

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.

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

16 “Formerly governmentally-involved housing”, housing which was governmentally-
17 involved housing as of April 1, 2000, but which then no longer is owned, operated, financed,
18 subsidized, mortgage-insured, or rent-regulated by the United States, the commonwealth, or any
19 authority created under the laws thereof, provided that “formerly governmentally involved
20 housing” shall include any housing receiving subsidy under 42 U.S.C. § 1437f(t).

21 “Governmentally-involved housing”, housing units which the United States, the
22 commonwealth or any authority created under the laws thereof; (i) insures the mortgage thereon,
23 or owns, operates, finances, or subsidizes housing units; and (ii) regulates the individual rents
24 thereof, including without limitation housing units constructed or reha-bilitated under 12 U.S.C.
25 § 1701q), 12 U.S.C. §§ 1715l(d) or 1715z-1, 42 U.S.C. § 8013, or housing units financed or
26 subsidized under project-based programs for low-income persons under 42 U.S.C. § 1437 f or
27 the project-based rental voucher program under item 7004-9004 of section 2 of chapter 159 of
28 the acts of 2000, as well as 760 C.M.R. Part 49.00, but not including the following:-

29 (1) housing units owned or acquired by the city of Lawrence through tax
30 foreclosure;

31 (2) housing units in a building or structure of fewer than 10 units which are not part
32 of a larger housing development, whether on 1 or more sites;

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

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

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

42 (6) housing units which become governmentally involved after January 1, 2005;

43 "Low-income", annual household income which is 80 per cent or less of the median
44 income for the area as determined by the United States Department of Housing and Urban
45 Development, with adjustments for smaller and larger families.

46 SECTION 3. Notwithstanding any general or special law to the contrary,
47 including, without limitation, chapter 40P of the General Laws and chapter 282 of the acts of
48 1994, for so long as the city council of the city of Lawrence shall determine that the
49 circumstances described in section 1 continue to exist, the city shall by ordinance regulate the
50 rent for use or occupancy of governmentally-involved or formerly governmentally-involved
51 housing to the extent the regulation is not preempted by federal law or by section 6 of chapter
52 708 of the acts of 1966, once the basis for federal or state rent regulation or preemption no longer
53 exists.

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

58 operating income as of the date of the official body's decision; provided, however, that the
59 ordinance shall authorize the official body to make individual adjustments in maximum rents
60 necessary to remove hardships or to correct other inequities. In making individual adjustments to
61 remove hardships or to correct other inequities, the official body shall observe the principle of
62 maintaining maximum rents for the housing units at levels which will yield to maximum rent for
63 the housing units yields a fair net operating income, due consideration shall be given to, among
64 other relevant factors: (1) increases in property taxes; (2) unavoidable increases in operating and
65 maintenance expenses; (3) major capital improvement of the housing units, distinguished from
66 ordinary repair, replacement, and maintenance; (4) increases or decreases in living space,
67 services, furniture, furnishings or equipment; and (5) substantial deterioration of the housing
68 units, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or
69 maintenance.

70 (b) The ordinance shall provide that no person shall bring an action to recover
71 possession of a governmentally-involved housing unit, or of a formerly governmentally-
72 involved housing unit, to the extent that such regulation is not otherwise preempted by federal
73 law or section 6 of chapter 708 of the acts of 1966, unless:

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

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

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

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

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

86 (6) the tenant has refused the owner reasonable access to the housing unit to make
87 necessary repairs or improvements required by law or to inspect as permitted or required by the
88 lease or law or to show the housing unit to any prospective purchaser or mortgagee;

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

90 or

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

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

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

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

109 (d) To the extent not preempted by federal law or section 6 of chapter 708 of the
110 acts of 1966, the ordinance shall require that owners of governmentally-involved housing, or
111 formerly governmentally involved housing, affirmatively seek out and accept any prospective
112 governmental housing resources, whether tenant-based or project-based, which maximize
113 affordability of the housing units consistent with the income character of the property and the
114 owner's right to obtain a fair net operating income for the housing units, provided that the city
115 shall assist owners by identifying the governmental housing resources.

116 (e) To the extent not preempted by federal law or section 6 of chapter 708 of the
117 acts of 1966, and so long as the regulation is consistent with the owner's right to obtain a fair net
118 operating income, such ordinance shall also provide that the city may establish local preferences,
119 priorities and income limits for admission to governmentally-involved housing or formerly
120 governmentally-involved housing upon unit turnover, consistent, to the extent practicable, with
121 the income profile of the property 12 months before the date of the loss of rent preemption or the
122 decision to not renew an expiring subsidy contract. The official body may approve an alternate

123 plan requested by the owner, consistent with this act. An ordinance or regulation shall not
124 require an owner to create a tenancy involving any person with a history of conduct which
125 would, if repeated, be grounds for eviction from the housing.

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

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

136 (h) Decisions of the official body may be appealed to the housing court
137 department of the trial court, northeast division, by any person aggrieved thereby, whether or not
138 previously a party in the matter, within 30 calendar days after notice of the decision. Judicial
139 review of adjudicatory decisions shall be conducted under section 14 of chapter 30A of the
140 General Laws. Judicial review of regulations shall be conducted under section 7 of said chapter
141 30A. The housing court department of the trial court, northeast division, shall have jurisdiction
142 to enforce this act and any ordinance, rule or regulation adopted under this act, and, on
143 application of the board or any aggrieved person, may restrain or enjoin violations of any such
144 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.