

HOUSE No. 1360

The Commonwealth of Massachusetts

PRESENTED BY:

Samantha Montaño

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

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to restore Boston’s governmentally-involved housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>1/9/2023</i>
<i>Rob Consalvo</i>	<i>14th Suffolk</i>	<i>2/13/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/21/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>3/31/2023</i>

HOUSE No. 1360

By Representative Montañó of Boston, a petition (accompanied by bill, House, No. 1360) of Samantha Montañó, Rob Consalvo and Vanna Howard (with the approval of the mayor and city council) relative to governmentally-involved housing in the city of Boston. Housing. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to restore Boston’s governmentally-involved housing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 WHEREAS, Boston continues to face a housing crisis, and it is incumbent that the City
2 preserve its affordable housing market; and

3 WHEREAS, As of 2021, There are 30,435 privately-owned, subsidized apartments in
4 Boston, and close to 2,000 have been converted to high market rents; and

5 WHEREAS, According to an April 2021 report by the Community Economic
6 Development Assistance Corporation (CEDAC), 928 apartments in Boston are at risk of
7 conversion to market rate by 2022, including the Forbes Building in Jamaica Plain and Babcock
8 Towers in Brighton; and

9 WHEREAS, Last year, the owner of the Forbes Building announced a plan to convert
10 147 apartments affordable to low-income senior and disabled tenants into market-rate housing,
11 putting tenants and the community at risk; and

12 WHEREAS, According to Mayor Marty Walsh's "Housing a Changing City" Report,
13 3,038 apartments are at elevated risk for conversion into market-rate housing within the next ten
14 years; and

15 WHEREAS, A significant number of these units are in some of the City's highest-priced
16 neighborhoods where the financial incentives for developers to convert to market rate are high;
17 and; NOW, THEREFORE BE IT

18 ORDERED: That a petition to the General Court, accompanied by a bill for special law
19 relating to the City of Boston to be filed with an attested copy of this order be, and hereby is,
20 approved under Clause 1 of Section 8 of Article II, as amended, of the Amendments to the
21 Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted
22 providing precisely as follows, except for clerical or editorial changes of form only:

23 SECTION 1. Whereas, a serious public emergency exists with respect to the housing of
24 citizens in Boston residing in governmentally-involved housing, inasmuch as there is a threat that
25 many low income individuals and families residing in such housing, particularly those elderly
26 and disabled, may be threatened with displacement as a result of prepayment of mortgage
27 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and
28 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and
29 subsidy contracts and such prepayment, further exacerbating an extreme housing shortage within
30 the city for low income families and voters, and whereas , in approving Chapter 40P of the
31 General Laws, the voters did not exempt such housing from protection or regulation and whereas
32 it is the city's policy to encourage owners of this governmentally-involved housing to accept
33 incentives to keep such housing affordable and avert displacement, that such emergency should

34 be met by the city of Boston immediately; therefore, this act is declared to be in the public
35 interest.

36 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the
37 contrary, including, without limitation, the provisions of Chapter 40P of the General Laws and
38 Chapter 282 of the Acts of 1994, for so long as the City Council of Boston shall determine that
39 the circumstances described in Section 1 hereof continue to exist, the City of Boston shall by
40 ordinance regulate the rent for the use or occupancy of governmentally--involved or formerly
41 governmentally-involved housing to the extent such regulation is not preempted by federal law
42 or by Section six of Chapter 708 of the Acts of 1966 as amended, once the basis for federal or
43 state rent regulation or preemption no longer exists. For purposes of this act,"governmentally-
44 involved housing" is defined as housing units which the United States, the Commonwealth or
45 any authority created under the laws thereof (i) insures the mortgage thereon, or owns, operates,
46 finances, or subsidizes such housing units, and (ii) regulates the individual rents thereof,
47 including without limitation housing units constructed or rehabilitated pursuant to Section 202 of
48 the Housing Act of 1959, as amended (12 U.S.C. § 17019), Sections 221 (d) and 236 of the
49 National Housing Act, as amended (12 U.S.C. § § 17151(d) or 17152-1), Section 811 of the
50 Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. § 8013), or
51 Section 13A of Chapter 708 of the Acts of 1966, added by Section 10 of Chapter 855 of the Acts
52 of 1970, as amended (M.G.L. c. 23AApp. 91-13A), or housing units financed or subsidized
53 pursuant to project-based programs for low income persons under Section 8 of the United States
54 Housing Act of 1937, as amended (42 U.S.C. § 1437f), or the project-based Massachusetts
55 Rental Voucher Program, so-called (see line item 7004-9004 of Section 2 of Chapter 159 of the
56 Acts of two thousand, as well as 760 C.M.R. Part 49.00), or housing units with mortgage

57 insurance under Sections 207 or 220 of the National Housing Act, as amended, and subject to a
58 rent regulatory agreement or other controls pursuant to applicable law with the Boston Planning
59 and Development Agency, but not including the following:

60 (1) housing units owned or acquired by the City of Boston through tax foreclosure;

61 (2) except for publicly owned dwelling units or units that are financed or subsidized with
62 project-based Section 8, housing units in a one-to-four family building or structure that are not
63 part of larger housing development, whether on one or more sites;

64 (3) structures containing housing units subsidized with mobile tenant-based rental
65 assistance that would not otherwise come within the definition of governmentally-involved
66 housing;

67 (4) public housing owned or operated by a local housing authority under Chapter 121B of
68 General Laws, the United States Housing Act of 1937 (42 U.S.C. § § 1487a et seq.), or any
69 successor act or public housing programs formerly assisted under the United States Housing Act
70 of 1937;

71 (5) housing units that received mortgage insurance pursuant to Sections 207 or 220 of the
72 National Housing Act but not subject to a rent regulatory agreement or other controls with the
73 Boston Planning and Development Agency, as well as housing units that received mortgage
74 insurance pursuant to Section 608 of the National Housing Act, regardless of whether there was a
75 rent regulatory agreement or other controls with the Boston Planning and Development Agency
76 or not;

77 (6) housing units that received mortgage insurance pursuant to Section 221(d) of the
78 National Housing Act and which never received a federal or state subsidy or below-market
79 interest rate mortgage subsidy; and

80 (7) housing units where the sole government involvement is the owner's participation in
81 federal, state, or municipal funded programs for home repairs, energy conservation, or lead paint
82 abatement.

83 For the purpose of this act, "formerly governmentally-involved housing" is defined as
84 housing that was governmentally-involved housing as of July 1, 1994, or which becomes
85 governmentally-involved housing after July 1, 1994, but which then no longer is owned,
86 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the
87 Commonwealth, or any authority created under the laws thereof, provided that "formerly
88 governmentally-involved housing" shall include any housing receiving subsidy under Section
89 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

90 For the purpose of this act, "low-income" is defined as annual household income, which
91 is eighty percent or less of the median income for the area as determined by the United States
92 Department Of Housing and Urban Development, with adjustments for smaller and larger
93 families. The City of Boston shall, by ordinance, create an official body designated by the Mayor
94 to establish as the maximum rent for the governmentally-involved and formerly governmentally
95 involved housing units the rent in effect therefore on July 1, 1994, or six months before the basis
96 of federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure
97 such rent provides a fair net operating income as of the date of the official body's decision,
98 provided, however, said ordinance shall authorize the official body to make individual

99 adjustments in such maximum rents as may be necessary to remove hardships or to correct other
100 inequities, the official body shall observe the principle of maintaining maximum rents for such
101 housing units at levels which will yield to owners a fair net operating income from such housing
102 units. In determining whether the maximum rent for such housing units yields a fair net operating
103 income, due consideration shall be given to, among other relevant factors;

104 (1) increases in property taxes;

105 (2) unavoidable increases in operating and maintenance expenses;

106 (3) major capital improvement of the housing units, distinguished from ordinary repair,
107 replacement, and maintenance;

108 (4) increases or decreases in living space, services, furniture, furnishings, or equipment;

109 and

110 (5) substantial deterioration of the housing units, other than ordinary wear and tear or
111 failure to perform routine repair, replacement, or maintenance.

112 (B) Such ordinance shall provide that no person shall bring an action to recover
113 possession of a governmentally-involved housing unit, or of a formerly governmentally-involved
114 housing unit, to the extent that such regulation is not otherwise preempted by federal law or
115 Section 6 of Chapter 708 of the acts of 1966 as amended, unless:

116 (1) The tenant has failed to pay the rent to which the owner is entitled;

117 (2) The tenant has violated an obligation or covenant of tenancy not inconsistent with
118 Chapter 93A of the General Laws or this act other than the obligation to surrender possession
119 upon proper notice and has failed to cure the violation after having received the written notice;

120 (3) The tenant is causing, committing, or permitting a nuisance in or substantial damage
121 to the housing unit or is creating significant interference with the comfort, safety, or enjoyment
122 of the owner or other occupants of the same or any adjacent unit;

123 (4) The tenant has used or permitted use of a housing unit for illegal purposes;

124 (5) The tenant, who had a written lease or rental agreement which has terminated, has
125 refused, after written requests or demands by the owner, to execute a written extension or
126 renewal thereof for a further term of like duration on terms not inconsistent with or violative of
127 any provision of this act;

128 (6) The tenant has refused the owner reasonable access to the housing unit for the
129 purpose of making necessary repairs or improvements required by law, or for the purpose of
130 inspection as permitted or required by the lease or law, or to show the housing unit to a
131 prospective purchaser or mortgagee;

132 (7) The tenant holding at the end of a lease term is a subtenant not approved by the
133 owner; or

134 (8) The owner seeks to recover possession for any other just cause not in conflict with the
135 provisions and purposes of this act or Chapter 93 A of the General Laws.

136 The provisions of this Section shall be construed as additional restrictions on the right to
137 recover possession of such housing units.

138 (C) Such ordinance shall also provide that no person shall remove any governmentally
139 involved or formally governmentally-involved housing accommodation from low-income rental
140 housing use (including but not limited to sale, lease, or other disposition of the property which

141 may have such an effect), or convert such property to a condominium, without first obtaining a
142 permit for that purpose from the official body, to the extent that such provision is not preempted
143 by federal law or Section 6 of Chapter 708 of the acts of 1966 as amended. Such permit may be
144 subject to terms and conditions not inconsistent with the purposes and provisions of this act,
145 including, without limitation, (a) incentives to continue in effect the low-income restrictions
146 previously in place for the property and (b) where the sale, lease, or disposition of the property
147 may result in the loss of all or a portion of the property for low--income rental housing use, the
148 right of an incorporated tenants association in such housing, the city of Boston, the Boston
149 Housing Authority, non-profit community development corporations, or other equivalent bona
150 fide non-profit organizations to negotiate for, acquire and operate such property on substantially
151 equivalent terms and conditions as offered or available to a bona fide third-party purchaser.

152 (D) To the extent not preempted by federal law or Section 6 of Chapter 708 of the acts of
153 1966 amended, such ordinance shall require that owners of governmentally-involved housing, or
154 formerly governmentally-involved housing, affirmatively seek out and accept any prospective
155 governmental housing resources, whether tenant-based or project-based, which maximize
156 affordability of the housing units consistent with the income character of the property a the
157 owner a right to obtain a fair net operating income for the housing units, provided that the City
158 shall assist owners by identifying such governmental housing resources.

159 (E) To the extent not preempted by federal law or Section 6 of Chapter 708 of the acts of
160 1966 as amended, and so long as such regulation is consistent with the owner's right to obtain a
161 fair net operating income, such ordinance shall also provide that the City may establish local
162 preferences, priorities, and income limits for admission to governmentally-involved housing or
163 former governmentally-involved housing upon unit turnover, consistent, to the extent with the

164 income profile of the property twelve months before the date of the loss or rent preemption or the
165 decision not to renew an expiring subsidy contract. No ordinance or regulation shall require an
166 owner to create a tenancy involving any person with a history of conduct that would, if repeated,
167 be grounds for eviction from such housing. The official body may approve an alternative plan
168 requested by the owner, consistent with the provisions of this Act.

169 (F) Such ordinance shall also provide that the official body may grant exemptions and
170 exceptions to the general provisions of this act when such action would tend to maintain or
171 increase the supply of affordable housing in Boston, including, without limitation, promoting the
172 sale of properties to tenant organizations or non-profit community development corporations
173 under terms and conditions which would tend to maintain the income character of the property.

174 (G) Such ordinance shall provide that the official body may promulgate such rules,
175 regulations, and orders as it may deem necessary to effectuate the purposes of this act and the
176 ordinance. The official body may hold hearings on any matters within its authority under this act
177 and ordinance. Any hearings regarding matters related to regulation of rents or removal permits
178 for governmentally-involved or formerly governmentally-involved housing or regarding
179 compliance with other provisions of this act or the ordinance, orders, rules, or regulations
180 adopted or promulgated hereunder shall be conducted by the official body in accordance with the
181 provisions of Section 11 of Chapter 30A of the General Laws except that requirements (7) and
182 (8) of Section 11 shall not apply to such hearings.

183 (H) All decisions of the official body may be appealed to the housing court department of
184 the trial court, City of Boston division, by any person aggrieved thereby, whether or not
185 previously a party in the matter, within sixty calendar days after notice of such decision. Judicial

186 review of adjudicatory decisions shall be conducted in accordance with Section 14 of Chapter
187 30A to the General Laws. Judicial review of regulations shall be conducted in accordance with
188 Section 7 of Chapter 30A of the General Laws. The housing court department of the trial court,
189 city of Boston division, shall have jurisdiction to enforce the provisions hereof and any
190 ordinance, rule or regulation adopted hereunder, and on application of the official body or any
191 aggrieved person may restrain or enjoin violations of any such ordinance, rule, or regulation. In
192 the interests of justice, the court may allow any necessary parties to be joined in or to intervene
193 in any action brought hereunder and may, in its discretion, allow or require an action to proceed
194 as a class action,

195 SECTION 3. It shall be unlawful for any person to do or omit to do any action in
196 violation of this act or any order, ordinance, rule, or regulation adopted or promulgated
197 hereunder; whoever willfully violates any provision of this act or any order, ordinance, rule or
198 regulation adopted or promulgated hereunder or whoever makes a false statement in any
199 testimony before the official body or its agents, or whoever knowingly supplies the official body
200 with false information shall be punished by a fine of not more than five hundred dollars;
201 provided, however, that in the case of a second or subsequent offense, or where the violation
202 continues after notice thereof, such person shall be punished by a fine of not more than two
203 thousand dollars.

204 SECTION 4. The provisions of this act are severable, and if any of its provisions shall be
205 held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of
206 such court shall not affect or impair any of the remaining provisions.

207 SECTION 5. The provisions of M.G.L. c. 40P shall not apply to any ordinance adopted
208 under this authority.

209 SECTION 6. This act shall take effect upon passage.