

SENATE No. 618

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

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

(2) housing units in a building or structure of fewer than one hundred units which are not part of a larger housing development, whether on one or more sites:

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

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

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

(6) housing units which become governmentally involved after January 1, 2009

For the purpose of this act, “formerly governmentally involved housing” is defined as housing which was governmentally involved housing as of July 1, 1996, or which becomes governmentally involved housing after July 1, 1996, but which then no longer is owned, operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the Commonwealth, or any authority created under the laws thereof, provided that “formerly governmentally involved housing” shall include any housing receiving subsidy under Section 8(t) of the United States Housing Act of 1937 (42 U.S.C. §1437f(t)).

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

The City of Salem shall by ordinance create an official body to establish as the maximum rent for the governmentally involved and formally governmentally involved housing units the rent in effect therefore on July 1, 1996, or six months before the basis for federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of the date of the official body's decision, provided, however, said ordinance shall authorize the official body to make individual adjustments in such maximum rents as may be necessary to remove hardships or to correct other inequities. In making individual adjustments to remove hardships or to correct other inequities, the official body shall observe the principle of maintaining maximum rents for such housing units at levels that will yield to owners a fair net operating income from such housing units. In determining whether the maximum rent for such housing units yields a fair net operating income, due consideration shall be given to, among other relevant factors: (1) increases in property taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement of the housing units, distinguished from ordinary repair, replacement, and maintenance, (4) increases or decreases in living space, services, furniture, furnishings or equipment; and (5) substantial deterioration of the housing units, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance.

(B) Such ordinance shall provide that no person shall bring an action to recover possession of a governmentally involved housing unit, or of a formerly governmentally involved

housing unit, to the extent that such regulation is not otherwise preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and sixty-six as amended, unless:

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

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

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

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

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

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

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

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

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

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

120 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts of
121 nineteen hundred and sixty-six as amended, such ordinance shall require that owners of
122 governmentally involved housing, or formerly governmentally involved housing, affirmatively
123 seek out and accept any prospective governmental housing resources, whether tenant-based or

project-based, which maximize affordability of the housing units consistent with the income character of the property and the owner's right to obtain a fair net operating income for the housing units., provided that the city shall assist owners by identifying such governmental housing resources.

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

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

(G) Such ordinance shall provide that the official body may promulgate such rules, regulations and orders as it may deem necessary to effectuate the purposes of this act and the

ordinance. The board may hold hearings on any matters within its authority under this act and ordinance. Any hearings regarding matters related to regulation of rents or removal permits for governmentally involved or formerly governmentally involved housing or regarding compliance with other provisions of this act, or the ordinance, orders, rules, or regulations adopted or promulgated hereunder, shall be conducted by the official body in accordance with the provisions of reaction eleven of chapter thirty A of the General Laws except that requirements (7) and (8) of such section eleven shall not apply to such hearings.

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

SECTION 3. It shall be unlawful for any person to do or omit to do any action in violation of this act, or any order, ordinance, rule or regulation adopted or promulgated hereunder. Whoever willfully violates any provision of this act or any order, ordinance, rule or regulation adopted or promulgated hereunder or whoever makes a false statement in any testimony before the board or its agents, or whoever knowingly supplies the official body with

169 false information shall be punished by a fine of not more than four hundred dollars or by
170 imprisonment for not more than ninety days or both; provided however, that in the case of a
171 second or subsequent offense, or where the violation continues after notice thereof, such person
172 shall be punished by a fine of not more than two thousand dollars, or by imprisonment for not
173 more than one year, or both.

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

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

179 SECTION 6. This act shall take effect upon its passage.