

HOUSE No. 3812

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to restore Boston's governmentally involved housing protection ..

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

1 SECTION 1. Whereas, a serious public emergency exists with respect to the housing of
2 citizens in Boston residing in governmentally-involved housing, inasmuch as there is a threat that
3 many low-income individuals and families residing in such housing, particularly those elderly
4 and disabled, may be threatened with displacement as a result of prepayment of mortgage
5 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and
6 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and
7 subsidy contracts and such pre-payment, further exacerbating an extreme housing shortage
8 within the city for low-income families and voters, and whereas , in approving Chapter 40 P of
9 the General Laws, the voters did not exempt such housing from protection or regulation and
10 whereas it is the city’s policy to encourage owners of this governmentally-involved housing to
11 accept incentives to keep such housing affordable and avert displacement, that such emergency
12 should be met by the city of Boston immediately; therefore, this act is declared to be in the
13 public interest.

14 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the
15 contrary, including, without limitation, the provisions of chapter forty P of the General Laws and
16 chapter 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of
17 Boston shall determine that the circumstances described in section one hereof continue to exist,
18 the City of Boston shall by ordinance regulate the rent for the use or occupancy of
19 governmentally-involved or formerly governmentally-involved housing to the extent such
20 regulation is not preempted by federal law or by section six of chapter 708 of the Acts of
21 nineteen hundred and sixty-six as amended, once the basis for federal or state rent regulation or
22 preemption no longer exists. For purposes of this act, “governmentally-involved housing” is
23 defined as housing units which the United States, the Commonwealth or any authority created
24 under the laws thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes
25 such housing units, and (ii) regulates the individual rents thereof, including without limitation
26 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as
27 amended (12 U.S.C. § 1701q), Sections 221 (d) and 236 of the National Housing Act, as
28 amended (12 U.S.C. § § 17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National
29 Affordable Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the
30 Acts of nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of
31 nineteen hundred and seventy, as amended (M.G.L. c. 23A App. §1-13A), or housing units
32 financed or subsidized pursuant to project-based programs for low-income persons under Section
33 8 of the United States Housing Act of 1937, as amended (42 U.S.C. § 1437f), or the project-
34 based Massachusetts Rental Voucher Program, so-called (see line item 7004-9004 of Section 2
35 of chapter 159 of the Acts of two thousand, as well as 760 C.M.R. Part 49.00), or housing units
36 with mortgage insurance under Sections 207 or 220 of the National Housing Act, as amended,

37 and subject to a rent regulatory agreement or other controls pursuant to applicable law with the
38 Boston Redevelopment Authority, but not including the following:

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

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

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

47 (4) public housing owned or operated by a local housing authority under chapter
48 121B of the General Laws, the United States Housing Act of 1937 (42 U.S.C. § § 14S7a et seq.),
49 or any successor act or public housing programs formerly assisted under the United States
50 Housing Act of 1937;

51 (5) housing units which received mortgage insurance pursuant to sections 207 or
52 220 of the National Housing Act but not subject to a rent regulatory agreement or other controls
53 with the Boston Redevelopment Authority as well as housing units which received mortgage
54 insurance pursuant to section 608 of the National Housing Act, regardless of whether there was a
55 rent regulatory agreement or other controls with the Boston Redevelopment Authority or not;

56 (6) housing units which received mortgage insurance pursuant to Section 221(d) of
57 the National Housing Act and which never received a federal or state subsidy or below market
58 interest rate mortgage subsidy; and

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

62 For the purpose of this act, "formerly governmentally-involved housing" is defined as
63 housing which was governmentally-involved housing as of July 1, 1994, or which becomes
64 governmentally involved housing after July 1, 1994, but which then no longer is owned,
65 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the
66 Commonwealth, or any authority created under the laws thereof, provided that "formerly
67 governmentally involved housing" shall include any housing receiving subsidy under Section
68 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

69 For the purpose of this act, "low-income" is defined as annual household income which is
70 eighty per cent or less of the median income for the area as determined by the United States
71 Department of Housing and Urban Development, with adjustments for smaller and larger
72 families.

73 The City of Boston shall by ordinance create a official body designated by the Mayor to
74 establish as the maximum rent for the governmentally-involved and formerly governmentally-
75 involved housing units the rent in effect, therefore on July 1, 1994, or six months before the basis
76 federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure such
77 rent provides a fair net operating income as of the date of the official's body's decision,

78 provided, however, said ordinance shall authorize the official body to make individual
79 adjustments in such maximum rents as may be necessary to remove hardships or to correct other
80 inequities, the official body shall observe the principle of maintaining maximum rents for such
81 housing units at levels which will yield to owners a fair net operating income from such housing
82 units. In determining whether the maximum rent for such housing units yields a fair net
83 operating income, due consideration shall be given to, among other relevant factors; (1) increases
84 in property taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major
85 capital improvement of the housing units, distinguished from ordinary repair, replacement, and
86 maintenance; (4) increases or decreases in living space, services, furniture, furnishings or
87 equipment; and (5) substantial deterioration of the housing units, other than ordinary wear and
88 tear, or failure to perform ordinary repair, replacement, or maintenance.

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

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

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

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

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

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

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

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

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

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

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

119 property which may have such an effect), or convert such property to a condominium or
120 cooperative, without first obtaining a permit for that purpose from the official body, to the extent
121 that such provision is not preempted by federal law or section six of chapter 708 of the acts of
122 nineteen hundred and sixty-six as amended. Such permit may be subject to terms and conditions
123 not inconsistent with the purposes and provisions of this act, including, without limitation, (a)
124 incentives to continue in effect the low-income restrictions previously in place for the property
125 and (b) where sale, lease, or disposition of the property may result in the loss of all or a portion
126 of the property for low-income rental housing use, the right of an incorporated tenants
127 association in such housing, the city of Boston, the Boston Housing Authority, non-profit
128 community development corporations, or other equivalent bona fide non-profit organizations to
129 negotiate for, acquire and operate such property on substantially equivalent terms and conditions
130 as offered or available to a bona fide third-party purchaser.

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

139 (E) To the extent not preempted by federal law or section six of chapter 708 of the
140 acts of nineteen hundred and sixty-six as amended, and so long as such regulation is consistent
141 with the owner's right to obtain a fair net operating income, such ordinance shall also provide

142 that the City may establish local preferences, priorities, and income limits for admission to
143 governmentally-involved housing or former governmentally-involved housing upon unit
144 turnover, consistent, to the extent with the income profile of the property twelve months prior to
145 the date of the loss or rent preemption or the decision to not renew an expiring subsidy contract.
146 The official body may approve an alternative plan requested by the owner, consistent with the
147 provisions of this Act. No ordinance or regulation shall require an owner to create a tenancy
148 involving any person with a history of conduct which would, if repeated, be grounds for eviction
149 from such housing.

150 Such ordinance shall also provide that the official body may grant exemptions and
151 exceptions to the general provisions of this act when such action would tend to maintain or
152 increase the supply of affordable housing in Boston, including, without limitation, promoting the
153 sale of properties to bona fide tenant organizations or non-profit community development
154 corporations under terms and conditions which would tend to maintain the income character of
155 the property.

156 (F) Such ordinance shall provide that the official body may promulgate such rules,
157 regulations and orders as it may deem necessary to effectuate the purposes of this act and the
158 ordinance. The official body may hold hearings on any matters within its authority under this act
159 and ordinance. Any hearings regarding matters related to regulation of rents or removal permits
160 for governmentally involved or formerly governmentally involved housing or regarding
161 compliance with other provisions of this act, or the ordinance, orders, rules, or regulations
162 adopted or promulgated hereunder, shall be conducted by the official body in accordance with
163 the provisions of section eleven of chapter thirty A of the General Laws except that requirements
164 (7) and (8) of such section eleven shall not apply to such hearings.

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

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

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

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

192 SECTION 6. This act shall take effect upon passage