

HOUSE No. 03635

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

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 passage of the accompanying bill:

An Act to restore Boston's governmentally-involved housing protection.

PETITION OF:

NAME:

Aaron Michlewitz

DISTRICT/ADDRESS:

3rd Suffolk

HOUSE No. 03635

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

13 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the contrary,
14 including, without limitation, the provisions of chapter forty P of the General Laws and chapter
15 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of Boston
16 shall determine that the circumstances described in section one hereof continue to exist, the City
17 of Boston shall by ordinance regulate the rent for the use or occupancy of governmentally-
18 involved or formerly governmentally-involved housing to the extent such regulation is not
19 preempted by federal law or by section six of chapter 708 of the Acts of nineteen hundred and
20 sixty-six as amended, once the basis for federal or state rent regulation or preemption no longer
21 exists. For purposes of this act, “governmentally-involved housing” is defined as housing units
22 which the United States, the Commonwealth or any authority created under the laws thereof (i)
23 insures the mortgage thereon, or owns, operates, finances, or subsidizes such housing units, and
24 (ii) regulates the individual rents thereof, including without limitation housing units constructed
25 or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. §
26 1701q), Sections 221 (d) and 236 of the National Housing Act, as amended (12 U.S.C. § §
27 17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable Housing Act,
28 as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the Acts of nineteen hundred
29 and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen hundred and seventy,
30 as amended (M.G.L. c. 23A App. §1-13A), or housing units financed or subsidized pursuant to
31 project-based programs for low-income persons under Section 8 of the United States Housing
32 Act of 1937, as amended (42 U.S.C. § 1437f), or the project-based Massachusetts Rental
33 Voucher Program, so-called (see line item 7004-9004 of Section 2 of chapter 159 of the Acts of
34 two thousand, as well as 760 C.M.R. Part 49.00), or housing units with mortgage insurance
35 under Sections 207 or 220 of the National Housing Act, as amended, and subject to a rent

36 regulatory agreement or other controls pursuant to applicable law with the Boston
37 Redevelopment Authority, but not including the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 or disposition of the property may result in the loss of all or a portion of the property for low-
121 income rental housing use, the right of an incorporated tenants association in such housing, the
122 city of Boston, the Boston Housing Authority, non-profit community development corporations,
123 or other equivalent bona fide non-profit organizations to negotiate for, acquire and operate such
124 property on substantially equivalent terms and conditions as offered or available to a bona fide
125 third-party purchaser.

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

134 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts of
135 nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with the
136 owner's right to obtain a fair net operating income, such ordinance shall also provide that the
137 City may establish local preferences, priorities, and income limits for admission to
138 governmentally-involved housing or former governmentally-involved housing upon unit
139 turnover, consistent, to the extent with the income profile of the property twelve months prior to
140 the date of the loss or rent preemption or the decision to not renew an expiring subsidy contract.
141 The official body may approve an alternative plan requested by the owner, consistent with the
142 provisions of this Act. No ordinance or regulation shall require an owner to create a tenancy

143 involving any person with a history of conduct which would, if repeated, be grounds for eviction
144 from such housing.

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

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

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

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

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

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

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

186 SECTION 6. This act shall take effect upon passage