

HOUSE No.

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

William Lantigua

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 adopt protections for Lawrence's governmentally involved housing stock.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William Lantigua	16th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4433 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT TO ADOPT PROTECTIONS FOR LAWRENCE'S GOVERNMENTALLY INVOLVED HOUSING STOCK.

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, a serious public emergency exists with respect to the housing of citizens in
2 Lawrence 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 Lawrence immediately; therefore, this act is declared to be in the public interest.

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14 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the contrary,
15 including, without limitation, the provisions of Chapter 40 P of the General Laws and Chapter
16 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of Lawrence
17 shall determine that the circumstances described in Section one hereof continue to exist, the City
18 of Lawrence shall by ordinance regulate the rent for use or occupancy of governmentally-
19 involved or formerly governmentally-involved housing to the extent such regulation is not
20 preempted by federal law or by Section Six of Chapter 708 of the Acts of nineteen hundred and
21 sixty-six as amended, once the basis for federal or state rent regulation or preemption no longer
22 exists. For purposes of this act, "governmentally-involved housing" is defined as housing units

23 which the United States, the Commonwealth or any authority created under the laws thereof (i)
24 insures the mortgage thereon, or owns, operates, finances, or subsidizes such housing units, and
25 (ii) regulates the individual rents thereof, including without limitation housing units constructed
26 or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. §
27 1701q), Sections 220, 221(d) and 236 of the National Housing Act, as amended (12 U.S.C. §§
28 17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable Housing Act,
29 as amended (42 U.S.C. § 8013), or housing units financed or subsidized pursuant to project-
30 based programs for low-income persons under Section 8 of the United States Housing Act of
31 1937, as amended (42 U.S.C. § 1437f) or the project-based Massachusetts Rental Voucher
32 Program, so called (see line item 7004-9004 of Section 2 of Chapter 159 of the Acts of two
33 thousand, as well as 760 C.M.R. Part 49.00), but not including the following:

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- 35 (1) housing units owned or acquired by the City of Lawrence through tax foreclosure;
 - 36 (2) housing units in a building or structure of fewer than ten units which are not part of a
37 larger housing development, whether on one or more sites;
 - 38 (3) structures containing housing units subsidized with mobile tenant-based rental assistance
39 that would not otherwise come within the definition of governmentally involved housing;
 - 40 (4) public housing owned or operated by the Lawrence Housing Authority under Chapter
41 121Bf of the General Laws, the United States Housing act of 1937 (42 U.S.C. §§ 1437a
42 et seq.), or any successor act or public housing programs formerly assisted under the
43 United States Housing Act of 1937;
 - 44 (5) housing units where the sole government involvement is the owner's participation in
45 federal, state, or municipal funded programs for home repairs, energy conservation, or
46 lead paint abatement.
 - 47 (6) housing units which become governmentally involved after January 1, 2005;

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49 For the purpose of this act, "formerly governmentally-involved housing" is defined as
50 housing which was governmentally-involved housing as of April 1, 2000, but which then no
51 longer is owned, operated, financed, subsidized, mortgage-insured, or rent-regulated by the
52 United States, the Commonwealth, or any authority created under the laws thereof, provided that
53 "formerly governmentally involved housing" shall including any housing receiving subsidy
54 under Section 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

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56 For the purpose of this act, "low-income" is defined as annual household income which is
57 eighty percent or less of the median income for the area as determined by the United States
58 Department of Housing and Urban Development, with adjustments for smaller and larger
59 families.

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61 The City of Lawrence shall by ordinance create an official body to establish as the
62 maximum rent for the governmentally-involved and formerly governmentally-involved housing
63 units the rent in effect therefor on April 1, 2000 or six months before the basis for federal or state
64 rent regulation or preemption lapsed, whichever is later, adjusted to insure such rent provides a
65 fair net operating income as of the date of the official body to make individual adjustments in
66 such maximum rents as may be necessary to remove hardships or to correct other inequities, the
67 official body shall observe the principle of maintaining maximum rents for such housing units at
68 levels which will yield to owners a fair net operating income from such housing units. In

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

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

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

83

84 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with Chapter
85 93A of the General Laws or this act other than the obligation to surrender possession
86 upon proper notice, and has failed to cure the violation after having received written
87 notice thereof;

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

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

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

99

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

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

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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
110 recover possession of such housing units.

111

112 (C) Such ordinance shall also provide that no person shall remove any governmentally-
113 involved or formerly governmentally-involved housing accommodation from the low-
114 income rental housing use (including but not limited to sale, lease, or other disposition of

115 the property which may have such an effect), or convert such property to a condominium
116 or cooperative, without first obtaining a permit for that purpose from the official body, to
117 the extent that such provision is not preempted by federal law or section six of Chapter
118 708 of the acts of nineteen hundred and sixty-six as amended. Such permit may be
119 subject to terms and conditions not inconsistent with the purposes and provisions of this
120 act, including, without limitation, (a) incentives to continue in effect the low-income
121 restrictions previously in place for the property and (b) where sale, lease, or disposition of
122 the property may result in the loss of all or a portion of the property for low-income
123 rental housing use, the right of an incorporated tenants association in such housing, the
124 City of Lawrence, the Lawrence Housing Authority, or non-profit community
125 development corporations to negotiate for, acquire and operate such property on
126 substantially equivalent terms and conditions as offered or available to a bona fide third-
127 party purchaser.

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

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138 (E) To the extent not preempted by federal law or Section six of Chapter 708 of the acts of
139 nineteen hundred and sixty-six as amended, and so long as such regulation is consistent
140 with the owner's right to obtain a fair net operating income, such ordinance shall also
141 provide that the City may establish local preferences, priorities, and income limits for
142 admission to governmentally-involved housing or formerly governmentally-involved
143 housing upon unit turnover, consistent, to the extent practicable, with the income profile
144 of the property twelve months prior to the date of the loss of rent preemption or the
145 decision to not renew an expiring subsidy contract. The official body may approve an
146 alternate plan requested by the owner to create a tenancy involving any person with a
147 history of conduct which would, if repeated, be grounds for eviction from such housing.

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

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156 (G) Such ordinance shall provide that the official body may promulgate such rules,
157 regulations and orders as it may deem necessary to effectuate the purposes of this act and
158 the ordinance. The board may hold hearings on any matters within its authority under
159 this act and ordinance. Any hearing regarding matters related to regulation of rents or
160 removal permits for governmentally-involved or formerly governmentally involved

161 housing or regarding compliance with other provisions of this act, or the ordinance,
162 orders, rules, or regulations adopted or promulgated hereunder, shall be conducted by the
163 official body in accordance with the provisions of Section eleven of Chapter 30A of the
164 General Laws except that requirements (7) and (8) of such Section eleven shall no apply
165 to such hearings.

166
167 (H) All decisions of the official body may be appealed to the Housing Court Department of
168 the Trial Court, Northeast Division, by any person aggrieved thereby, whether or not
169 previously a party in the matter, within thirty calendar days after notice of such decision.
170 Judicial review of adjudicatory decisions shall be conducted in accordance with Section
171 fourteen of Chapter 30A of the General Laws. Judicial review of regulations shall be
172 conducted in accordance with Section seven of Chapter 30 A of the General Laws. The
173 Housing Court Department of the Trial Court, Northeast Division, shall have jurisdiction
174 to enforce the provisions hereof and any ordinance, rule or regulation adopted hereunder,
175 and on application of the board or any aggrieved person may restrain or enjoin violations
176 of any such ordinance, rule, or regulation. In the interests of justice, the Court may allow
177 any necessary parties to be joined in or to intervene in any action brought hereunder and
178 may in its discretion allow or require an action to proceed as a class action.

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

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

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

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