

Offered by Councilors Matt O'Malley and Michael Flaherty



CITY OF BOSTON

IN THE YEAR TWO THOUSAND TWENTY-ONE

HOME RULE PETITION

AN ACT TO RESTORE BOSTON'S GOVERNMENTALLY-INVOLVED HOUSING PROTECTION

- WHEREAS:** Boston continues to face a housing crisis and it is incumbent that the City preserve its affordable housing market; and
- WHEREAS:** There are 30,435 privately-owned, subsidized apartments in Boston and close to 2,000 have been converted to high market rents; and
- WHEREAS:** According to an April 2021 report by the Community Economic Development Assistance Corporation (CEDAC), 928 apartments in Boston are at risk of conversion to market rate by 2022, including the Forbes Building in Jamaica Plain and Babcock Towers in Brighton; and
- WHEREAS:** The owner of the Forbes Building has announced a plan to convert 147 apartments affordable to low income senior and disabled tenants into market rate housing, putting tenants and the community at risk; and
- WHEREAS:** According to the Mayor's "Housing a Changing City" Report, 3,038 apartments are considered to be at elevated risk for conversion into market-rate housing within the next ten years; and
- WHEREAS:** A significant number of these units are in some of the City's highest-priced neighborhoods where the financial incentives for developers to convert to market-rate are high; and

THEREFORE BE IT

- ORDERED:** That a petition to the General Court, accompanied by a bill for special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause 1 of Section 8 of Article II, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted providing precisely as follows, except for clerical or editorial changes of form only:

PETITION FOR A SPECIAL LAW

SECTION 1. Whereas, a serious public emergency exists with respect to the housing of citizens in Boston residing in governmentally-involved housing, inasmuch as there is a threat that many low-income individuals and families residing in such housing, particularly those elderly and disabled, may be threatened with displacement as a result of prepayment of mortgage financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and there is a threat that affordable housing stock will be lost due to expiration of use restrictions and subsidy contracts and such pre-payment, further exacerbating an extreme housing shortage within the city for low-income families and voters, and whereas , in approving Chapter 40P of the General Laws, the voters did not exempt such housing from protection or regulation and whereas it is the city's policy to encourage owners of this governmentally-involved housing to accept incentives to keep such housing affordable and avert displacement, that such emergency should be met by the city of Boston immediately; therefore, this 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 40P of the General Laws and Chapter 282 of the Acts of 1994, for so long as the City Council of Boston shall determine that the circumstances described in Section 1 hereof continue to exist, **the City of Boston shall by ordinance regulate the rent for the 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 1966 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), Sections 221 (d) and 236 of the National Housing Act, as amended (12 U.S.C. § § 17151(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 1966, added by Section 10 of Chapter 855 of the Acts of 1970, 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), or housing units with mortgage insurance under Sections 207 or 220 of the National Housing Act, as amended, and subject to a rent regulatory agreement or other controls pursuant to applicable law with the Boston Planning and Development Agency, but not including the following:

- (1) housing units owned or acquired by the City of Boston through tax foreclosure;
- (2) except for publicly owned dwelling units or units which are financed or subsidized with project-based Section 8, housing units in a one-to-four family building or structure 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 a local housing authority under Chapter 121B of the General Laws, the United States Housing Act of 1937 (42 U.S.C. § 1457a et seq.), or any successor act or public housing programs formerly assisted under the United States Housing Act of 1937;
- (5) housing units which received mortgage insurance pursuant to Sections 207 or 220 of the National Housing Act but not subject to a rent regulatory agreement or other controls with the Boston Planning and Development Agency as well as housing units which received mortgage insurance pursuant to Section 608 of the National Housing Act, regardless of whether there was a rent regulatory agreement or other controls with the Boston Planning and Development Agency or not;
- (6) housing units which received mortgage insurance pursuant to Section 221(d) of the National Housing Act and which never received a federal or state subsidy or below market interest rate mortgage subsidy; and
- (7) 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.

For the purpose of this act, "formerly governmentally-involved housing" is defined as housing which was governmentally-involved housing as of July 1, 1994, or which becomes governmentally-involved housing after July 1, 1994, 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 Boston shall by ordinance create an official body designated by the Mayor to establish as the maximum rent for the governmentally-involved and formerly governmentally-involved housing units the rent in effect therefore on July 1, 1994, or six months before the basis 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, the official body shall observe the principle of maintaining maximum rents for such housing units at levels which 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 6 of Chapter 708 of the acts of 1966 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
- (8) The owner seeks to recover possession for any other just cause not in conflict with the provisions and purposes of this act or Chapter 93A of the General Laws.

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

(C) Such ordinance shall also provide that **no person shall remove any governmentally-involved or formally 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 such property to a**

condominium or cooperative, without first obtaining a permit for that purpose from the official body, to the extent that such provision is not preempted by federal law or Section 6 of Chapter 708 of the acts of 1966 as amended. Such permit may be subject to terms and conditions not inconsistent with the purposes and provisions of this act, including, without limitation, (a) incentives to continue in effect the low-income restrictions previously in place for the property and (b) 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 Boston, the Boston Housing Authority, non-profit community development corporations, or other equivalent bona fide non-profit organizations to negotiate for, acquire and operate such 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 as amended, such 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 allowing the owner a 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 6 of Chapter 708 of the acts of 1966 as amended, and so long as such 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 former governmentally-involved housing upon unit turnover, consistent, to the extent with the income profile of the property twelve months prior to the date of the loss or rent preemption or the decision to not renew an expiring subsidy contract. The official body may approve an alternative plan requested by the owner, consistent with the provisions 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 Boston, including, without limitation, promoting the sale of properties to bona 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 official body 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 Section 11 of Chapter 30A of the General Laws except that requirements (7) and (8) of such Section 11 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, City of Boston 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 14 of Chapter 30A to the General Laws. Judicial review of regulations shall be conducted in accordance with Section 7 of Chapter 30A of the General Laws. The housing court department of the trial court, city of Boston division, shall have jurisdiction to enforce the provisions hereof and any ordinance, rule or regulation adopted hereunder, and on application of the official body 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 official body or its agents, or whoever knowingly supplies the official body with false information shall be punished by a fine of not more than four hundred dollars; provided, however, that in the case of a second or subsequent offense, or where the violation continues after notice thereof, such person shall be punished by a fine of not more than two thousand dollars.

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

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

SECTION 6. This act shall take effect upon passage.

Filed in Council: June 11, 2021