

HOUSE No. 3635

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 3635) of Aaron Michlewitz (with the approval of the mayor and city council) relative to rent regulation in governmentally-involved housing in the city of Boston. Housing. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 foreclosure;

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

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

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

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

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

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

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

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

72 The City of Boston shall by ordinance create a official body designated by the Mayor to
73 establish as the maximum rent for the governmentally-involved and formerly governmentally-
74 involved housing units the rent in effect therefore on July 1, 1994, or six months before the basis
75 federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure such
76 rent provides a fair net operating income as of the date of the official body’s decision, provided,
77 however, said ordinance shall authorize the official body to make individual adjustments in such
78 maximum rents as may be necessary to remove hardships or to correct other inequities, the
79 official body shall observe the principle of maintaining maximum rents for such housing units at

80 levels which will yield to owners a fair net operating income from such housing units. In
81 determining whether the maximum rent for such housing units yields a fair net operating income,
82 due consideration shall be given to, among other relevant factors; (1) increases in property taxes;
83 (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement
84 of the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)
85 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)
86 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to
87 perform ordinary repair, replacement, or maintenance.

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

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

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

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

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

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

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

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

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

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

115 (C) Such ordinance shall also provide that no person shall remove any
116 governmentally-involved or formally governmentally-involved housing accommodation from
117 low-income rental housing use (including but not limited to sale, lease, or other disposition of the
118 property which may have such an effect), or convert such property to a condominium or
119 cooperative, without first obtaining a permit for that purpose from the official body, to the extent
120 that such provision is not preempted by federal law or section six of chapter 708 of the acts of
121 nineteen hundred and sixty-six as amended. Such permit may be subject to terms and conditions
122 not inconsistent with the purposes and provisions of this act, including, without limitation, (a)

123 incentives to continue in effect the low-income restrictions previously in place for the property
124 and (b) where sale, lease, or disposition of the property may result in the loss of all or a portion
125 of the property for low-income rental housing use, the right of an incorporated tenants
126 association in such housing, the city of Boston, the Boston Housing Authority, non-profit
127 community development corporations, or other equivalent bona fide non-profit organizations to
128 negotiate for, acquire and operate such property on substantially equivalent terms and conditions
129 as offered or available to a bona fide third-party purchaser.

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

138 (E) To the extent not preempted by federal law or section six of chapter 708 of the
139 acts of nineteen hundred and sixty-six as amended, and so long as such regulation is consistent
140 with the owner's right to obtain a fair net operating income, such ordinance shall also provide
141 that the City may establish local preferences, priorities, and income limits for admission to
142 governmentally-involved housing or former governmentally-involved housing upon unit
143 turnover, consistent, to the extent with the income profile of the property twelve months prior to
144 the date of the loss or rent preemption or the decision to not renew an expiring subsidy contract.
145 The official body may approve an alternative plan requested by the owner, consistent with the

146 provisions of this Act. No ordinance or regulation shall require an owner to create a tenancy
147 involving any person with a history of conduct which would, if repeated, be grounds for eviction
148 from such housing.

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

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

164 (H) All decisions of the crucial body may be appealed to the housing court department
165 of the trial court, city of Boston division, by any person aggrieved thereby, whether or not
166 previously a party in the matter, within thirty calendar days after notice of such decision.
167 Judicial review of adjudicatory decisions shall be conducted in accordance with section fourteen

168 of chapter thirty A to the General Laws. Judicial review of regulations shall be conducted in
169 accordance with section seven of chapter thirty A of the General Laws. The housing court
170 department of the trial court, city of Boston division, shall have jurisdiction to enforce the
171 provisions hereof and any ordinance, rule or regulation adopted hereunder, and on application of
172 the official body or any aggrieved person may restrain or enjoin violations of any such
173 ordinance, rule, or regulation. In the interests of justice, the court may allow any necessary
174 parties to be joined in or to intervene in any action brought hereunder and may in its discretion
175 allow or require an action to proceed as a class action.

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

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

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

191 SECTION 6. This act shall take effect upon passage