

**HOUSE . . . . . No.**

**[LOCAL APPROVAL RECEIVED.]**

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
PRESENTED BY:

**Michael F. Rush**  
\_\_\_\_\_

*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:	DISTRICT/ADDRESS:
Michael F. Rush	10th Suffolk
Thomas M. Menino	Mayor of Boston

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3950 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### 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  
5 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent,  
6 and there is a threat that affordable housing stock will be lost due to expiration of use  
7 restrictions and subsidy contracts and such pre-payment, further exacerbating an extreme  
8 housing shortage within the city for low-income families and voters, and whereas , in approving  
9 Chapter 40 P of the General Laws, the voters did not exempt such housing from protection or  
10 regulation and whereas it is the city's policy to encourage owners of this governmentally-  
11 involved housing to accept incentives to keep such housing affordable and avert displacement,  
12 that such emergency should be met by the city of Boston immediately; therefore, this act is  
13 declared to be in the public interest.

14 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the contrary,  
15 including, without limitation, the provisions of chapter forty 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 Boston  
17 shall determine that the circumstances described in section one hereof continue to exist, the  
18 City of Boston shall by ordinance regulate the rent for the 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  
22 longer exists. For purposes of this act, “governmentally-involved housing” is defined as housing  
23 units which the United States, the Commonwealth or any authority created under the laws  
24 thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes such  
25 housing units, and (ii) regulates the individual rents thereof, including without limitation  
26 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959,  
27 as amended (12 U.S.C. § 1701q), Sections 221 (d) and 236 of the National Housing Act, as  
28 amended (12 U.S.C. § § 17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National  
29 Affordable Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the  
30 Acts of nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of  
31 nineteen hundred and seventy, as amended (M.G.L. c. 23A App. §1-13A), or housing units  
32 financed or subsidized pursuant to project-based programs for low-income persons under  
33 Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. § 1437f), or the  
34 project-based Massachusetts Rental Voucher Program, so-called (see line item 7004-9004 of  
35 Section 2 of chapter 159 of the Acts of two thousand, as well as 760 C.M.R. Part 49.00), or  
36 housing units with mortgage insurance under Sections 207 or 220 of the National Housing Act,  
37 as amended, and subject to a rent regulatory agreement or other controls pursuant to  
38 applicable law with the Boston Redevelopment Authority, but not including the following:

- 39 (1) housing units owned or acquired by the City of Boston through tax foreclosure;
- 40 (2) except for publicly owned dwelling units or units which are financed or  
41 subsidized with project-based Section 8, housing units in a one-to-four family building or  
42 structure which are not part of a larger housing development, whether on one or more sites;
- 43 (3) structures containing housing units subsidized with mobile tenant-based rental  
44 assistance that would not otherwise come within the definition of governmentally-involved  
45 housing;
- 46 (4) public housing owned or operated by a local housing authority under chapter 121B  
47 of the General Laws, the United States Housing Act of 1937 (42 U.S.C. § § 14S7a et seq.), or  
48 any successor act or public housing programs formerly assisted under the United States  
49 Housing Act of 1937;
- 50 (5) housing units which received mortgage insurance pursuant to sections 207 or 220  
51 of the National Housing Act but not subject to a rent regulatory agreement or other controls  
52 with the Boston Redevelopment Authority as well as housing units which received mortgage  
53 insurance pursuant to section 608 of the National Housing Act, regardless of whether there  
54 was a rent regulatory agreement or other controls with the Boston Redevelopment Authority  
55 or not;

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

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

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

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

73 The City of Boston shall by ordinance create a official body designated by the Mayor to  
74 establish as the maximum rent for the governmentally-involved and formerly governmentally-  
75 involved housing units the rent in effect, therefore on July 1, 1994, or six months before the  
76 basis federal or state rent regulation or preemption lapsed, whichever is later, adjusted to  
77 insure such rent provides a fair net operating income as of the date of the official's body's  
78 decision, provided, however, said ordinance shall authorize the official body to make individual  
79 adjustments in such maximum rents as may be necessary to remove hardships or to correct  
80 other inequities, the official body shall observe the principle of maintaining maximum rents for  
81 such housing units at levels which will yield to owners a fair net operating income from such  
82 housing units. In determining whether the maximum rent for such housing units yields a fair  
83 net operating income, due consideration shall be given to, among other relevant factors; (1)  
84 increases in property taxes; (2) unavoidable increases in operating and maintenance expenses;  
85 (3) major capital improvement of the housing units, distinguished from ordinary repair,  
86 replacement, and maintenance; (4) increases or decreases in living space, services, furniture,  
87 furnishings or equipment; and (5) substantial deterioration of the housing units, other than  
88 ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance.

89 (B) Such ordinance shall provide that no person shall bring an action to recover possession  
90 of a governmentally-involved housing unit, or of a formerly governmentally involved housing

91 unit, to the extent that such regulation is not otherwise preempted by federal law or section six  
92 of chapter 708 of the acts of nineteen hundred and sixty-six as amended, unless:

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

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

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

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

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

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

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

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

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

116 (C) Such ordinance shall also provide that no person shall remove any governmentally-  
117 involved or formally governmentally-involved housing accommodation from low-income rental  
118 housing use (including but not limited to sale, lease, or other disposition of the property which  
119 may have such an effect), or convert such property to a condominium or cooperative, without  
120 first obtaining a permit for that purpose from the official body, to the extent that such provision  
121 is not preempted by federal law or section six of chapter 708 of the acts of nineteen hundred  
122 and sixty-six as amended. Such permit may be subject to terms and conditions not inconsistent

123 with the purposes and provisions of this act, including, without limitation, (a) incentives to  
124 continue in effect the low-income restrictions previously in place for the property and (b)  
125 where sale, lease, or disposition of the property may result in the loss of all or a portion of the  
126 property for low-income rental housing use, the right of an incorporated tenants association in  
127 such housing, the city of Boston, the Boston Housing Authority, non-profit community  
128 development corporations, or other equivalent bona fide non-profit organizations to negotiate  
129 for, acquire and operate such property on substantially equivalent terms and conditions as  
130 offered or available to a bona fide third-party purchaser.

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

139 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts of  
140 nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with  
141 the owner's right to obtain a fair net operating income, such ordinance shall also provide that  
142 the City may establish local preferences, priorities, and income limits for admission to  
143 governmentally-involved housing or former governmentally-involved housing upon unit  
144 turnover, consistent, to the extent with the income profile of the property twelve months prior  
145 to the date of the loss or rent preemption or the decision to not renew an expiring subsidy  
146 contract. The official body may approve an alternative plan requested by the owner, consistent  
147 with the provisions of this Act. No ordinance or regulation shall require an owner to create a  
148 tenancy involving any person with a history of conduct which would, if repeated, be grounds for  
149 eviction from such housing.

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

156 (F) 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 the  
158 ordinance. The official body may hold hearings on any matters within its authority under this

159 act and ordinance. Any hearings regarding matters related to regulation of rents or removal  
160 permits for governmentally involved or formerly governmentally involved housing or regarding  
161 compliance with other provisions of this act, or the ordinance, orders, rules, or regulations  
162 adopted or promulgated hereunder, shall be conducted by the official body in accordance with  
163 the provisions of section eleven of chapter thirty A of the General Laws except that  
164 requirements (7) and (8) of such section eleven shall not apply to such hearings.

165 (G) All decisions of the crucial body may be appealed to the housing court department of  
166 the trial court, city of Boston division, by any person aggrieved thereby, whether or not  
167 previously a party in the matter, within thirty calendar days after notice of such decision.  
168 Judicial review of adjudicatory decisions shall be conducted in accordance with section fourteen  
169 of chapter thirty A to the General Laws. Judicial review of regulations shall be conducted in  
170 accordance with section seven of chapter thirty A of the General Laws. The housing court  
171 department of the trial court, city of Boston division, shall have jurisdiction to enforce the  
172 provisions hereof and any ordinance, rule or regulation adopted hereunder, and on application  
173 of the official body or any aggrieved person may restrain or enjoin violations of any such  
174 ordinance, rule, or regulation. In the interests of justice, the court may allow any necessary  
175 parties to be joined in or to intervene in any action brought hereunder and may in its discretion  
176 allow or require an action to proceed as a class action.

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

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

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

192 SECTION 6. This act shall take effect upon passage

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