee established by this section. 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 City of Cambridge ("City") and allocated to the Cambridge Affordable Housing Trust Fund 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, 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 City shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt, in whole or in part, from the fee, stating the basis for the exemption. The Register of Deeds for Middlesex County, shall not record or 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 Trust. Failure to comply with this requirement shall not affect the validity of any instrument. All money collected pursuant to this Act shall be used in a manner that is consistent with the purposes of the Trust as set forth in the Declaration of Trust and in accordance with the powers granted to the Trust by chapter four hundred and eighty-two of the Acts of nineteen hundred and ninety-one. The Treasurer of the City of Cambridge shall prudently invest the sums collected and all income thereon shall accrue to the Trust. The fee imposed hereunder shall be due simultaneously with the time of transfer of the real property interest upon which it is imposed. Notwithstanding the foregoing, whenever there is a

conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead the Trust may require payment of the fee referred to in real property interests so conveyed as determined by the Board.

Section 3. Unless exempted pursuant to section five infra, but notwithstanding the exemptions referred to in section 5, paragraphs (g) and (h), the following fees shall be imposed:

(a) A fee equal to one percent of the purchase price, on the amount in excess of three hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of or otherwise owned by a corporation, shall be paid upon the transfer of the controlling stockholders of their interests of the stock of such corporation, and upon the transfer of a minority stockholder's shares if said transfer gives the transferee the right to occupy a residential unit in cooperatively held housing accommodations. This fee is due on or before the time of transfer of the stock.

(b) A fee equal to one percent of the purchase price, on the amount in excess of three hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of a partnership or otherwise owned by a partnership, upon the change in composition of such partnership either in one transaction or a

series of related transactions which change in composition results in a transfer of capital interests in excess of fifty per cent of the total capital interests within such partnership or results in a transfer of the ownership rights to profit interests within such partnerships.

Section 4. At any time within fourteen 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 City 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 5. The following transfers of real property interest 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 hereunder.

(a) Transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies or subdivisions.

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

(c) Transfers made as gifts without consideration.

(d) 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.

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

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

(g) Transfers made to a corporation or partnership 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 (i) with respect to a corporation the transferor retains a controlling interest in such corporation after such formation or (ii), with respect to a partnership, the transferor retains after such formation rights to capital interests in excess of fifty per cent of the capital interests within such partnership or retains rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(h) Transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership; provided, however, that such transfer shall be exempt only in the event that (i) with

respect to a corporation, the transferee had prior to the transfer a controlling interest in such corporation or (ii) with respect to a partnership, the transferee had prior to the transfer rights to capital interests in excess of fifty per cent of the total capital interests within such partnership or had rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(i) 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.

(j) Transfers of property consisting in part of real property interests situated in the City of Cambridge and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in the City of Cambridge; provided that the purchaser shall furnish the Trust 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.

(k) All transfers under three hundred thousand dollars;

(l) All transfers of "affordable housing", as that term is defined in regulations promulgated by the Trust.

(m) Transfers consisting of property taken by eminent domain.

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: Interest on the unpaid amount of the fee to be calculated from the time of the transfer at a rate equal to fourteen percent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade the fee established by section three, fails to pay all or a portion of the fee within thirty days of the time of transfer, shall pay a penalty equal to five percent of the outstanding fee as determined by the Board 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 percent of the unpaid fee due at the time of transfer. Whenever the Board determines that all or a portion of a fee due under this act was not paid due to fraud or with intent to defeat or evade the fee imposed by this act, a penalty equal to the amount of said fee shall be paid by the purchaser in addition to said fee.

Section 7. (a) The Board shall notify a purchaser 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 Board shall grant a hearing on the matter of the imposition of said fee or any penalty or interest assessed, if a petition requesting such hearing is received by the Board within thirty days after the mailing of said notice. The Board shall notify the purchaser 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 Board, concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within thirty days after the mailing of notification of the determination by the Board. Upon the failure to timely petition for a hearing, or appeal to said courts within the time limits hereby established, the purchaser 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 Board. All decisions of said courts shall be appealable to the Massachusetts Appeals Court in the same manner as civil actions. Every notice to be given under this section by the Board shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, 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 Middlesex County, such notice shall be effective when mailed to the purchaser 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 Middlesex 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 Board;

said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty.

(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 or penalty thereon, shall be a lien in favor of the Board upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of the transfer and shall continue until the liability for such amount is satisfied. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Board: a) with respect to real property or fixtures, in the registry of deeds for Middlesex County, or b) 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.

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 Board, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the Commonwealth to enforce the liens of the Board 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 Board may issue a waiver or release of any lien imposed by this section, pursuant to standards set forth in regulations promulgated by the Board. Such waiver or release shall be conclusive evidence that the lien upon which the property covered by the waiver or release is extinguished.

Section 8. The Affordable Housing Trust Fund is hereby empowered to promulgate rules and regulations governing the application of the transfer fee to the transfer of any real property interest within the City of Cambridge in furtherance of the provisions of this Act.

Section 9. Upon termination or dissolution of the Affordable Housing Trust Fund, the title to all funds and other properties owned by it or owed to it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the Trust shall vest in the City of Cambridge.

Section 10. This act, being necessary for the welfare of the City of Cambridge and its inhabitants, shall be liberally construed to effect the purposes hereof.

Section 11. The provisions of this Act shall apply to any real property interests transferred on or after the effective date hereof.

Section 12. This act shall be submitted for acceptance to the voters of the City of Cambridge at the next regular city election to be held in the year nineteen hundred and ninety-seven in the form of the following question which shall be placed on the

official ballot to be used at said election: -

"Shall an act passed by the general court in the year nineteen hundred and ninety-seven, entitled 'An Act Providing for a Fee on the Transfer or Conveyance of Real Property Interests in the City of Cambridge' be accepted."

This act shall take effect, upon certification by the Election Commissioners that a majority of votes cast in answer to said question is in the affirmative.



CITY OF CAMBRIDGE

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

April 14, 1997

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

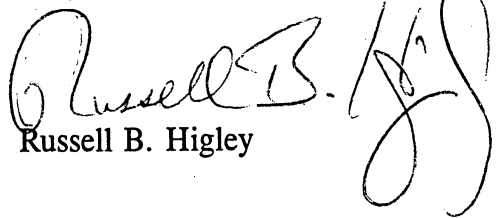
Re: *Amendment to the Draft of the Home Rule Petition Relative to the Transfer Fee*

Dear Mr. Healy:

It has come to my attention that the draft of the home rule petition submitted to the City Council on April 3, 1997 contains a drafting error. In earlier versions of the legislation, when the Council was considering a fee that would apply to the entire purchase price, we were asked to create an exemption for first-time home buyers. At the Council meeting of March 17, 1997, the Council asked that we redraft the petition so as to assess the fee only to purchases over \$100,000. Accordingly, the current language of §5 (k) as it appears in the April 3, 1997 draft should be stricken and should now read as follows:

(k) All transfers under one hundred thousand dollars.

Very truly yours,


Russell B. Higley

pg #345
me to check
& strike K



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300

FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

April 3, 1997

To The Honorable, The City Council:

I am transmitting the Law Department's draft of the home rule petition relating to the proposed transfer tax. As the City Council requested, the Law Department has drafted the petition in accordance with the terms voted by the Council at the meeting of March 17, 1997. You will note that there are two drafts of the petition attached. Draft A is the version of the petition previously submitted to the City Council, with the amounts approved by the Council on March 17, 1997. Draft B is the same petition with the addition of a section that would require a local referendum prior to the law taking effect. This section has been drafted by the Law Department in response to the position taken by the Governor with respect to a recent petition by Nantucket. I have attached a copy of the Governor's letter relating to the Nantucket petition to indicate the apparent need for a referendum clause.

Very truly yours,

Robert W. Healy
City Manager



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- SEVEN

AN ACT

PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE
OF REAL PROPERTY INTERESTS IN THE CITY OF
CAMBRIDGE.

*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 Trust Fund" or "Trust", shall refer to the
"Cambridge Affordable Housing Trust Fund", as enacted, chapter four
hundred and eighty-two of the Acts of nineteen hundred and ninety-
one.

"Board", shall refer to the Board of Trustees of the
Affordable Housing Trust Fund as established by section two of
chapter four hundred and eighty-two of the Acts of nineteen hundred
and ninety-one.

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

"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 the transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; the fair market value, at the time of the 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", 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 interests in real property; but shall not include any interest which is limited to any or all 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, and any estate of years having a term of less than thirty years; any reversionary right, condition, or right

of entry for condition broken; the interest of a mortgage or other secured property in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

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

"Time of transfer", of any real property interests 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.

SECTION 2. There is hereby imposed a fee on the transfer or conveyance of any real property interests in real property in the City of Cambridge used in whole or in part for residential purposes. Said fee shall be in the amount of one percent of the purchase price, on the amount in excess of one hundred thousand dollars. Notwithstanding any general or special law to the contrary, no adjustment shall be made pursuant to section four of chapter sixty-two F of the General Laws on account of revenues received from any fee established by this section. 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 City of Cambridge ("City") and allocated to the Cambridge Affordable Housing Trust Fund 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, 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 City shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt, in whole or in part, from the fee, stating the basis for the exemption. The Register of Deeds for Middlesex County, shall not record or 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 Trust. Failure to comply with this requirement shall not affect the validity of any instrument. All money collected pursuant to this Act shall be used in a manner that is consistent with the purposes of the Trust as set forth in the Declaration of Trust and in accordance with the powers granted to the Trust by chapter four hundred and eighty-two of the Acts of nineteen hundred and ninety-one. The Treasurer of the City of Cambridge shall prudently invest the sums collected and all income thereon shall accrue to the Trust. The fee imposed hereunder shall be due simultaneously with the time of transfer of the real property interest upon which it is imposed. Notwithstanding the foregoing, whenever there is a

conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead the Trust may require payment of the fee referred to in real property interests so conveyed as determined by the Board.

Section 3. Unless exempted pursuant to section five infra, but notwithstanding the exemptions referred to in section 5, paragraphs (g) and (h), the following fees shall be imposed:

(a) A fee equal to one percent of the purchase price, on the amount in excess of one hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of or otherwise owned by a corporation, shall be paid upon the transfer of the controlling stockholders of their interests of the stock of such corporation, and upon the transfer of a minority stockholder's shares if said transfer gives the transferee the right to occupy a residential unit in cooperatively held housing accommodations. This fee is due on or before the time of transfer of the stock.

(b) A fee equal to one percent of the purchase price, on the amount in excess of one hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of a partnership or otherwise owned by a partnership, upon the change in composition of such partnership either in one transaction or a series of

related transactions which change in composition results in a transfer of capital interests in excess of fifty per cent of the total capital interests within such partnership or results in a transfer of the ownership rights to profit interests within such partnerships.

Section 4. At any time within fourteen 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 City 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 5. The following transfers of real property interest 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 hereunder.

(a) Transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies or subdivisions.

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

(c) Transfers made as gifts without consideration.

(d) 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.

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

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

(g) Transfers made to a corporation or partnership 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 (i) with respect to a corporation the transferor retains a controlling interest in such corporation after such formation or (ii), with respect to a partnership, the transferor retains after such formation rights to capital interests in excess of fifty per cent of the capital interests within such partnership or retains rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(h) Transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership; provided, however, that such transfer shall be exempt only in the event that (i) with

respect to a corporation, the transferee had prior to the transfer a controlling interest in such corporation or (ii) with respect to a partnership, the transferee had prior to the transfer rights to capital interests in excess of fifty per cent of the total capital interests within such partnership or had rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(i) 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.

(j) Transfers of property consisting in part of real property interests situated in the City of Cambridge and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in the City of Cambridge; provided that the purchaser shall furnish the Trust 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.

(k) Transfers made to a purchaser who, at the time of transfer, has at no time prior to said transfer owned or possessed any real property interest as defined in section one either within or without the City of Cambridge;

(l) All transfers of "affordable housing", as that term is defined in regulations promulgated by the Trust.

(m) Transfers consisting of property taken by eminent domain.

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: Interest on the unpaid amount of the fee to be calculated from the time of the transfer at a rate equal to fourteen percent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade the fee established by section three, fails to pay all or a portion of the fee within thirty days of the time of transfer, shall pay a penalty equal to five percent of the outstanding fee as determined by the Board 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 percent of the unpaid fee due at the time of transfer. Whenever the Board determines that all or a portion of a fee due under this act was not paid due to fraud or with intent to defeat or evade the fee imposed by this act, a penalty equal to the amount of said fee shall be paid by the purchaser in addition to said fee.

Section 7. (a) The Board shall notify a purchaser 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 Board shall grant a hearing on the matter of the imposition of said fee or any penalty or interest assessed, if a petition requesting such hearing is received by the Board within thirty days after the mailing of said notice. The Board shall

notify the purchaser 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 Board, concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within thirty days after the mailing of notification of the determination by the Board. Upon the failure to timely petition for a hearing, or appeal to said courts within the time limits hereby established, the purchaser 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 Board. All decisions of said courts shall be appealable to the Massachusetts Appeals Court in the same manner as civil actions. Every notice to be given under this section by the Board shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, 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 Middlesex County, such notice shall be effective when mailed to the purchaser 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 Middlesex 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 Board; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty.

(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 or penalty thereon, shall be a lien in favor of the Board upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of the transfer and shall continue until the liability for such amount is satisfied. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Board: a) with respect to real property or fixtures, in the registry of deeds for Middlesex County, or b) 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.

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 Board, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the Commonwealth to enforce the liens of the

Board 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 Board may issue a waiver or release of any lien imposed by this section, pursuant to standards set forth in regulations promulgated by the Board. Such waiver or release shall be conclusive evidence that the lien upon which the property covered by the waiver or release is extinguished.

Section 8. The Affordable Housing Trust Fund is hereby empowered to promulgate rules and regulations governing the application of the transfer fee to the transfer of any real property interest within the City of Cambridge in furtherance of the provisions of this Act.

Section 9. Upon termination or dissolution of the Affordable Housing Trust Fund, the title to all funds and other properties owned by it or owed to it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the Trust shall vest in the City of Cambridge.

Section 10. This act, being necessary for the welfare of the City of Cambridge and its inhabitants, shall be liberally construed to effect the purposes hereof.

Section 11. The provisions of this Act shall take effect on

_____. 19____.



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- SEVEN

AN ACT

PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE
OF REAL PROPERTY INTERESTS IN THE CITY OF
CAMBRIDGE.

*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 Trust Fund" or "Trust", shall refer to the
"Cambridge Affordable Housing Trust Fund", as enacted, chapter four
hundred and eighty-two of the Acts of nineteen hundred and ninety-
one.

"Board", shall refer to the Board of Trustees of the
Affordable Housing Trust Fund as established by section two of
chapter four hundred and eighty-two of the Acts of nineteen hundred
and ninety-one.

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

"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 the transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; the fair market value, at the time of the 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", 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 interests in real property; but shall not include any interest which is limited to any or all 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, and any estate of years having a term of less than thirty years; any reversionary right, condition, or right

of entry for condition broken; the interest of a mortgage or other secured property in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

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

"Time of transfer", of any real property interests 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.

SECTION 2. There is hereby imposed a fee on the transfer or conveyance of any real property interests in real property in the City of Cambridge used in whole or in part for residential purposes. Said fee shall be in the amount of one percent of the purchase price, on the amount in excess of ^{three}~~one~~ hundred thousand dollars. Notwithstanding any general or special law to the contrary, no adjustment shall be made pursuant to section four of chapter sixty-two F of the General Laws on account of revenues received from any fee established by this section. 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 City of Cambridge ("City") and allocated to the Cambridge Affordable Housing Trust Fund 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, 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 City shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt, in whole or in part, from the fee, stating the basis for the exemption. The Register of Deeds for Middlesex County, shall not record or 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 Trust. Failure to comply with this requirement shall not affect the validity of any instrument. All money collected pursuant to this Act shall be used in a manner that is consistent with the purposes of the Trust as set forth in the Declaration of Trust and in accordance with the powers granted to the Trust by chapter four hundred and eighty-two of the Acts of nineteen hundred and ninety-one. The Treasurer of the City of Cambridge shall prudently invest the sums collected and all income thereon shall accrue to the Trust. The fee imposed hereunder shall be due simultaneously with the time of transfer of the real property interest upon which it is imposed. Notwithstanding the foregoing, whenever there is a

conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead the Trust may require payment of the fee referred to in real property interests so conveyed as determined by the Board.

Section 3. Unless exempted pursuant to section five infra, but notwithstanding the exemptions referred to in section 5, paragraphs (g) and (h), the following fees shall be imposed:

(a) A fee equal to one percent of the purchase price, on the amount in excess of ~~one~~ ^{three} hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of or otherwise owned by a corporation, shall be paid upon the transfer of the controlling stockholders of their interests of the stock of such corporation, and upon the transfer of a minority stockholder's shares if said transfer gives the transferee the right to occupy a residential unit in cooperatively held housing accommodations. This fee is due on or before the time of transfer of the stock.

(b) A fee equal to one percent of the purchase price, on the amount in excess of ~~one~~ ^{three} hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of a partnership or otherwise owned by a partnership, upon the change in composition of such partnership either in one transaction or a series of

related transactions which change in composition results in a transfer of capital interests in excess of fifty per cent of the total capital interests within such partnership or results in a transfer of the ownership rights to profit interests within such partnerships.

Section 4. At any time within fourteen 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 City 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 5. The following transfers of real property interest 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 hereunder.

(a) Transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies or subdivisions.

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

(c) Transfers made as gifts without consideration.

(d) 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.

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

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

(g) Transfers made to a corporation or partnership 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 (i) with respect to a corporation the transferor retains a controlling interest in such corporation after such formation or (ii), with respect to a partnership, the transferor retains after such formation rights to capital interests in excess of fifty per cent of the capital interests within such partnership or retains rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(h) Transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership; provided, however, that such transfer shall be exempt only in the event that (i) with

respect to a corporation, the transferee had prior to the transfer a controlling interest in such corporation or (ii) with respect to a partnership, the transferee had prior to the transfer rights to capital interests in excess of fifty per cent of the total capital interests within such partnership or had rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(i) 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.

(j) Transfers of property consisting in part of real property interests situated in the City of Cambridge and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in the City of Cambridge; provided that the purchaser shall furnish the Trust 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.

(k) Transfers made to a purchaser who, at the time of transfer, has at no time prior to said transfer owned or possessed any real property interest as defined in section one either within or without the City of Cambridge; *insert new K*

(l) All transfers of "affordable housing", as that term is defined in regulations promulgated by the Trust.

(m) Transfers consisting of property taken by eminent domain.

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: Interest on the unpaid amount of the fee to be calculated from the time of the transfer at a rate equal to fourteen percent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade the fee established by section three, fails to pay all or a portion of the fee within thirty days of the time of transfer, shall pay a penalty equal to five percent of the outstanding fee as determined by the Board 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 percent of the unpaid fee due at the time of transfer. Whenever the Board determines that all or a portion of a fee due under this act was not paid due to fraud or with intent to defeat or evade the fee imposed by this act, a penalty equal to the amount of said fee shall be paid by the purchaser in addition to said fee.

Section 7. (a) The Board shall notify a purchaser 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 Board shall grant a hearing on the matter of the imposition of said fee or any penalty or interest assessed, if a petition requesting such hearing is received by the Board within thirty days after the mailing of said notice. The Board shall

notify the purchaser 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 Board, concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within thirty days after the mailing of notification of the determination by the Board. Upon the failure to timely petition for a hearing, or appeal to said courts within the time limits hereby established, the purchaser 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 Board. All decisions of said courts shall be appealable to the Massachusetts Appeals Court in the same manner as civil actions. Every notice to be given under this section by the Board shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, 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 Middlesex County, such notice shall be effective when mailed to the purchaser 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 Middlesex 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 Board; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty.

(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 or penalty thereon, shall be a lien in favor of the Board upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of the transfer and shall continue until the liability for such amount is satisfied. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Board: a) with respect to real property or fixtures, in the registry of deeds for Middlesex County, or b) 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.

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 Board, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the Commonwealth to enforce the liens of the

Board 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 Board may issue a waiver or release of any lien imposed by this section, pursuant to standards set forth in regulations promulgated by the Board. Such waiver or release shall be conclusive evidence that the lien upon which the property covered by the waiver or release is extinguished.

Section 8. The Affordable Housing Trust Fund is hereby empowered to promulgate rules and regulations governing the application of the transfer fee to the transfer of any real property interest within the City of Cambridge in furtherance of the provisions of this Act.

Section 9. Upon termination or dissolution of the Affordable Housing Trust Fund, the title to all funds and other properties owned by it or owed to it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the Trust shall vest in the City of Cambridge.

Section 10. This act, being necessary for the welfare of the City of Cambridge and its inhabitants, shall be liberally construed to effect the purposes hereof.

Section 11. The provisions of this Act shall apply to any real property interests transferred on or after the effective date hereof.

Section 12. This act shall be submitted for acceptance to

the voters of the City of Cambridge at the next regular city election to be held in the year nineteen hundred and ninety-seven in the form of the following question which shall be placed on the official ballot to be used at said election: -

"Shall an act passed by the general court in the year nineteen hundred and ninety-seven, entitled 'An Act Providing for a Fee on the Transfer or Conveyance of Real Property Interests in the City of Cambridge' be accepted."

This act shall take effect, upon certification by the Election Commissioners that a majority of votes cast in answer to said question is in the affirmative.

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 727-3600

WILLIAM F. WELD
GOVERNOR

MARGO PAUL CELLUCCI
LIEUTENANT GOVERNOR

September 26, 1996

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal entitled, "An Act Relative to the Nantucket Islands Land Bank," pursuant to the provisions of Article II, Section 8, Paragraph 1, Clause (2) of the Amendments to the Constitution, as amended by Article LXXXIX.

This legislation will afford the voters of Nantucket the opportunity, by ballot vote, to supplement the funding available to acquire and protect natural, scenic and open areas on Nantucket Island by ratifying an increase in the Nantucket Islands Land Bank real estate transfer fee from 2% to 4%. The bill will also exempt first time homebuyers from the transfer fee for the first \$200,000 of the purchase price of a home.

An identical bill, initiated as a home rule bill by the Town of Nantucket, was passed to be enacted by the Legislature on August 8, 1996. However, because the bill had been amended by the Legislature subsequent to its approval by town meeting, the constitutional validity of the act was in doubt. For this reason, I reluctantly returned that bill unsigned.

In a letter dated September 9, 1996, the Chairman of the Nantucket Board of Selectmen informed me that the Board voted on September 4, 1996 to request that I file this bill. Provided this bill is enacted by a two-thirds vote in each branch of the General Court, the constitutional infirmity will be eliminated and the terms of the home rule bill previously passed will be implemented. Consistent with the intention expressed at the Annual Town Meeting last Spring and more recently by the Board of Selectmen, a ballot vote on the transfer fee may then be taken by the residents of Nantucket at the earliest possible date.

I support the objective of this bill to protect Nantucket Island -- one of our most beautiful and fragile resources. I also support the principle that an increase in the transfer fee must be subject to the will of the people expressed in a binding ballot vote, and I would not support this bill without such a provision.

I appreciate your consideration of this bill.

Respectfully submitted,

W. F. Weld

William F. Weld
Governor



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- SEVEN

AN ACT

PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE
OF REAL PROPERTY INTERESTS IN THE CITY OF
CAMBRIDGE.

*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 Trust Fund" or "Trust", shall refer to the
"Cambridge Affordable Housing Trust Fund", as enacted, chapter four
hundred and eighty-two of the Acts of nineteen hundred and ninety-
one.

"Board", shall refer to the Board of Trustees of the
Affordable Housing Trust Fund as established by section two of
chapter four hundred and eighty-two of the Acts of nineteen hundred
and ninety-one.

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

"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 the transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; the fair market value, at the time of the 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", 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 interests in real property; but shall not include any interest which is limited to any or all 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, and any estate of years having a term of less than thirty years; any reversionary right, condition, or right

of entry for condition broken; the interest of a mortgage or other secured property in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

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

"Time of transfer", of any real property interests 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.

SECTION 2. There is hereby imposed a fee on the transfer or conveyance of any real property interests in real property in the City of Cambridge used in whole or in part for residential purposes. Said fee shall be in the amount of one percent of the purchase price, on the amount in excess of one hundred thousand dollars. Notwithstanding any general or special law to the contrary, no adjustment shall be made pursuant to section four of chapter sixty-two F of the General Laws on account of revenues received from any fee established by this section. 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 City of Cambridge ("City") and allocated to the Cambridge Affordable Housing Trust Fund 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, 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 City shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt, in whole or in part, from the fee, stating the basis for the exemption. The Register of Deeds for Middlesex County, shall not record or 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 Trust. Failure to comply with this requirement shall not affect the validity of any instrument. All money collected pursuant to this Act shall be used in a manner that is consistent with the purposes of the Trust as set forth in the Declaration of Trust and in accordance with the powers granted to the Trust by chapter four hundred and eighty-two of the Acts of nineteen hundred and ninety-one. The Treasurer of the City of Cambridge shall prudently invest the sums collected and all income thereon shall accrue to the Trust. The fee imposed hereunder shall be due simultaneously with the time of transfer of the real property interest upon which it is imposed. Notwithstanding the foregoing, whenever there is a

conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead the Trust may require payment of the fee referred to in real property interests so conveyed as determined by the Board.

Section 3. Unless exempted pursuant to section five infra, but notwithstanding the exemptions referred to in section 5, paragraphs (g) and (h), the following fees shall be imposed:

(a) A fee equal to one percent of the purchase price, on the amount in excess of one hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of or otherwise owned by a corporation, shall be paid upon the transfer of the controlling stockholders of their interests of the stock of such corporation, and upon the transfer of a minority stockholder's shares if said transfer gives the transferee the right to occupy a residential unit in cooperatively held housing accommodations. This fee is due on or before the time of transfer of the stock.

(b) A fee equal to one percent of the purchase price, on the amount in excess of one hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of a partnership or otherwise owned by a partnership, upon the change in composition of such partnership either in one transaction or a series of

related transactions which change in composition results in a transfer of capital interests in excess of fifty per cent of the total capital interests within such partnership or results in a transfer of the ownership rights to profit interests within such partnerships.

Section 4. At any time within fourteen 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 City 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 5. The following transfers of real property interest 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 hereunder.

(a) Transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies or subdivisions.

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

(c) Transfers made as gifts without consideration.

(d) 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.

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

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

(g) Transfers made to a corporation or partnership 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 (i) with respect to a corporation the transferor retains a controlling interest in such corporation after such formation or (ii), with respect to a partnership, the transferor retains after such formation rights to capital interests in excess of fifty per cent of the capital interests within such partnership or retains rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(h) Transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership; provided, however, that such transfer shall be exempt only in the event that (i) with

respect to a corporation, the transferee had prior to the transfer a controlling interest in such corporation or (ii) with respect to a partnership, the transferee had prior to the transfer rights to capital interests in excess of fifty per cent of the total capital interests within such partnership or had rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(i) 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.

(j) Transfers of property consisting in part of real property interests situated in the City of Cambridge and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in the City of Cambridge; provided that the purchaser shall furnish the Trust 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.

(k) Transfers made to a purchaser who, at the time of transfer, has at no time prior to said transfer owned or possessed any real property interest as defined in section one either within or without the City of Cambridge;

(l) All transfers of "affordable housing", as that term is defined in regulations promulgated by the Trust.

(m) Transfers consisting of property taken by eminent domain.

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: Interest on the unpaid amount of the fee to be calculated from the time of the transfer at a rate equal to fourteen percent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade the fee established by section three, fails to pay all or a portion of the fee within thirty days of the time of transfer, shall pay a penalty equal to five percent of the outstanding fee as determined by the Board 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 percent of the unpaid fee due at the time of transfer. Whenever the Board determines that all or a portion of a fee due under this act was not paid due to fraud or with intent to defeat or evade the fee imposed by this act, a penalty equal to the amount of said fee shall be paid by the purchaser in addition to said fee.

Section 7. (a) The Board shall notify a purchaser 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 Board shall grant a hearing on the matter of the imposition of said fee or any penalty or interest assessed, if a petition requesting such hearing is received by the Board within thirty days after the mailing of said notice. The Board shall

notify the purchaser 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 Board, concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within thirty days after the mailing of notification of the determination by the Board. Upon the failure to timely petition for a hearing, or appeal to said courts within the time limits hereby established, the purchaser 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 Board. All decisions of said courts shall be appealable to the Massachusetts Appeals Court in the same manner as civil actions. Every notice to be given under this section by the Board shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, 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 Middlesex County, such notice shall be effective when mailed to the purchaser 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 Middlesex 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 Board; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty.

(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 or penalty thereon, shall be a lien in favor of the Board upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of the transfer and shall continue until the liability for such amount is satisfied. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Board: a) with respect to real property or fixtures, in the registry of deeds for Middlesex County, or b) 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.

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 Board, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the Commonwealth to enforce the liens of the

Board 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 Board may issue a waiver or release of any lien imposed by this section, pursuant to standards set forth in regulations promulgated by the Board. Such waiver or release shall be conclusive evidence that the lien upon which the property covered by the waiver or release is extinguished.

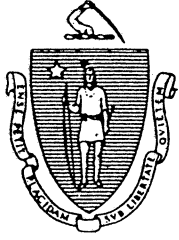
Section 8. The Affordable Housing Trust Fund is hereby empowered to promulgate rules and regulations governing the application of the transfer fee to the transfer of any real property interest within the City of Cambridge in furtherance of the provisions of this Act.

Section 9. Upon termination or dissolution of the Affordable Housing Trust Fund, the title to all funds and other properties owned by it or owed to it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the Trust shall vest in the City of Cambridge.

Section 10. This act, being necessary for the welfare of the City of Cambridge and its inhabitants, shall be liberally construed to effect the purposes hereof.

Section 11. The provisions of this Act shall take effect on

_____. 19____.



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- SEVEN

AN ACT

PROVIDING FOR A FEE ON THE TRANSFER OR CONVEYANCE
OF REAL PROPERTY INTERESTS IN THE CITY OF
CAMBRIDGE.

*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 Trust Fund" or "Trust", shall refer to the
"Cambridge Affordable Housing Trust Fund", as enacted, chapter four
hundred and eighty-two of the Acts of nineteen hundred and ninety-
one.

"Board", shall refer to the Board of Trustees of the
Affordable Housing Trust Fund as established by section two of
chapter four hundred and eighty-two, of the Acts of nineteen hundred
and ninety-one.

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

"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 the transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; the fair market value, at the time of the 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", 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 interests in real property; but shall not include any interest which is limited to any or all 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, and any estate of years having a term of less than thirty years; any reversionary right, condition, or right

of entry for condition broken; the interest of a mortgage or other secured property in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

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

"Time of transfer", of any real property interests 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.

SECTION 2. There is hereby imposed a fee on the transfer or conveyance of any real property interests in real property in the City of Cambridge used in whole or in part for residential purposes. Said fee shall be in the amount of one percent of the purchase price, on the amount in excess of one hundred thousand dollars. Notwithstanding any general or special law to the contrary, no adjustment shall be made pursuant to section four of chapter sixty-two F of the General Laws on account of revenues received from any fee established by this section. 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 City of Cambridge ("City") and allocated to the Cambridge Affordable Housing Trust Fund 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, 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 City shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt, in whole or in part, from the fee, stating the basis for the exemption. The Register of Deeds for Middlesex County, shall not record or 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 Trust. Failure to comply with this requirement shall not affect the validity of any instrument. All money collected pursuant to this Act shall be used in a manner that is consistent with the purposes of the Trust as set forth in the Declaration of Trust and in accordance with the powers granted to the Trust by chapter four hundred and eighty-two of the Acts of nineteen hundred and ninety-one. The Treasurer of the City of Cambridge shall prudently invest the sums collected and all income thereon shall accrue to the Trust. The fee imposed hereunder shall be due simultaneously with the time of transfer of the real property interest upon which it is imposed. Notwithstanding the foregoing, whenever there is a

conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead the Trust may require payment of the fee referred to in real property interests so conveyed as determined by the Board.

Section 3. Unless exempted pursuant to section five infra, but notwithstanding the exemptions referred to in section 5, paragraphs (g) and (h), the following fees shall be imposed:

(a) A fee equal to one percent of the purchase price, on the amount in excess of one hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of or otherwise owned by a corporation, shall be paid upon the transfer of the controlling stockholders of their interests of the stock of such corporation, and upon the transfer of a minority stockholder's shares if said transfer gives the transferee the right to occupy a residential unit in cooperatively held housing accommodations. This fee is due on or before the time of transfer of the stock.

(b) A fee equal to one percent of the purchase price, on the amount in excess of one hundred thousand dollars of the fair market value of real property interests in real property used in whole or in part for residential purposes held in the name of a partnership or otherwise owned by a partnership, upon the change in composition of such partnership either in one transaction or a series of

related transactions which change in composition results in a transfer of capital interests in excess of fifty per cent of the total capital interests within such partnership or results in a transfer of the ownership rights to profit interests within such partnerships.

Section 4. At any time within fourteen 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 City 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 5. The following transfers of real property interest 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 hereunder.

(a) Transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies or subdivisions.

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

(c) Transfers made as gifts without consideration.

(d) 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.

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

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

(g) Transfers made to a corporation or partnership 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 (i) with respect to a corporation the transferor retains a controlling interest in such corporation after such formation or (ii), with respect to a partnership, the transferor retains after such formation rights to capital interests in excess of fifty per cent of the capital interests within such partnership or retains rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(h) Transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership; provided, however, that such transfer shall be exempt only in the event that (i) with

respect to a corporation, the transferee had prior to the transfer a controlling interest in such corporation or (ii) with respect to a partnership, the transferee had prior to the transfer rights to capital interests in excess of fifty per cent of the total capital interests within such partnership or had rights to profit interests within such partnership in excess of fifty per cent of the total profit interests within such partnership.

(i) 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.

(j) Transfers of property consisting in part of real property interests situated in the City of Cambridge and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in the City of Cambridge; provided that the purchaser shall furnish the Trust 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.

(k) Transfers made to a purchaser who, at the time of transfer, has at no time prior to said transfer owned or possessed any real property interest as defined in section one either within or without the City of Cambridge;

(l) All transfers of "affordable housing", as that term is defined in regulations promulgated by the Trust.

(m) Transfers consisting of property taken by eminent domain.

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: Interest on the unpaid amount of the fee to be calculated from the time of the transfer at a rate equal to fourteen percent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade the fee established by section three, fails to pay all or a portion of the fee within thirty days of the time of transfer, shall pay a penalty equal to five percent of the outstanding fee as determined by the Board 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 percent of the unpaid fee due at the time of transfer. Whenever the Board determines that all or a portion of a fee due under this act was not paid due to fraud or with intent to defeat or evade the fee imposed by this act, a penalty equal to the amount of said fee shall be paid by the purchaser in addition to said fee.

Section 7. (a) The Board shall notify a purchaser 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 Board shall grant a hearing on the matter of the imposition of said fee or any penalty or interest assessed, if a petition requesting such hearing is received by the Board within thirty days after the mailing of said notice. The Board shall

notify the purchaser 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 Board, concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within thirty days after the mailing of notification of the determination by the Board. Upon the failure to timely petition for a hearing, or appeal to said courts within the time limits hereby established, the purchaser 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 Board. All decisions of said courts shall be appealable to the Massachusetts Appeals Court in the same manner as civil actions. Every notice to be given under this section by the Board shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, 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 Middlesex County, such notice shall be effective when mailed to the purchaser 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 Middlesex 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 Board; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty.

(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 or penalty thereon, shall be a lien in favor of the Board upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of the transfer and shall continue until the liability for such amount is satisfied. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Board: a) with respect to real property or fixtures, in the registry of deeds for Middlesex County, or b) 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.

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 Board, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the Commonwealth to enforce the liens of the

Board 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 Board may issue a waiver or release of any lien imposed by this section, pursuant to standards set forth in regulations promulgated by the Board. Such waiver or release shall be conclusive evidence that the lien upon which the property covered by the waiver or release is extinguished.

Section 8. The Affordable Housing Trust Fund is hereby empowered to promulgate rules and regulations governing the application of the transfer fee to the transfer of any real property interest within the City of Cambridge in furtherance of the provisions of this Act.

Section 9. Upon termination or dissolution of the Affordable Housing Trust Fund, the title to all funds and other properties owned by it or owed to it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the Trust shall vest in the City of Cambridge.

Section 10. This act, being necessary for the welfare of the City of Cambridge and its inhabitants, shall be liberally construed to effect the purposes hereof.

Section 11. The provisions of this Act shall apply to any real property interests transferred on or after the effective date hereof.

Section 12. This act shall be submitted for acceptance to

the voters of the City of Cambridge at the next regular city election to be held in the year nineteen hundred and ninety-seven in the form of the following question which shall be placed on the official ballot to be used at said election: -

"Shall an act passed by the general court in the year nineteen hundred and ninety-seven, entitled 'An Act Providing for a Fee on the Transfer or Conveyance of Real Property Interests in the City of Cambridge' be accepted."

This act shall take effect, upon certification by the Election Commissioners that a majority of votes cast in answer to said question is in the affirmative.

HOUSE No. 6333

The Commonwealth of Massachusetts



WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 727-3600

September 26, 1996

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal entitled, "An Act Relative to the Nantucket Islands Land Bank," pursuant to the provisions of Article II, Section 8, Paragraph 1, Clause (2) of the Amendments to the Constitution, as amended by Article LXXXIX.

This legislation will afford the voters of Nantucket the opportunity, by ballot vote, to supplement the funding available to acquire and protect natural, scenic and open areas on Nantucket Island by ratifying an increase in the Nantucket Islands Land Bank real estate transfer fee from 2% to 4%. The bill will also exempt first time homebuyers from the transfer fee for the first \$200,000 of the purchase price of a home.

An identical bill, initiated as a home rule bill by the Town of Nantucket, was passed to be enacted by the Legislature on August 8, 1996. However, because the bill had been amended by the Legislature subsequent to its approval by town meeting, the constitutional validity of the act was in doubt. For this reason, I reluctantly returned that bill unsigned.

In a letter dated September 9, 1996, the Chairman of the Nantucket Board of Selectmen informed me that the Board voted on September 4, 1996 to request that I file this bill. Provided this bill is enacted by a two-thirds vote in each branch of the General Court, the constitutional infirmity will be eliminated and the terms of the home rule bill previously passed will be implemented. Consistent with the intention expressed at the Annual Town Meeting last Spring and more recently by the Board of Selectmen, a ballot vote on the transfer fee may then be taken by the residents of Nantucket at the earliest possible date.

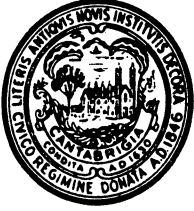
I support the objective of this bill to protect Nantucket Island -- one of our most beautiful and fragile resources. I also support the principle that an increase in the transfer fee must be subject to the will of the people expressed in a binding ballot vote, and I would not support this bill without such a provision.

I appreciate your consideration of this bill.

Respectfully submitted,

William F. Weld

William F. Weld
Governor



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

April 3, 1997

To The Honorable, The City Council:

I am transmitting the Law Department's draft of the home rule petition relating to the proposed transfer tax. As the City Council requested, the Law Department has drafted the petition in accordance with the terms voted by the Council at the meeting of March 17, 1997. You will note that there are two drafts of the petition attached. Draft A is the version of the petition previously submitted to the City Council, with the amounts approved by the Council on March 17, 1997. Draft B is the same petition with the addition of a section that would require a local referendum prior to the law taking effect. This section has been drafted by the Law Department in response to the position taken by the Governor with respect to a recent petition by Nantucket. I have attached a copy of the Governor's letter relating to the Nantucket petition to indicate the apparent need for a referendum clause.

Very truly yours,

Robert W. Healy
City Manager

Consent Agenda #3

Transmitting communication from
Robert W. Healy, City Manager, relative
to the Law Department's draft of home
rule petition relating to the proposed
transfer tax.

Cal 9
5-211
April 14, 1997

Motion to amend by

Nice Mayor Born in sections
two, ~~and~~ three and subsections
of section five of draft B
Carried - 6-2-0-1

Order adopted to file Home
Rule Legislation as amended
Carried - 5-4-0.

In City Council April 7, 1997

Placed on the table
on the motion
of Councillor Dueray