

HOUSE No. 3810

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to adopt protections for New Bedford's governmentally involved housing stock..

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, the City of New Bedford desires to adopt protections for governmentally
2 involved housing;

3 WHEREAS, the City of New Bedford is petitioning the General Court for passage of
4 legislation authorizing such a change;

5 WHEREAS, a majority vote of approval by the New Bedford City Council is required for
6 the filing of such petition;

7 NOW THEREFORE, be it voted by the city council of the city OF New Bedford, as
8 follows:

9 Ordered: That a petition to the General Court, accompanied by a bill for a special law
10 relating to the city of New Bedford to be filed with an attested copy of this order be, and hereby
11 is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the
12 Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted
13 precisely as follows, except for clerical or editorial changes of form only:

14 SECTION 1. Whereas, a serious public emergency exists with respect to the housing of
15 citizens in New Bedford residing in governmentally-involved housing, in as much as there is a
16 threat that many low-income individuals and families residing in such housing, particularly those
17 elderly and disabled, may be threatened with displacement as a result of prepayment of mortgage
18 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and
19 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and
20 subsidy contracts and such pre-payment, further exacerbating an extreme housing shortage
21 within the city for low-income families and voters, and whereas, in approving Chapter 40 P of
22 the General Laws, the voters did not exempt such housing from protection or regulation and
23 whereas it is the city's policy to encourage owners of this governmentally-involved housing to
24 accept incentives to keep such housing affordable and avert displacement, that such emergency
25 should be met by the city of New Bedford immediately; therefore, this act is declared to be in the
26 public interest.

27 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the
28 contrary, including, without limitation, the provisions of chapter forty P of the General Laws and
29 chapter 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of
30 New Bedford shall determine that the circumstances described in section one hereof continue to
31 exist, the City of New Bedford shall by ordinance regulate the rent for use or occupancy of
32 governmentally-involved or formerly governmentally-involved housing to the extent such
33 regulation is not preempted by federal law or by section six of chapter 708 of the Acts of
34 nineteen hundred and sixty-six as amended, once the basis for federal or state rent regulation or
35 preemption no longer exists, except that market units in projects formerly assisted under sections
36 25 through 27 of chapter 23 (a) of the General Laws shall not be deemed to be regulated by the

37 state for purposes of this act. For purposes of this act, "governmentally-involved housing" is
38 defined as housing units which the United States, the Commonwealth or any authority created
39 under the laws thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes
40 such housing units, and (ii) regulates the individual rents thereof, including without limitation
41 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as
42 amended (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National Housing Act, as amended
43 (12 U.S.C. §§ 1715l(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable
44 Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the Acts of
45 nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen
46 hundred and seventy, as amended (M.G.L. c. 23A App. § 1-13A), or housing units financed or
47 subsidized pursuant to project-based programs for low-income persons under Section 8 of the
48 United States Housing Act of 1937, as amended (42 U.S.C. § 1437f) or the project-based
49 Massachusetts Rental Voucher Program, so-called (see line item 7004-9004 of Section 2 of
50 chapter 159 of the Acts of two thousand, as well as 760 C.M.R. Part 49.00), but not including the
51 following:-

52 (1) housing units owned or acquired by the City of New Bedford through tax
53 foreclosure;

54 (2) housing units in a building or structure of fewer than twenty-five units which are not
55 part of a larger housing development, whether on one or more sites;

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

59 (4) public housing owned or operated by the New Bedford Housing Authority under
60 chapter 121Bf of the General Laws, the United States Housing Act of 1937 (42 U.S.C. §§ 1437a
61 et seq.), or any successor act or public housing programs formerly assisted under the United
62 States Housing Act of 1937;

63 (5) housing units where the sole government involvement is the owner's participation in
64 federal, state, or municipal funded programs for home repairs, energy conservation, or lead paint
65 abatement.

66 (6) housing units which become governmentally involved after January 1, 2002; For the
67 purpose of this act, "formerly governmentally-involved housing" is defined as housing which
68 was governmentally-involved housing as of July 1, 1996 or which becomes governmentally-
69 involved housing after July 1, 1996 but which then no longer is owned, operated, financed,
70 subsidized, mortgage-insured, or rent-regulated by the United States, the Commonwealth, or any
71 authority created under the laws thereof, provided that "formerly governmentally involved
72 housing" shall include any housing receiving subsidy under Section 8(t) of the United States
73 Housing Act of 1937 (42 U.S.C. § 1437f(t)).

74 For the purpose of this act, "low-income" is defined as annual household income which is
75 eighty percent or less of the median income for the area as determined by the United States
76 Department of Housing and Urban Development, with adjustments for smaller and larger
77 families.

78 The City of New Bedford shall by ordinance create an official body to establish as the
79 maximum rent for the governmentally-involved and formerly governmentally-involved housing
80 units the rent in effect therefore on July 1, 1996 or six months before the basis for federal or state

81 rent regulation or preemption lapsed, whichever is later, adjusted to insure such rent provides a
82 fair net operating income as of the date of the official body's decision, provided, however, said
83 ordinance shall authorize the official body to make individual adjustments in such maximum
84 rents as may be necessary to remove hardships or to correct other inequities.

85 In making individual adjustments to remove hardships or to correct other inequities, the
86 official body shall observe the principle of maintaining maximum rents for such housing units at
87 levels which will yield to owners a fair net operating income from such housing units. In
88 determining whether the maximum rent for such housing units yields a fair net operating income,
89 due consideration shall be given to, among other relevant factors: (1) increases in property taxes;
90 (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement
91 of the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)
92 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)
93 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to
94 perform ordinary repair, replacement, or maintenance.

95 (B) Such ordinance shall provide that no person shall bring an action to recover
96 possession of a governmentally-involved housing unit, or of a formerly governmentally involved
97 housing unit, to the extent that such regulation is not otherwise preempted by federal law or
98 section six of chapter 708 of the acts of nineteen hundred and sixty-six as amended, unless:

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

100 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with
101 chapter 93A of the General Laws or this act other than the obligation to surrender possession

102 upon proper notice, and has failed to cure the violation after having received written notice
103 thereof;

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

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

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

112 (6) the tenant has refused the owner reasonable access to the housing unit for the purpose
113 of making necessary repairs or improvements required by law, or for the purpose of inspection as
114 permitted or required by the lease or law, or for the purpose of showing the housing unit to any
115 prospective purchaser or mortgagee;

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

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

120 The provisions of this section shall be construed as additional restrictions on the right to
121 recover possession of such housing units.

122 (C) Such ordinance shall also provide that no person shall remove any governmentally-
123 involved or formerly governmentally-involved housing accommodation from low-income rental
124 housing use (including but not limited to sale, lease, or other disposition of the property which
125 may have such an effect), or convert such property to a condominium or cooperative, without
126 first obtaining a permit for that purpose from the official body, to the extent that such provision
127 is not preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and
128 sixty-six as amended. Such permit may be subject to terms and conditions not inconsistent with
129 the purposes and provisions of this act, including, without limitation, (a) incentives to continue in
130 effect the low-income restrictions previously in place for the property and (b) where sale, lease,
131 or disposition of the property may result in the loss of all or a portion of the property for low-
132 income rental housing use, the right of an incorporated tenants association in such housing, the
133 city of New Bedford, the New Bedford Housing Authority, or non-profit community
134 development corporations to negotiate for, acquire and operate such property on substantially
135 equivalent terms and conditions as offered or available to a bona fide third-party purchaser.

136 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts
137 of nineteen hundred and sixty-six as amended, such ordinance shall require that owners of
138 governmentally-involved housing, or formerly governmentally involved housing, affirmatively
139 seek out and accept any prospective governmental housing resources, whether tenant-based or
140 project-based, which maximize affordability of the housing units consistent with the income
141 character of the property and the owner's right to obtain a fair net operating income for the
142 housing units, provided that the City shall assist owners by identifying such governmental
143 housing resources.

144 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts
145 of nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with
146 the owner's right to obtain a fair net operating income, such ordinance shall also provide that the
147 City may establish local preferences, priorities, and income limits for admission to
148 governmentally-involved housing or formerly governmentally-involved housing upon unit
149 turnover, consistent, to the extent practicable, with the income profile of the property twelve
150 months prior to the date of the loss of rent preemption or the decision to not renew an expiring
151 subsidy contract. The official body may approve an alternate plan requested by the owner,
152 consistent with the provisions of this act. No ordinance or regulation shall require an owner to
153 create a tenancy involving any person with a history of conduct which would, if repeated, be
154 grounds for eviction from such housing.

155 (F) Such ordinance shall also provide that the official body may grant exemptions and
156 exceptions to the general provisions of this act when such action would tend to maintain or
157 increase the supply of affordable housing in New Bedford, including, without limitation,
158 promoting the sale of properties to bona fide tenant organizations or non-profit community
159 development corporations under terms and conditions which would tend to maintain the income
160 character of the property.

161 (G) Such ordinance shall provide that the official body may promulgate such rules,
162 regulations and orders as it may deem necessary to effectuate the purposes of this act and the
163 ordinance. The board may hold hearings on any matters within its authority under this act and
164 ordinance. Any hearings regarding matters related to regulation of rents or removal permits for
165 governmentally involved or formerly governmentally involved housing or regarding compliance
166 with other provisions of this act, or the ordinance, orders, rules, or regulations adopted or

167 promulgated hereunder, shall be conducted by the official body in accordance with the
168 provisions of section eleven of chapter thirty A of the General Laws except that requirements (7)
169 and (8) of such section eleven shall not apply to such hearings.

170 (H) All decisions of the official body may be appealed to the housing court department
171 of the trial court, Southeast Division, by any person aggrieved thereby, whether or not previously
172 a party in the matter, within thirty calendar days after notice of such decision. Judicial review of
173 adjudicatory decisions shall be conducted in accordance with section fourteen of chapter thirty A
174 of the General Laws. Judicial review of regulations shall be conducted in accordance with
175 section seven of chapter thirty A of the General Laws. The housing court department of the trial
176 court, Southeast Division, shall have jurisdiction to enforce the provisions hereof and any
177 ordinance, rule or regulation adopted hereunder, and on application of the board or any aggrieved
178 person may restrain or enjoin violations of any such ordinance, rule, or regulation. In the
179 interests of justice, the court may allow any necessary parties to be joined in or to intervene in
180 any action brought hereunder and may in its discretion allow or require an action to proceed as a
181 class action.

182 SECTION 3. It shall be unlawful for any person to do or omit to do any action in
183 violation of this act, or any order, ordinance, rule or regulation adopted or promulgated
184 hereunder. Whoever willfully violates any provision of this act or any order, ordinance, rule or
185 regulation adopted or promulgated hereunder or whoever makes a false statement in any
186 testimony before the board or its agents, or whoever knowingly supplies the official body with
187 false information shall be punished by a fine of not more than four hundred dollars or by
188 imprisonment for not more than ninety days, or both; provided, however, that in the case of a
189 second or subsequent offense, or where the violation continues after notice thereof, such person

190 shall be punished by a fine of not more than two thousand dollars, or by imprisonment for not
191 more than one year, or both.

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

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

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