

SENATE No. 1983

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting certain housing stock in the city of Lawrence.

PETITION OF:

NAME:

Barry R. Finegold

DISTRICT/ADDRESS:

SENATE No. 1983

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 1983) of Barry Finegold (with approval of the mayor and city council) for legislation to protect certain housing stock in the city of Lawrence. [Local Approval Received.] Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act protecting certain housing stock in the city of Lawrence.

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

SECTION 2. For the purpose of this act, the following words shall have the following meanings:

“Formerly governmentally-involved housing”, housing which was governmentally-involved housing as of April 1, 2000, 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 42 U.S.C. § 1437f(t).

“Governmentally-involved housing”, 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 housing units; and (ii) regulates the individual rents thereof, including without limitation housing units constructed or rehabilitated under 12 U.S.C. § 1701q), 12 U.S.C. §§ 1715l(d) or 1715z-1, 42 U.S.C. § 8013, or housing units financed or subsidized under project-based programs for low-income persons under 42 U.S.C. § 1437 f or the project-based rental voucher program under item 7004-9004 of section 2 of chapter 159 of the acts of 2000, 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 Lawrence through tax foreclosure;

(2) housing units in a building or structure of fewer than 10 units which are not part of a larger housing development, whether on 1 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 Lawrence housing authority under chapter 121B of the General Laws, 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 owner's 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, 2005;

"Low-income", annual household income which is 80 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.

SECTION 3. Notwithstanding any general or special law to the contrary, including, without limitation, chapter 40P of the General Laws and chapter 282 of the acts of 1994, for so long as the city council of the city of Lawrence shall determine that the circumstances described in section 1 continue to exist, the city shall by ordinance regulate the rent for use or occupancy of governmentally-involved or formerly governmentally-involved housing to the extent the regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966, once the basis for federal or state rent regulation or preemption no longer exists.

SECTION 4. (a) The city of Lawrence shall by ordinance create an official body to establish the maximum rent for the governmentally-involved and formerly governmentally-involved housing units as of April 1, 2000 or 6 months before the basis for federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure the rent provides a fair net

operating income as of the date of the official body's decision; provided, however, that the ordinance shall authorize the official body to make individual adjustments in maximum rents 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 the housing units at levels which will yield to maximum rent for the 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) The 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 6 of chapter 708 of the acts of 1966, 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 of the violation;

(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 this act;

(6) the tenant has refused the owner reasonable access to the housing unit to make necessary repairs or improvements required by law or to inspect as permitted or required by the lease or law or to show 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

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

This section shall be construed as additional restrictions on the right to recover possession of those housing units.

(c) The ordinance shall also provide that no person shall remove a governmentally-involved or formerly governmentally-involved housing accommodation from low-income rental housing use, including but not limited to sale, lease, or other disposition of the property which may have such an effect, or convert the property to a condominium or cooperative, without first obtaining a permit for that purpose from the official body, to the extent

that the provision is not preempted by federal law or section 6 of chapter 708 of the acts of 1966. THE permit may be subject to terms and conditions not inconsistent with this act, including, without limitation, (i) incentives to continue in effect the low-income restrictions previously in place for the property and (ii) where sale, lease, or disposition of the property may result in the loss of all or a portion of the property for low-income rental housing use, the right of an incorporated tenants association in such housing, the city of Lawrence, the Lawrence housing authority, or non-profit community development corporations to negotiate for, acquire and operate the property on substantially equivalent terms and conditions as offered or available to a bona fide third-party purchaser.

(d) To the extent not preempted by federal law or section 6 of chapter 708 of the acts of 1966, the ordinance shall require that owners of governmentally-involved housing, or formerly governmentally involved housing, affirmatively 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 the governmental housing resources.

(e) To the extent not preempted by federal law or section 6 of chapter 708 of the acts of 1966, and so long as the regulation is consistent with the owner's 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 formerly governmentally-involved housing upon unit turnover, consistent, to the extent practicable, with the income profile of the property 12 months before 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 this act. An ordinance or regulation shall not require an owner to create a tenancy involving any person with a history of conduct which would, if repeated, be grounds for eviction from the housing.

(f) The ordinance shall also provide that the official body may grant exemptions and exceptions that would tend to maintain the income character of the property.

(g) The ordinance shall provide that the official body may promulgate rules, regulations and orders necessary to effectuate this act and the ordinance. The board may hold hearings on matters within its authority under this act and ordinance. Hearings regarding matters related to regulation of rents or removal permits for governmentally involved or formerly governmentally involved housing or regarding compliance with this act, or the ordinance, orders, rules or regulations adopted or promulgated under this act, shall be conducted by the official body under section 11 of chapter 30A of the General Laws except that requirements (7) and (8) of said section 11 shall not apply to those hearings.

(h) 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 30 calendar days after notice of the decision. Judicial review of adjudicatory decisions shall be conducted under section 14 of chapter 30A of the General Laws. Judicial review of regulations shall be conducted under section 7 of said chapter 30A. The housing court department of the trial court, northeast division, shall have jurisdiction to enforce this act and any ordinance, rule or regulation adopted under this act, 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 necessary parties to

145 be joined in or to intervene in any action brought under this act and may in its discretion allow or
146 require an action to proceed as a class action.

147 SECTION 5. It shall be unlawful for any person to do or omit to do any action
148 in violation of this act, or any order, ordinance, rule or regulation adopted or promulgated under
149 this act. Whoever willfully violates this act or any order, ordinance, rule or regulation adopted or
150 promulgated under this act or whoever makes a false statement in any testimony before the board
151 or its agents or whoever knowingly supplies the official body with false information shall be
152 punished by a fine of not more than \$400 or by imprisonment for not more than 90 days, or both;
153 provided, however, that in the case of a second or subsequent offense, or where the violation
154 continues after notice of the violation, the person shall be punished by a fine of not more than
155 \$2,000, or by imprisonment for not more than 1 year, or both.

156 SECTION 6. Chapter 40P of the General Laws shall not apply to an ordinance
157 adopted under this act.

158 SECTION 7. This act shall take effect upon its passage.