

HOUSE No. 4229

The Commonwealth of Massachusetts

PRESENTED BY:

Nika C. Elugardo

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 to restore Boston's governmentally-involved housing protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>10/15/2021</i>

HOUSE No. 4229

By Ms. Elugardo of Boston, a petition (accompanied by bill, House, No. 4229) of Nika C. Elugardo (with the approval of the mayor and city council) that the city of Boston be authorized to regulate the rent for the use or occupancy of certain governmentally--involved or formerly governmentally-involved housing in said city. Housing. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 WHEREAS: Boston continues to face a housing crisis and it is incumbent that the City
2 preserve its affordable housing market; and

3 WHEREAS: There are 30,435 privately-owned, subsidized apartments in Boston and
4 close to 2,000 have been converted to high market rents; and

5 WHEREAS: According to an April 2021 report by the Community Economic
6 Development Assistance Corporation (CEDAC), 928 apartments in Boston are at risk of
7 conversion to market rate by 2022, including the Forbes Building in Jamaica Plain and Babcock
8 Towers in Brighton; and

9 WHEREAS: The owner of the Forbes Building has announced a plan to convert 147
10 apartments affordable to low income senior and disabled tenants into market rate housing,
11 putting tenants and the community at risk; and

12 WHEREAS: According to the Mayor’s “Housing a Changing City” Report, 3,038
13 apartments are considered to be at elevated risk for conversion into market-rate housing within
14 the next ten years; and

15 WHEREAS: A significant number of these units are in some of the City’s highest-
16 priced neighborhoods where the financial incentives for developers to convert to market-rate are
17 high; and

18 THEREFORE BE IT

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

24 PETITION FOR A SPECIAL LAW

25 SECTION 1. Whereas, a serious public emergency exists with respect to the housing of
26 citizens in Boston residing in governmentally-involved housing, inasmuch as there is a threat that
27 many low-income individuals and families residing in such housing, particularly those elderly
28 and disabled, may be threatened with displacement as a result of prepayment of mortgage
29 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and
30 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and
31 subsidy contracts and such pre-payment, further exacerbating an extreme housing shortage
32 within the city for low-income families and voters, and whereas, in approving Chapter 40P of the
33 General Laws, the voters did not exempt such housing from protection or regulation and whereas

34 it is the city's policy to encourage owners of this governmentally-involved housing to accept
35 incentives to keep such housing affordable and avert displacement, that such emergency should
36 be met by the city of Boston immediately; therefore, this act is declared to be in the public
37 interest.

38 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the
39 contrary, including, without limitation, the provisions of Chapter 40P of the General Laws and
40 Chapter 282 of the Acts of 1994, for so long as the City Council of Boston shall determine that
41 the circumstances described in Section 1 hereof continue to exist, the City of Boston shall by
42 ordinance regulate the rent for the use or occupancy of governmentally--involved or formerly
43 governmentally-involved housing to the extent such regulation is not preempted by federal law
44 or by Section six of Chapter 708 of the Acts of 1966 as amended, once the basis for federal or
45 state rent regulation or preemption no longer exists. For purposes of this act, "governmentally-
46 involved housing" is defined as housing units which the United States, the Commonwealth or
47 any authority created under the laws thereof (i) insures the mortgage thereon, or owns, operates,
48 finances, or subsidizes such housing units, and (ii) regulates the individual rents thereof,
49 including without limitation housing units constructed or rehabilitated pursuant to Section 202 of
50 the Housing Act of 1959, as amended (12 U.S.C. § 1701q), Sections 221 (d) and 236 of the
51 National Housing Act, as amended (12 U.S.C. § § 17151(d) or 1715z-1), Section 811 of the
52 Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. § 8013), or
53 Section 13A of Chapter 708 of the Acts of 1966, added by Section 10 of Chapter 855 of the Acts
54 of 1970, as amended (M.G.L. c. 23A App. §1-13A), or housing units financed or subsidized
55 pursuant to project-based programs for low-income persons under Section 8 of the United States
56 Housing Act of 1937, as amended (42 U.S.C. § 1437f), or the project-based Massachusetts

57 Rental Voucher Program, so-called (see line item 7004-9004 of Section 2 of Chapter 159 of the
58 Acts of two thousand, as well as 760 C.M.R. Part 49.00), or housing units with mortgage
59 insurance under Sections 207 or 220 of the National Housing Act, as amended, and subject to a
60 rent regulatory agreement or other controls pursuant to applicable law with the Boston Planning
61 and Development Agency, but not including the following:

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

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

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

70 (4) public housing owned or operated by a local housing authority under Chapter 121B of
71 the General Laws, the United States Housing Act of 1937 (42 U.S.C. § 1457a et seq.), or any
72 successor act or public housing programs formerly assisted under the United States Housing Act
73 of 1937;

74 (5) housing units which received mortgage insurance pursuant to Sections 207 or 220 of
75 the National Housing Act but not subject to a rent regulatory agreement or other controls with
76 the Boston Planning and Development Agency as well as housing units which received mortgage
77 insurance pursuant to Section 608 of the National Housing Act, regardless of whether there was a

78 rent regulatory agreement or other controls with the Boston Planning and Development Agency
79 or not;

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

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

86 For the purpose of this act, "formerly governmentally-involved housing" is defined as
87 housing which was governmentally-involved housing as of July 1, 1994, or which becomes
88 governmentally-involved housing after July 1, 1994, but which then no longer is owned,
89 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the
90 Commonwealth, or any authority created under the laws thereof, provided that "formerly
91 governmentally-involved housing" shall include any housing receiving subsidy under Section
92 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

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

97

98 The City of Boston shall by ordinance create an official body designated by the Mayor to
99 establish as the maximum rent for the governmentally-involved and formerly governmentally--
100 involved housing units the rent in effect therefore on July 1, 1994, or six months before the basis
101 federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure such
102 rent provides a fair net operating income as of the date of the official body's decision, provided,
103 however, said ordinance shall authorize the official body to make individual adjustments in such
104 maximum rents as may be necessary to remove hardships or to correct other inequities, the
105 official body shall observe the principle of maintaining maximum rents for such housing units at
106 levels which will yield to owners a fair net operating income from such housing units. In
107 determining whether the maximum rent for such housing units yields a fair net operating income,
108 due consideration shall be given to, among other relevant factors; (1) increases in property taxes;
109 (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement
110 of the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)
111 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)
112 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to
113 perform ordinary repair, replacement, or maintenance.

114 (B) Such ordinance shall provide that no person shall bring an action to recover
115 possession of a governmentally-involved housing unit, or of a formerly governmentally-involved
116 housing unit, to the extent that such regulation is not otherwise preempted by federal law or
117 Section 6 of Chapter 708 of the acts of 1966 as amended, unless:

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

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

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

126 (4) The tenant has used or permitted use of a housing unit for illegal
127 purposes;

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

132 (6) The tenant has refused the owner reasonable access to the housing unit for the
133 purpose of making necessary repairs or improvements required by law, or for the purpose of
134 inspection as permitted or required by the lease or law, or for the purpose of showing the housing
135 unit to any prospective purchaser or mortgagee;

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

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

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

142 (C) Such ordinance shall also provide that no person shall remove any governmentally-
143 involved or formally governmentally-involved housing accommodation from low-income rental
144 housing use (including but not limited to sale, lease, or other disposition of the property which
145 may have such an effect), or convert such property to a condominium or cooperative, without
146 first obtaining a permit for that purpose from the official body, to the extent that such provision
147 is not preempted by federal law or Section 6 of Chapter 708 of the acts of 1966 as amended.
148 Such permit may be subject to terms and conditions not inconsistent with the purposes and
149 provisions of this act, including, without limitation, (a) incentives to continue in effect the low-
150 income restrictions previously in place for the property and (b) where sale, lease, or disposition
151 of the property may result in the loss of all or a portion of the property for low--income rental
152 housing use, the right of an incorporated tenants association in such housing, the city of Boston,
153 the Boston Housing Authority, non-profit community development corporations, or other
154 equivalent bona fide non-profit organizations to negotiate for, acquire and operate such property
155 on substantially equivalent terms and conditions as offered or available to a bona fide third-party
156 purchaser.

157 (D) To the extent not preempted by federal law or Section 6 of Chapter 708 of the acts of
158 1966 as amended, such ordinance shall require that owners of governmentally-involved housing,
159 or formerly governmentally-involved housing, affirmatively seek out and accept any prospective
160 governmental housing resources, whether tenant-based or project-based, which maximize
161 affordability of the housing units consistent with the income character of the property allowing

162 the owner a right to obtain a fair net operating income for the housing units, provided that the
163 City shall assist owners by identifying such governmental housing resources.

164 (E) To the extent not preempted by federal law or Section 6 of Chapter 708 of the acts of
165 1966 as amended, and so long as such regulation is consistent with the owner's right to obtain a
166 fair net operating income, such ordinance shall also provide that the City may establish local
167 preferences, priorities, and income limits for admission to governmentally-involved housing or
168 former governmentally-involved housing upon unit turnover, consistent, to the extent with the
169 income profile of the property twelve months prior to the date of the loss or rent preemption or
170 the decision to not renew an expiring subsidy contract. The official body may approve an
171 alternative plan requested by the owner, consistent with the provisions of this Act. No ordinance
172 or regulation shall require an owner to create a tenancy involving any person with a history of
173 conduct which would, if repeated, be grounds for eviction from such housing.

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

180 (G) Such ordinance shall provide that the official body may promulgate such rules,
181 regulations and orders as it may deem necessary to effectuate the purposes of this act and the
182 ordinance. The official body may hold hearings on any matters within its authority under this act
183 and ordinance. Any hearings regarding matters related to regulation of rents or removal permits

184 for governmentally-involved or formerly governmentally-involved housing or regarding
185 compliance with other provisions of this act, or the ordinance, orders, rules, or regulations
186 adopted or promulgated hereunder, shall be conducted by the official body in accordance with
187 the provisions of Section 11 of Chapter 30A of the General Laws except that requirements (7)
188 and (8) of such Section 11 shall not apply to such hearings.

189 (H) All decisions of the official body may be appealed to the housing court department of
190 the trial court, City of Boston division, by any person aggrieved thereby, whether or not
191 previously a party in the matter, within thirty calendar days after notice of such decision. Judicial
192 review of adjudicatory decisions shall be conducted in accordance with Section 14 of Chapter
193 30A to the General Laws. Judicial review of regulations shall be conducted in accordance with
194 Section 7 of Chapter 30A of the General Laws. The housing court department of the trial court,
195 city of Boston division, shall have jurisdiction to enforce the provisions hereof and any
196 ordinance, rule or regulation adopted hereunder, and on application of the official body or any
197 aggrieved person may restrain or enjoin violations of any such ordinance, rule, or regulation. In
198 the interests of justice, the court may allow any necessary parties to be joined in or to intervene
199 in any action brought hereunder and may in its discretion allow or require an action to proceed as
200 a class action.

201 SECTION 3. It shall be unlawful for any person to do or omit to do any action in
202 violation of this act, or any order, ordinance, rule or regulation adopted or promulgated
203 hereunder. Whoever willfully violates any provision of this act or any order, ordinance, rule or
204 regulation adopted or promulgated hereunder or whoever makes a false statement in any
205 testimony before the official body or its agents, or whoever knowingly supplies the official body
206 with false information shall be punished by a fine of not more than four hundred dollars;

207 provided, however, that in the case of a second or subsequent offense, or where the violation
208 continues after notice thereof, such person shall be punished by a fine of not more than two
209 thousand dollars.

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

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

215 SECTION 6. This act shall take effect upon passage.

216 Filed in Council: June 11, 2021