January 18, 2024

Representative James Arciero, House Chair
Joint Committee on Housing
State House, Room 146
Boston, MA 02133

Senator Lydia Edwards, Senate Chair
Joint Committee on Housing
State House, Room 520
Boston, MA 02133

Dear Chair Arciero and Chair Edwards,

On behalf of the Greater Boston Chamber of Commerce and our 1,200 members, I write to offer testimony on H.4138, *the Affordable Homes Act,* filed by Governor Healey. As housing availability and affordability continue to be major challenges for those living and working in Massachusetts, I commend Governor Healey for taking a bold step in the right direction for housing policy in the Commonwealth. We urgently need a comprehensive approach, and H.4138 provides needed resources to support housing production of all types. However, while this legislation has many positive elements, the Chamber encourages the Joint Committee on Housing to avoid policies, like transfer taxes, that add to our already high housing costs or create barriers to housing production.

The Chamber Supports Critical Investments in Housing Production and Affordability

H.4138 provides necessary capital resources to boost housing production, maintain existing affordable housing units, and provide incentives to build both public and private housing developments for individuals of all incomes. The Chamber applauds these initiatives and encourages the Committee to adopt the programs that will spur both public and private housing development. Particularly, the Chamber supports:

- The Affordable Housing Trust Fund (7004-0072 - $800 million)
- The Housing Stabilization and Investment Fund (7004-0073 - $425 million)
- HousingWorks (7004-0083 - $175 million)
- Middle Income Housing Fund (7004-0080 - $100 million)
- Sustainable and Green Housing Initiatives (7004-0078 - $275 million)
- Public Housing Grants (7004-0074 - $1.5 billion)
- Smart Growth Housing Trust Fund (7004-0079 - $20 million)
- Expanding Homeownership Opportunities for First Time Buyers and Socially and Economically Disadvantaged Individuals Reserve (7004-0081 - $100 million)

The Chamber Supports Proactive Planning and Housing Production Incentives

H.4138 also includes several important policy improvements that will help with planning and production of housing. The Chamber strongly supports the creation of a statewide housing plan every 5 years (Section 8) and encourages the Committee to bolster those efforts by including a review of necessary infrastructure needed to support housing development, such as energy facilities and transportation. The Chamber also supports allowing accessory dwelling units to be built by-right (Sections 12 and 13) and the creation of the Homeownership Production Tax Credit. These efforts are consistent with the Commonwealth's goals of encouraging and streamlining housing production across the state.

The Chamber Strongly Opposes Transfer Taxes (Section 20)

H.4138 moves housing policy forward in several important ways. Unfortunately, a few provisions of the bill raise significant concerns and represent a step backward in incentivizing housing production. Section 20 allows communities that are compliant with the MBTA Communities Act to impose a tax on all residential, commercial, and other real property transfers that are the greater of $1 million or the median single family home price within the county. This proposal will only increase the cost of housing in the Commonwealth with no guarantee that more affordable housing will be produced. Transfer taxes do not just raise costs for sellers, despite arguments to the contrary. Costs created by the new tax will be passed down to tenants, increasing rents for both residential and commercial renters and particularly impacting renters and small businesses in smaller, generally more affordable properties. The unintended consequences of this tax can be seen in other jurisdictions, and the lack of oversight, reporting, and accountability on revenues raised by the proposed transfer tax raise questions about what housing, if any, will be built as a result.

1) Residential Impacts of Real Estate Transfer Taxes

Proponents argue that real estate transfer taxes will drive more affordable housing construction, however, jurisdictions that adopted similar policies have, in fact, permitted less housing after the tax is implemented. Furthermore, Massachusetts communities already have a local option revenue source for affordable housing that is dramatically underused.

We urge the Committee to look at residential construction trends in other jurisdictions with transfer taxes. New York and New Jersey, two states that are both competitors for jobs and talent with Massachusetts, each have long-established real estate transfer taxes on properties over $1 million. New York state's tax, implemented in 1989, levies an additional 1 percent tax on the sale price for properties sold for more than $1 million. New Jersey's tax, implemented in 2004, similarly levies an additional 1 percent tax on properties sold for more than $1 million.

New York state averaged more than 60,000 housing units permitted per year between 1960 and 1988, before the tax was implemented. Beginning with its implementation in 1989 and through 2022, it averaged less than 40,000 permitted housing units annually. During the 29 years before implementation, a total of 1.78 million housing units were permitted compared to 1.35 million in the 34 years that followed. With the transfer tax in place, the state permitted 431,000 fewer housing units compared to a period five years shorter without the tax in place.[1]

New Jersey follows similar trends. In the 19 years prior to the tax taking effect, the state averaged a total of 31,600 housing units permitted annually. In the 19 years since the tax took effect, the state has permitted an average of less than 27,500 units annually. Since the transfer tax took effect in 2004 through 2022, the state permitted 522,325 total units. Compared to the same length of time prior to the adoption – 1985 through 2003 – the state permitted 75,000 fewer housing units.[2]

Furthermore, Massachusetts communities already have the Community Preservation Act (CPA), a local option property tax for which up to 80% of revenues can be used to fund affordable housing. Since 2000, over half of municipalities across Massachusetts have voluntarily opted to adopt the Community Preservation Act.[3] According to a study issued in June 2023, the CPA has resulted in 15,000 local projects and a total of $2.7 billion in community investment, but affordable housing development represents only small fraction of the spending. Despite a requirement that CPA communities must devote 10% of funding toward affordable housing, 70 municipalities fall short of this rule. Only 20 % of total CPA revenues go towards affordable housing purposes and less than 5 % of CPA projects involve the construction of new housing units. Communities should make use of the tools they have before the state opens another path to add a tax and further raise housing costs.

[1] U.S. Census, New Privately-Owned Housing Units Authorized by Building Permits in Permit-Issuing Places, Annual History by State, 1960-2022
[2] Ibid.
[3] Missed Opportunities: Funding Housing Through the Community preservation Act," June 2023. The Center for State Policy Analysis at Tufts University

2) Commercial Impacts of Real Estate Transfer Taxes

The Committee should also be mindful that the implementation of a real estate transfer tax will impact more than just residential housing transfers. In many instances, the sale of commercial real estate will likely surpass the $1 million stated threshold for the transfer tax, particularly in the Greater Boston area – the area in most need of cost relief. Businesses with a physical office or commercial footprint are grappling with the dynamics of a post-pandemic work environment, where hybrid and remote work options remain largely popular with many employers and employees. This dynamic raises the question of the value of maintaining a physical office footprint as demand fluctuates.

While the long-term impacts of this changing work environment are unclear, what we do know is that office vacancies in Massachusetts have increased to a concerning level. In fact, recent data show that the commercial office vacancy rate in Massachusetts is at 20.6%, exceeding peak levels during the Global Financial Crisis.[4] A transfer tax would raise the cost to sell an office and commercial property, a cost that may be offset through higher office rents or other means for the property owner to absorb the increased cost. This additional cost may be the deciding factor for more businesses or building owners to disinvest their footprint in the state. A rush to sell properties occurred in other jurisdictions prior to the enactment of a real estate transfer tax, with some estimates showing the number of transactions above the transfer fee threshold jumping 90%.[5] This tax is a long-term choice that adds in a new fixed cost to owning commercial or office space in Massachusetts. As businesses continue to experiment with their long-term work modality preferences, we must avoid policies that continue to raise the cost to do business in the state.

3) Unintended Consequences of Real Estate Transfer Taxes

We strongly urge the Committee to consider all consequences, intended or unintended, of implementing a transfer tax. By implementing this measure as a local option, communities adjacent to those who accept the transfer fee could see a surge in housing demand by buyers seeking to avoid the added cost, leading to higher home prices in adjacent communities and undercutting the intent of the administration's goal of addressing the high cost of housing. The threshold at which the transfer tax applies also raises important questions about policy implementation. The current threshold is drafted as being the greater of $1,000,000, or the median single family home sales price for that county. Adding further complexity, municipalities may also adopt a higher threshold. Proposing several thresholds creates an uneven playing field where a wider swath of sellers in one community may carry a higher tax burden than other communities. And meaningfully, there will be an inequitable impact on different regions of the state over the long-term as housing prices in some areas create higher thresholds for the tax than in others.

The Chamber Voices Concerns with Inclusionary Zoning Ordinance Voting Threshold

Inclusionary Zoning Ordinances may have unintended negative consequences on housing production. When overly aggressive, such ordinances may have the opposite intended impact and drive down affordable housing production in a municipality, undermining the laudable goals of the Affordable Homes Act. As an example, Boston's inclusionary development policy increased substantially last year despite the City's own research that it would make many housing projects financially unfeasible.[6] Combine these new requirements with high interest rates, high construction costs, and an increasingly uncertain economic environment, and the result is a dramatic decrease in housing production permitting.

[4] Colliers 23Q3 Boston Office Market Report
[5] "'We're Scrambling.' L.A.'s New Mansion Tax Put Sellers on a Deal-Making Deadline". The Wall Street Journal. https://www.wsj.com/articles/los-angeles-mansion-tax-real-estate-market-3922cf8
[6] Boston's Inclusionary Development Policy (IDP) Analysis, RKG Associates, Inc

The Chamber encourages the committee to either eliminate this proposal, or in the alternative, create a ceiling on affordability requirements on developments to ensure that this legislation boosts housing unit production instead of creating additional tools to avoid or limit development.

The Chamber Encourages the Committee to Include a Permit Extension Act

In 2010, the Legislature wisely adopted a Permit Extension Act that created a tolling period to protect state and local permit approvals in the wake of the Great Recession. Without this action, many developments in Boston and beyond would have faltered before the economy could recover. With similar economic and fiscal uncertainties facing policymakers in 2024, combined with the expiration of pandemic-era permit tolling and the current housing shortage, the Committee should again consider such tolling to ensure much needed housing and commercial projects move forward when possible and avoid cumbersome delays that may undermine otherwise worthy development. The Chamber encourages the Committee to adopt permit tolling as part of its redraft of H.4138.

Conclusion

The Chamber appreciates the administration's focus on increasing the supply of housing with the introduction of the Affordable Homes Act. The Chamber is supportive of many of the bill's provisions advancing affordability, promoting public and private housing development, and providing investments in housing for all types of individuals and families. However, to reach our supply goals, the state must avoid policies such as a real estate transfer tax, that will serve only to disincentivize housing production and commercial development. Thank you for your attention and please reach out with any questions.

Sincerely,

James E. Rooney

James E. Rooney
President and CEO

CC: Members of the Joint Committee on Housing