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House, No. 3810

Presented by: Antonio F.D. Cabral

(with the approval of the mayor and city council) for legislation to authorize the city of New Bedford to adopt regulations for the protection and control of public housing in said city

1/20/2009HR Referred to the Joint Committee on Housing

1/20/2009SSenate concurred

Public Hearing date 5/5 at 10:30 AM in Hearing Room A1

6/24/2009HA Accompanied a new draft, see H04132

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HOUSE No. 3810

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F.D. Cabral

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 New Bedford's governmentally involved housing stock.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Antonio F.D. Cabral

13th Bristol

Robert M. Koczera

11th Bristol

John F. Quinn

9th Bristol

Stephen R. Canessa

12th Bristol

Steven J. D'Amico

4th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4051 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO ADOPT PROTECTIONS FOR NEW BEDFORD'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, the City of New Bedford desires to adopt protections for
2 governmentally involved housing;

3 WHEREAS, the City of New Bedford is petitioning the General Court for passage
4 of legislation authorizing such a change;

5 WHEREAS, a majority vote of approval by the New Bedford City Council is
6 required for the filing of such petition;

7 NOW THEREFORE, be it voted by the city council of the city OF New Bedford, as
8 follows:

9 Ordered: That a petition to the General Court, accompanied by a bill for a
10 special law relating to the city of New Bedford to be filed with an attested
11 copy of this order be, and hereby is, approved under Clause (1) of Section 8
12 of Article 2, as amended, of the Amendments to the Constitution of the
13 Commonwealth of Massachusetts, to the end that legislation be adopted
14 precisely as follows, except for clerical or editorial changes of form only:

15 SECTION 1. Whereas, a serious public emergency exists with respect to the
16 housing of citizens in New Bedford residing in governmentally-involved
17 housing, in as much as there is a threat that many low-income individuals and
18 families residing in such housing, particularly those elderly and disabled,
19 may be threatened with displacement as a result of prepayment of mortgage
20 financing, loss of use restrictions, expiring subsidy contracts, and expected
21 increases in rent, and there is a threat that affordable housing stock will
22 be lost due to expiration of use restrictions and subsidy contracts and such

23 pre-payment, further exacerbating an extreme housing shortage within the city
24 for low-income families and voters, and whereas, in approving Chapter 40 P of
25 the General Laws, the voters did not exempt such housing from protection or
26 regulation and whereas it is the city's policy to encourage owners of this
27 governmentally-involved housing to accept incentives to keep such housing
28 affordable and avert displacement, that such emergency should be met by the
29 city of New Bedford immediately; therefore, this act is declared to be in the
30 public interest.

31 SECTION 2. (A) Notwithstanding the provisions of any general or special law
32 to the contrary, including, without limitation, the provisions of chapter
33 forty P of the General Laws and chapter 282 of the Acts of nineteen hundred
34 and ninety-four, for so long as the City Council of New Bedford shall
35 determine that the circumstances described in section one hereof continue to
36 exist, the City of New Bedford shall by ordinance regulate the rent for use
37 or occupancy of governmentally-involved or formerly governmentally-involved
38 housing to the extent such regulation is not preempted by federal law or by
39 section six of chapter 708 of the Acts of nineteen hundred and sixty-six as
40 amended, once the basis for federal or state rent regulation or preemption no
41 longer exists, except that market units in projects formerly assisted under
42 sections 25 through 27 of chapter 23 (a) of the General Laws shall not be
43 deemed to be regulated by the state for purposes of this act. For purposes of
44 this act, "governmentally-involved housing" is defined as housing units which
45 the United States, the Commonwealth or any authority created under the laws
46 thereof (i) insures the mortgage thereon, or owns, operates, finances, or
47 subsidizes such housing units, and (ii) regulates the individual rents
48 thereof, including without limitation housing units constructed or
49 rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended
50 (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National Housing Act, as
51 amended (12 U.S.C. §§ 17151(d) or 1715z-1), Section 811 of the Cranston-
52 Gonzalez National Affordable Housing Act, as amended (42 U.S.C. § 8013), or
53 Section 13A of chapter 708 of the Acts of nineteen hundred and sixty-six,
54 added by Section 10 of chapter 855 of the Acts of nineteen hundred and
55 seventy, as amended (M.G.L. c. 23A App. § 1-13A), or housing units financed
56 or subsidized pursuant to project-based programs for low-income persons under
57 Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. §
58 1437f) or the project-based Massachusetts Rental Voucher Program, so-called
59 (see line item 7004-9004 of Section 2 of chapter 159 of the Acts of two
60 thousand, as well as 760 C.M.R. Part. 49.00), but not including the
61 following:-

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

64 (2) housing units in a building or structure of fewer than twenty-five units
65 which are not part of a larger housing development, whether on one or more
66 sites;

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

70 (4) public housing owned or operated by the New Bedford Housing Authority
71 under chapter 121Bf of the General Laws, the United States Housing Act of
72 1937 (42 U.S.C. §§ 1437a et seq.), or any successor act or public housing
73 programs formerly assisted under the United States Housing Act of 1937;

74 (5) housing units where the sole government involvement is the owner's
75 participation in federal, state, or municipal funded programs for home
76 repairs, energy conservation, or lead paint abatement.

77 (6) housing units which become governmentally involved after January 1,
78 2002; For the purpose of this act, "formerly governmentally-involved housing"
79 is defined as housing which was governmentally-involved housing as of July 1,
80 1996 or which becomes governmentally-involved housing after July 1, 1996 but
81 which then no longer is owned, operated, financed, subsidized, mortgage-
82 insured, or rent-regulated by the United States, the Commonwealth, or any
83 authority created under the laws thereof, provided that "formerly
84 governmentally involved housing" shall include any housing receiving subsidy
85 under Section 8(t) of the United States Housing Act of 1937 (42 U.S.C. §
86 1437f(t)).

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

91 The City of New Bedford shall by ordinance create an official body to
92 establish as the maximum rent for the governmentally-involved and formerly
93 governmentally-involved housing units the rent in effect therefore on July 1,
94 1996 or six months before the basis for federal or state rent regulation or
95 preemption lapsed, whichever is later, adjusted to insure such rent provides
96 a fair net operating income as of the date of the official body's decision,
97 provided, however, said ordinance shall authorize the official body to make
98 individual adjustments in such maximum rents as may be necessary to remove
99 hardships or to correct other inequities.

100 In making individual adjustments to remove hardships or to correct other
101 inequities, the official body shall observe the principle of maintaining
102 maximum rents for such housing units at levels which will yield to owners a
103 fair net operating income from such housing units. In determining whether the
104 maximum rent for such housing units yields a fair net operating income, due
105 consideration shall be given to, among other relevant factors: (1) increases
106 in property taxes; (2) unavoidable increases in operating and maintenance
107 expenses; (3) major capital improvement of the housing units, distinguished
108 from ordinary repair, replacement, and maintenance; (4) increases or
109 decreases in living space, services, furniture, furnishings or equipment; and
110 (5) substantial deterioration of the housing units, other than ordinary wear
111 and tear, or failure to perform ordinary repair, replacement, or maintenance.

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

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

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

122 (3) the tenant is causing, committing, or permitting a nuisance in, or
123 substantial damage to, the housing unit, or is creating substantial
124 interference with the comfort, safety, or enjoyment of the owner or other
125 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
129 terminated, has refused, after written requests or demand by the owner, to
130 execute a written extension or renewal thereof for a further term of like
131 duration on terms not inconsistent with or violative of any provision of this
132 act;

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

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

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

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

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

154 purposes and provisions of this act, including, without limitation, (a)
155 incentives to continue in effect the low-income restrictions previously in
156 place for the property and (b) where sale, lease, or disposition of the
157 property may result in the loss of all or a portion of the property for low-
158 income rental housing use, the right of an incorporated tenants association
159 in such housing, the city of New Bedford, the New Bedford Housing Authority,
160 or non-profit community development corporations to negotiate for, acquire
161 and operate such property on substantially equivalent terms and conditions as
162 offered or available to a bona fide third-party purchaser.

163 (D) To the extent not preempted by federal law or section six of chapter 708
164 of the acts of nineteen hundred and sixty-six as amended, such ordinance
165 shall require that owners of governmentally-involved housing, or formerly
166 governmentally involved housing, affirmatively seek out and accept any
167 prospective governmental housing resources, whether tenant-based or project-
168 based, which maximize affordability of the housing units consistent with the
169 income character of the property and the owner's right to obtain a fair net
170 operating income for the housing units, provided that the City shall assist
171 owners by identifying such governmental housing resources.

172 (E) To the extent not preempted by federal law or section six of chapter 708
173 of the acts of nineteen hundred and sixty-six as amended, and so long as such
174 regulation is consistent with the owner's right to obtain a fair net
175 operating income, such ordinance shall also provide that the City may
176 establish local preferences, priorities, and income limits for admission to
177 governmentally-involved housing or formerly governmentally-involved housing
178 upon unit turnover, consistent, to the extent practicable, with the income
179 profile of the property twelve months prior to the date of the loss of rent
180 preemption or the decision to not renew an expiring subsidy contract. The
181 official body may approve an alternate plan requested by the owner,
182 consistent with the provisions of this act. No ordinance or regulation shall
183 require an owner to create a tenancy involving any person with a history of
184 conduct which would, if repeated, be grounds for eviction from such housing.

185 (F) Such ordinance shall also provide that the official body may grant
186 exemptions and exceptions to the general provisions of this act when such
187 action would tend to maintain or increase the supply of affordable housing in
188 New Bedford, including, without limitation, promoting the sale of properties
189 to bona fide tenant organizations or non-profit community development
190 corporations under terms and conditions which would tend to maintain the
191 income character of the property.

192 (G) Such ordinance shall provide that the official body may promulgate such
193 rules, regulations and orders as it may deem necessary to effectuate the
194 purposes of this act and the ordinance. The board may hold hearings on any
195 matters within its authority under this act and ordinance. Any hearings
196 regarding matters related to regulation of rents or removal permits for
197 governmentally involved or formerly governmentally involved housing or
198 regarding compliance with other provisions of this act, or the ordinance,
199 orders, rules, or regulations adopted or promulgated hereunder, shall be

200 conducted by the official body in accordance with the provisions of section
201 eleven of chapter thirty A of the General Laws, except that requirements (7)
202 and (8) of such section eleven shall not apply to such hearings.

203 (H) All decisions of the official body may be appealed to the housing court
204 department of the trial court, Southeast Division, by any person aggrieved
205 thereby, whether or not previously a party in the matter, within thirty
206 calendar days after notice of such decision. Judicial review of adjudicatory
207 decisions shall be conducted in accordance with section fourteen of chapter
208 thirty A of the General Laws. Judicial review of regulations shall be
209 conducted in accordance with section seven of chapter thirty A of the General
210 Laws. The housing court department of the trial court, Southeast Division,
211 shall have jurisdiction to enforce the provisions hereof and any ordinance,
212 rule, or regulation adopted hereunder, and on application of the board or any
213 aggrieved person may restrain or enjoin violations of any such ordinance,
214 rule, or regulation. In the interests of justice, the court may allow any
215 necessary parties to be joined in or to intervene in any action brought
216 hereunder and may in its discretion allow or require an action to proceed as
217 a class action.

218 SECTION 3. It shall be unlawful for any person to do or omit to do any action
219 in violation of this act, or any order, ordinance, rule or regulation adopted
220 or promulgated hereunder. Whoever willfully violates any provision of this
221 act or any order, ordinance, rule or regulation adopted or promulgated
222 hereunder or whoever makes a false statement in any testimony before the
223 board or its agents, or whoever knowingly supplies the official body with
224 false information shall be punished by a fine of not more than four hundred
225 dollars or by imprisonment for not more than ninety days, or both; provided,
226 however, that in the case of a second or subsequent offense, or where the
227 violation continues after notice thereof, such person shall be punished by a
228 fine of not more than two thousand dollars, or by imprisonment for not more
229 than one year, or both.

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

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

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