

# HOUSE . . . . . No. 1360

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Samantha Montañó***

*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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Samantha Montañó</i>	<i>15th Suffolk</i>	<i>1/9/2023</i>
<i>Rob Consalvo</i>	<i>14th Suffolk</i>	<i>2/13/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/21/2023</i>

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By Representative Montañó of Boston, a petition (accompanied by bill, House, No. 1360) of Samantha Montañó, Rob Consalvo and Vanna Howard (with the approval of the mayor and city council) relative to governmentally-involved housing in the city of Boston. Housing. [Local Approval Received.]

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Third General Court  
(2023-2024)  
\_\_\_\_\_

An Act to restore Boston’s governmentally-involved housing.

*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, As of 2021, There are 30,435 privately-owned, subsidized apartments in  
4       Boston, and 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, Last year, the owner of the Forbes Building announced a plan to convert  
10      147 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 Mayor Marty Walsh's "Housing a Changing City" Report,  
13 3,038 apartments are at elevated risk for conversion into market-rate housing within the next ten  
14 years; and

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

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

23 SECTION 1. Whereas, a serious public emergency exists with respect to the housing of  
24 citizens in Boston residing in governmentally-involved housing, inasmuch as there is a threat that  
25 many low income individuals and families residing in such housing, particularly those elderly  
26 and disabled, may be threatened with displacement as a result of prepayment of mortgage  
27 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and  
28 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and  
29 subsidy contracts and such prepayment, further exacerbating an extreme housing shortage within  
30 the city for low income families and voters, and whereas , in approving Chapter 40P of the  
31 General Laws, the voters did not exempt such housing from protection or regulation and whereas  
32 it is the city's policy to encourage owners of this governmentally-involved housing to accept  
33 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. § 17019), Sections 221 (d) and 236 of the National Housing Act, as amended (12 U.S.C. §§ 17151(d) or 17152-1), 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. 91-13A), 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 that are financed or subsidized with project-based Section 8, housing units in a one-to-four family building or structure that are not part of 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 General Laws, the United States Housing Act of 1937 (42 U.S.C. § 1487a et seq.), or any successor act or public housing programs formerly assisted under the United States Housing Act of 1937;

(5) housing units that 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 that 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 that 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 that 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 percent 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 of 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 routine 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 the written notice;

(3) The tenant is causing, committing, or permitting a nuisance in or substantial damage to the housing unit or is creating significant 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 demands 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 to show the housing unit to a 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 93 A 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, 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 the 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 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 a 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 before the date of the loss or rent preemption or the decision not to renew an expiring subsidy contract. No ordinance or regulation shall require an owner to create a tenancy involving any person with a history of conduct that would, if repeated, be grounds for eviction from such housing. The official body may approve an alternative plan requested by the owner, consistent with the provisions of this Act.

(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 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 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 sixty 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 five 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.

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

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