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ATTACHMENT G

July 17, 2017

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution, I am returning to you for amendment Section 30 of House Bill No. 3800, "An Act Making Appropriations for the Fiscal Year 2018 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements."

Section 30 proposes to allow for the creation of "Community Benefit Districts." These are areas in which a group of property owners, with the approval of the city or town, agree to a program of assessments to pay for benefits that accrue to the properties assessed. The concept is similar in many respects to Business Improvement Districts, which already are authorized by the General Laws.

The Legislature passed a similar proposal last summer as part of House Bill 4569, "An Act Relative to Job Creation and Workforce Development." However, I vetoed the section establishing Community Benefit Districts. At the time, I wrote:

While I generally support efforts to reform Business Improvement Districts, I cannot support some of the details in the bill as presented to me and am therefore disapproving this section. The bill includes a presumption that all manner of tax-exempt entities—from non-profits to houses of worship to governmental entities—would be included among the persons and entities required to pay assessments levied in the district despite their tax-exempt status. Nor does the bill mandate protections for residential property owners who are entitled to tax abatements under existing law, such as the elderly, the blind, and qualifying veterans. Additionally, I am concerned that the proposed criteria for creating a Community Benefit District do not include a requirement that even a simple majority of affected property owners support the creation of the district.

These three specific concerns were illustrative of issues I thought should be addressed before authorizing the creation of Community Benefit Districts. I commend the Legislature for addressing issues relating to tax exempt entities and residential property owners who are entitled to tax abatements. The proposal as written provides adequate protection for these groups. However, the third issue I raised last summer, the need for majority support before the tools of government may be used to take money from property owners, remains unaddressed. In addition, a number of clarifications to the statutory language could make it easier for municipal officials and other proponents to implement this law if it is enacted.

Our administration looks forward to working collaboratively with the House and Senate to address these issues and make sure that Community Benefit Districts are structured in a way that ensures that assessments will be spent in a responsible fashion should a majority of participating property owners choose to create a district. To that end, I am recommending an amendment as described below. This amendment would, among other changes:

- Require a majority vote of participating property owners to form a community benefit district;
- Require that assessments paid by a property owner be reasonably proportionate to the benefit received;
- Provide enhanced protections for smaller property owners in the formation process in situations where a single large property owner or group of related property owners will pay a significant portion of the assessments to be levied;
- Promote responsible management of a district by a CBD corporation, including by making its board members subject to the ethics laws; and
- Make other technical changes that should clarify for municipal officials and CBD proponents how a district is created, managed and potentially dissolved when it no longer is serving its intended purpose.

For these reasons, I recommend that Section 30 be amended by striking out the proposed language and inserting in place thereof the following text:-

SECTION 30. The General Laws are hereby amended by inserting after Chapter 40W the following chapter:-

Chapter 40X. Community Benefit Districts

Section 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Community benefit district” or “district”, a contiguous geographic area with clearly defined boundaries, formed pursuant to this chapter.

“CBD corporation”, the nonprofit corporation established pursuant to section 2 to oversee the affairs of the district and ensure the implementation of the CBD management plan.

“CBD assessments”, the annual assessments imposed on participating property owners in the district to pay for the services or improvements specified in the CBD management plan.

“CBD property”, a parcel of real property located within a community benefit district, regardless of use of the parcel or the status of its owner as a participating property owner.

“CBD management plan”, the operating plan for the community benefit district containing all of the information required by section 5, as such plan may be amended from time to time in accordance with section 9.

“Exempt owner”, a property owner who is exempted from paying a CBD assessment in accordance with subsection (b) of section 6.

“Participating property owner”, an owner of CBD property who is required to pay a CBD assessment and any exempt owner who voluntarily agrees, in a binding written agreement, to support the district activities through a cash payment or in-kind services.

“Petition”, a petition submitted by property owners to the municipality as set forth in section 3.

“Petition signer”, a person who signs the petition to establish a community benefit district.

“Property owner”, the record owner or owners of the fee simple title of a CBD property.

“Standard government services”, governmental functions, programs, activities, facilities, improvements and other services that a municipality is authorized to perform or provide and that are paid for out of the municipal government budget.

“Supplemental services”, the provision of programs, public services, activities, amenities or information in addition to the standard government services provided to the CBD.

Section 2. CBD corporation.

(a) A CBD corporation shall be established pursuant to section 3 of chapter 180 of the General Laws. The CBD corporation shall be subject to the requirements set forth in said chapter 180 and sections 18 to 35 of chapter 68, and shall comply with the public charity reporting requirements of section 8F of chapter 12.

(b) Each CBD corporation shall have a board of directors to manage the affairs of the CBD corporation and ensure the implementation of the CBD management plan. Board members shall be selected by majority vote of CBD property owners. At least 51 per cent of the board shall be composed of participating property owners or their designees. The remaining board members may be selected from stakeholders in the community. CBD board members shall be deemed to be special municipal employees for purposes of chapter 268A and shall be subject to all the provisions of said chapter 268A with respect thereto.

(c) The articles of incorporation and bylaws of the CBD corporation shall be included in any petition to establish a CBD and shall be subject to the approval of the municipal legislative body. Any amendment to said articles or bylaws shall be subject to the approval of the municipal legislative body.

Section 3. Petition to establish a district

(a) The organization of a community benefit district shall be initiated by a petition of property owners within the proposed district. Such petition shall be filed in the office of the clerk of the municipality and contain the following:

- (i) the identity of the property owner, the assessed value and the assessor's parcel identification number for each CBD property;
- (ii) the signatures of the property owners in the proposed district who support the establishment of the district;
- (iii) a description of and a site map delineating the boundaries of the proposed district;
- (iv) the identity and address of the CBD corporation, including its initial set of directors and officers and a copy of its articles of incorporation and by-laws;
- (v) a CBD management plan, including all of the information required pursuant to section 5.

(b) Each petition signer shall include with his or her signature the assessor's parcel identification number of the CBD property owned by the petition signer. If the property owner is not a natural person, the petition signer also shall include the name of the property owner and the petition signer's title, if applicable. The petition signer's signature shall constitute a certification under pains and penalty of perjury of his or her authority to sign the petition on behalf of the property owner.

(c) On the same day that said petition is filed with the clerk of the municipality, the petition signers shall file a copy of the petition with the undersecretary of housing and community development and the secretary of housing and economic development. Said secretary and undersecretary may provide to a municipal legislative body written comments on such petition. The secretary of housing and economic development may, in the secretary's discretion, promulgate regulations for the review and approval of petitions submitted pursuant to this chapter.

(d) Within 3 days after receipt of a petition, the clerk of the municipality shall provide a copy of the petition to the municipal assessor. Within 30 days after receipt of a petition, the assessor shall confirm to the municipal chief executive officer whether the information set forth in a petition is consistent with ownership and valuation information maintained by the assessor. In the event of a discrepancy between the information set forth in a petition and the information maintained by the assessor, the municipal chief executive officer may request additional

information from the petition signers to resolve the discrepancy. To determine the authority of a petition signer to act on behalf of a CBD property owner that is an entity other than a natural person, the municipal chief executive officer may rely on a good standing certificate from the secretary of the commonwealth or other independent confirmation of the authority of a petition signer to sign the petition on behalf of the property owner.

Section 4. Municipal approval of a proposed district

(a) A municipal legislative body may approve a petition to establish a community benefit district upon a finding by the municipal chief executive officer that:

(i) Petition signers are property owners who will pay more than 50 per cent of the total CBD assessments proposed to be levied in the district; provided, however, if any participating property owner, or group of related property owners as determined under subsection (b), will pay more than 20 percent of the proposed CBD assessments, then for purposes of determining compliance with the 50 percent threshold, the amount of CBD assessment attributable to such property owner or group of related property owners shall be reduced to an amount equal to 20 percent of the total CBD assessments.

(ii) If there are more than 4 unrelated property owners in the proposed district, more than 50 per cent of the total participating property owners have signed the petition; and if there are not more than unrelated 4 property owners in the proposed district, all participating property owners have signed the petition.

(iii) The CBD assessments are structured to require property owners to contribute to the cost providing services within the district in proportion to the benefits anticipated to be received.

(iv) The total CBD assessments to be collected in any 1 year do not exceed 1/2 of 1 per cent of the sum of the assessed valuation of the CBD property owned by participating property owners.

(v) The CBD management plan meets the requirements of section 5.

(vi) The CBD assessments comply with the requirements of section 6.

(vii) The CBD assessments will not impose undue financial hardship on property owners within the district, or alternatively, the CBD management plan allows a waiver for property owners who can demonstrate financial hardship.

(b) The municipal legislative body may request confirmation from the assessor that the requirements in clause (i) and (ii) of subsection (a) have been met. For purposes of determining compliance with said clauses (i) and (ii) the municipal legislative body, in its discretion, may determine whether property owners are related and may require that any property owner that is an entity other than a natural person to disclose of all its owners, members, partners, or other beneficiaries.

(c) In the case of a city, the municipal legislative body, and in the case of a town, the municipal chief executive officer, shall hold a public hearing on the CBD petition not more than 60 days following receipt of the petition by the clerk of the municipality. The clerk of the municipality shall send written notification of the hearing to each CBD property owner not less than 14 days and not more than 30 days before the hearing. Such notice shall be mailed to the address listed in the property tax records. Notice of the hearing shall be published for 2 consecutive weeks in a newspaper of general circulation in the area, the last publication being not fewer than 14 days before the hearing and posted on the municipality's website. The notices required by this subsection shall include the proposed boundaries of the CBD, the schedule of proposed CBD assessments, a summary of supplemental services to be provided in the district, and notice of where the property owner may obtain a full copy of the management plan.

(d) Not more than 45 days after the close of the public hearing, if the municipal chief executive officer has made the findings required in subsection (a) then the municipal legislative body may, in its sole discretion, approve a petition and establish the community benefit district. A vote to approve a district may be subject to such conditions as the municipal legislative body determines are in the public interest. The approval shall include authorization for the municipality to enter into an agreement with the CBD corporation with respect to operations and funding consistent with the approved management plan, if applicable. The CBD corporation may commence operations 30 days after the municipal approval becomes final.

(e) Notice of the establishment of the community benefit district shall be mailed or delivered to each CBD property owner. The notice shall include the amount of the CBD assessment applicable to said CBD property owner, the projected total of CBD assessments in the district as a whole, and the supplemental services to be provided within the district. In addition to such individual notices, notice that the district has been approved shall be published for 2 consecutive weeks in a newspaper of general circulation in the area, the last publication being not more than 30 days after the vote to declare the district organized and posted on the municipality's website.

Section 5. CBD management plan

(a) A CBD management plan shall include:

(i) A clear statement of the purpose or purposes for which the district has been formed, which may include retaining or recruiting business; administering and managing central and neighborhood business districts; promoting economic development; managing parking within the district; designing, engineering, constructing, maintaining or operating buildings, facilities, urban streetscapes or infrastructures within the district to further economic development and public purposes; conducting historic preservation activities within the district; leasing, owning, acquiring, or optioning real property within the district; owning and managing parks, public spaces and community facilities within the district; supplementing maintenance, security, or sanitation; planning and designing services; formulating a fee structure; accumulating interest; incurring costs or indebtedness; entering into contracts; suing and being sued; employing legal and accounting services; undertaking planning, feasibility and market analyses; developing common marketing and promotional activities; engaging in placemaking, programming, and event management within the district; soliciting donations, sponsorships and grants; operating

transit services within the district; and supporting public art, human and environmental services related to the enhancement of the district or other supplemental services or programs that would further the purposes of this chapter;

(ii) A description of the supplemental services proposed to be provided in the district and paid for with CBD assessments;

(iii) A schedule of the CBD assessments to be made by each of the participating property owners within the CBD, and the percentage of the total assessments to be paid by each of the participating property owners;

(iv) The commitments, if any, of exempt property owners to contribute voluntary payments or in-kind services, and the means of enforcing such commitments;

(v) A budget outlining the cost of the improvements to be constructed and services and activities proposed to be provided in the district; and

(vi) Staffing required to implement the CBD management plan, which may include private nonprofit, for-profit or public agency contractors or subcontractors.

(b) A CBD management plan may include:

(i) Criteria for waiving the CBD assessment for any property owner within the district who demonstrates that the imposition of the CBD assessment would create a significant financial hardship, provided that such waivers shall be requested and granted on an annual basis; and

(ii) A mechanism for reimbursing the municipality for the costs incurred in reviewing the petition and for costs incurred in collecting the CBD assessments.

(c) The CBD corporation shall review the CBD management plan at least once every 3 years and propose such amendments as are necessary to achieve the goals of the district. Amendments to the CBD management plan shall be made in accordance with section 8. Amendments shall become effective upon approval of the municipal legislative body in accordance with section 8. The CBD corporation shall provide written notice of proposed and final amendments to each CBD property owner.

Section 6. CBD assessments; exemptions

(a) CBD assessments for each participating property owner shall be determined by a formula set forth in the management plan; provided that the total CBD assessments to be collected in any 1 year do not exceed 1/2 of 1 per cent of the sum of the assessed valuation of the CBD property owned by participating property owners. The CBD assessment formula may be based on assessed valuation, building or parcel square footage, street frontage, or any other criteria which meets the objectives of the CBD. It shall be permissible for different rates to apply to different classifications of property or to different zones within the district. The CBD corporation, through its management plan, shall have the option to limit or cap the maximum CBD

assessment imposed on individual properties or the total annual revenue generated by CBD assessments in any one year. The management plan may also provide for a phase-in period of not more than 3 years, with assessments increasing over such phase-in period.

(b) All CBD property shall be subject to a CBD assessment that is reasonably proportionate to the benefit to be received by the property owner, except for the following exempt property owners:

(i) Any residential property with a homeowner eligible for a real property tax exemption established by statute, or local ordinance or bylaw shall not be subject to a CBD assessment.

(ii) Tax-exempt CBD property owners, including but not limited to governmental entities, shall not be subject to CBD assessments, but may elect to support the implementation of the CBD management plan through voluntary payment of money or contribution of in-kind services and become a participating CBD property owner by executing a binding written agreement.

(iii) The CBD corporation, in its sole discretion, may grant a hardship waiver to any property owner pursuant to the waiver criteria established within the CBD management plan. The CBD corporation may also approve in-kind contributions or services in addition to, or in lieu of, a CBD assessment upon execution of a written agreement with a participating property owner.

Section 7. Collection and disbursement of CBD assessments; liens

(a) Unless another collection mechanism is set forth in the approved CBD management plan, the collector or treasurer of the municipality shall collect CBD assessments and disburse the funds to the CBD corporation. In addition to the items identified in section 3A of chapter 60, the collector or treasurer may include notices for CBD assessments in the envelope or electronic message in which a real property tax bill is sent. The collector or treasurer shall disburse collected CBD assessments to the CBD corporation not later than 30 days after the collection of such assessments, together with any interest earned on those assessments.

(b) Funds disbursed by the collector or treasurer to the CBD corporation shall be expended by the CBD corporation solely to further the goals and activities identified and approved in the CBD management plan. In addition to receiving the CBD assessments, the CBD corporation may receive grants, donations, and revenues generated from services funded by the CBD corporation, including but not limited to parking fees.

(c) Following establishment of the CBD, all CBD assessments billed by or on behalf of the CBD corporation and unpaid after 30 days from the date of billing shall become a lien on the property, with priority over all other liens except liens in favor of the commonwealth or the United States, municipal liens and prior mortgages of record. The CBD corporation shall file notice of the lien in the appropriate registry of deeds or land court registry district and may enforce the lien arising under this section following the procedures, and subject to the same limitations, as apply to a municipal tax lien arising under section 37 of chapter 60.

Section 8. Amendments

At any time after the establishment of a community benefit district pursuant to this chapter, the CBD corporation may petition the municipality to amend the boundaries of the district, the CBD management plan, or the bylaws of the CBD corporation. Any amendment to the CBD assessments, a material change in the use of the CBD funds, and any change in the boundaries of the district shall be approved in the same manner and be subject to the same approval criteria as an original petition; provided, however, that if the petition concerns an amendment to expand the district, the petition shall be required to meet the approval criteria in clauses (i) and (ii) of subsection (a) of section 4 for the expanded area rather than the district as a whole.

Section 9. Dissolution


(a) A community benefit district may be dissolved upon (i) a majority vote of the CBD corporation's board of directors, ratified by a vote of the participating property owners who are responsible for paying more than 50 per cent of the total CBD assessments levied in the district; provided, however, if any participating property owner, or group of related property owners as determined under subsection (b) of section 4, will pay more than 20 percent of the proposed CBD assessments, then for purposes of determining compliance with the 50 percent threshold, the amount of CBD assessment attributable to such property owner or group of related property owners shall be reduced to an amount equal to 20 percent of the total CBD assessments; and (ii) the dissolution of the CBD corporation in accordance with section 11 and other applicable provisions of chapter 180. No district shall be dissolved until the CBD corporation has satisfied or paid in full all of its outstanding indebtedness, obligations and liabilities; until funds are on deposit and available therefore or until a repayment schedule has been formulated and approved by the municipal chief executive officer.

(b) Upon any dissolution in accordance with said section 11 of said chapter 180, the existence of the CBD corporation shall cease, subject to applicable provisions of law for continuation to close its affairs, for the appointment of receivers and for revival. Upon dissolution, the CBD corporation shall not incur any new or increased financial obligations.

(c) Any liabilities, either current or future, incurred as a result of action to accomplish the purposes of the CBD management plan shall not be an obligation of the municipality. Liabilities of a CBD corporation shall be paid for entirely from CBD assessments, revenue derived from the project or facilities owned by the CBD corporation and other assets, if any, of the CBD corporation.

(d) Upon the dissolution of a district, any remaining assets of the CBD corporation shall be refunded to the participating property owners by applying the same formula used to calculate the fee in the fiscal year in which the district is dissolved, or otherwise shall be distributed as ordered by a court of competent jurisdiction.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles D. Baker", is written over the printed name.

Charles D. Baker

Governor