

HOUSE No. 4088

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to restore Lowell'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 Lowell 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 40P of the
9 General Laws, the voters did not exempt such housing from protection or regulation and whereas
10 it is the city's policy to encourage owners of this governmentally-involved housing to accept
11 incentives to keep such housing affordable and avert displacement; that such emergency should
12 be met by the city of Lowell immediately; therefore, this act is declared to be in the public
13 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 Lowell shall determine that the circumstances described in section one hereof continue to exist,
18 the City of Lowell shall by ordinance regulate the rent for use or occupancy of governmentally-
19 involved or formerly governmentally-involved housing to the extent such regulation is not
20 preempted by federal law or by section six of chapter 708 of the Acts of nineteen hundred and
21 sixty-six as amended, once the basis for federal or state rent regulation or preemption no longer
22 exists. For purposes of this act, "governmentally-involved housing" is defined as housing units
23 which the United States, the Commonwealth or any authority created under the laws thereof (i)
24 insures the mortgage thereon, or owns, operates, finances, or subsidizes such housing units, and
25 (ii) regulates the individual rents thereof, including without limitation housing units constructed
26 or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C.
27 §1701q), Sections 221(d) and 236 of the National Housing Act, as amended (12 U.S.C.
28 §§17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable Housing
29 Act, as amended (42 U.S.C. §8013), or Section 13A of chapter 708 of the Acts of nineteen
30 hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen hundred and
31 seventy, as amended (M.G.L. c.23A App. §1-13A), or housing units financed or subsidized
32 pursuant to project-based programs for low income persons under Section 8 of the United States
33 Housing Act of 1937, as amended (42 U.S.C. §1437f) or the project-based Massachusetts Rental
34 Voucher Program, so-called (see line item 7004-9004 of Section 2 of chapter 159 of the Acts of
35 two thousand, as well as 760 C.M.R. Part 49.00), but not including the following:

36 (1) housing units owned or acquired by the City of Lowell through tax foreclosure,
37 eminent domain, deed, or other means;

38 (2) housing units in a building or structure of fewer than twenty-five units which are
39 not part of a larger housing development, on the some or immediate adjoining site;

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

43 (4) public housing owned or operated by a local housing authority under chapter 121B of
44 the General Laws, the United States Housing Act of 1937 (42 U.S.C. §§1437a et seq.), or any
45 successor act or pubic housing programs formerly assisted under the United States Housing Act
46 of 1937;

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

50 (6) housing units which become governmentally involved after January 1, 2002;

51 For the purpose of this act, "formerly governmentally-involved housing" is defined as
52 housing which was governmentally-involved housing as of July 1, 1998, or which becomes
53 governmentally-involved housing after July 1, 1998, but which then no longer is owned,
54 operated, financed, subsidized mortgage-insured, or rent-regulated by the United States, the
55 Commonwealth, or any authority created under the laws thereof, provided that "formerly

56 governmentally-involved housing" shall include any housing receiving subsidy under Section
57 8(t) of the United States Housing Act of 1937 (42 U.S.C. §1437f(t)).

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

62 The City of Lowell shall by ordinance create an official body to establish as the
63 maximum rent for the governmentally-involved and formerly governmentally-involved housing
64 units the rent in effect therefore on July 1, 1998, or six months before the basis for federal or
65 state rent regulation or preemption lapsed, whichever is later, adjusted to insure such rent
66 provides a fair net operating income as of the date of the official body's decision, provided,
67 however, said ordinance shall authorize the official body to make individual adjustments in such
68 maximum rents as may be necessary to remove hardships or to correct other inequities. In
69 making individual adjustments to remove hardships or to correct other inequities, the official
70 body shall observe the principle of maintaining maximum rents for such housing units at levels
71 which will yield to owners a fair net operating income from such housing units. In determining
72 whether the maximum rent yields a fair net operating income, due consideration shall be given
73 to, among relevant factors established by the official body, including but not limited to: (1)
74 increases in property taxes; (2) increases in ordinary operating, repair, replacement and
75 maintenance expenses; (3) capital improvements of the building, structure or land directly related
76 to the particular unit; (4) increases or decreases in living space, services, furniture, furnishings or
77 equipment; (5) cost of living adjustments; and (6) substantial deterioration of the housing units,

78 other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or
79 maintenance.

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

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

85 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with
86 chapter 93A of the General Laws or this act other than the obligation or covenant of tenancy not
87 inconsistent with chapter 93A of the General Laws or this act other than the obligation to
88 surrender possession upon proper notice, and has failed to cure the violation after having
89 received written notice thereof;

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

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

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

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

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

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

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

108 (C) Such ordinance shall also provide that no person shall remove any governmentally-
109 involved or formerly governmentally-involved housing accommodation from low-income rental
110 housing use (including but not limited to sale, lease, or other disposition of the property which
111 may have such an effect), or convert such property to a condominium or cooperative, without
112 first obtaining a permit for that purpose from the official body, to the extent that such provision
113 is not preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and
114 sixty-six, as amended. Such permit may be subject to terms and conditions not inconsistent with
115 the purposes and provisions of this act, including, without limitation, (a) incentives to continue in
116 effect the low-income restrictions previously in place for the property and (b) where sale, lease,
117 or disposition of the property may result in the loss of all or a portion of the property for low-
118 income rental housing use, the right of an incorporated tenants association in such housing, the
119 City of Lowell, the Lowell Housing Authority, non-profit community development corporation,

120 or other equivalent bona fide non-profit organizations to negotiate for, acquire and operate such
121 property on substantially equivalent terms and conditions as offered or available to a bona fide
122 third-party purchaser.

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