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House, No. 4088

Presented by: Kevin J. Murphy

(with the approval of the mayor and city council) relative to governmentally involved housing in the city of Lowell

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

1/20/2009S Senate concurred

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

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

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HOUSE No. 4088

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin J. Murphy

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 Lowell's governmentally-involved housing protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kevin J. Murphy	18th Middlesex
David M. Nangle	17th Middlesex
William G. Greene, Jr.	22nd Middlesex
Thomas A. Golden, Jr.	16th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO RESTORE LOWELL'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 Lowell residing in governmentally-involved housing, inasmuch as there is a threat that many low-
3 income individuals and families residing in such housing, particularly those elderly and disabled, may be
4 threatened with displacement as a result of prepayment of mortgage financing, loss of use restrictions,
5 expiring subsidy contracts, and expected increases in rent, and there is a threat that affordable housing
6 stock will be lost due to expiration of use restrictions and subsidy contracts and such pre-payment, further
7 exacerbating an extreme housing shortage within the city for low-income families and voters, and
8 whereas, in approving Chapter 40P of the General Laws, the voters did not exempt such housing from
9 protection or regulation and whereas it is the city's policy to encourage owners of this governmentally-
10 involved housing to accept incentives to keep such housing affordable and avert displacement; that such
11 emergency should be met by the city of Lowell immediately; therefore, this act is declared to be in the
12 public interest.

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

22 (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes such housing units, and (ii)
23 regulates the individual rents thereof, including without limitation housing units constructed or
24 rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. §1701q),
25 Sections 221(d) and 236 of the National Housing Act, as amended (12 U.S.C. §§17151(d) or 1715z-1),
26 Section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. §8013),
27 or Section 13A of chapter 708 of the Acts of nineteen hundred and sixty-six, added by Section 10 of
28 chapter 855 of the Acts of nineteen hundred and seventy, as amended (M.G.L. c.23A App. §1-13A), or
29 housing units financed or subsidized pursuant to project-based programs for low income persons under
30 Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. §1437f) or the project-based
31 Massachusetts Rental Voucher Program, so-called (see line item 7004-9004 of Section 2 of chapter 159 of
32 the Acts of two thousand, as well as 760 C.M.R. Part 49.00), but not including the following:

33 (1) housing units owned or acquired by the City of Lowell through tax foreclosure, eminent
34 domain, deed, or other means;

35 (2) housing units in a building or structure of fewer than twenty-five units which are not part
36 of a larger housing development, on the same or immediate adjoining site;

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

39 (4) public housing owned or operated by a local housing authority under chapter 121B of the
40 General Laws, the United States Housing Act of 1937 (42 U.S.C. §§1437a et seq.), or any successor act
41 or public housing programs formerly assisted under the United States Housing Act of 1937;

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

44 (6) housing units which become governmentally involved after January 1, 2002;

45 For the purpose of this act, "formerly governmentally-involved housing" is defined as housing
46 which was governmentally-involved housing as of July 1, 1998, or which becomes governmentally-
47 involved housing after July 1, 1998, but which then no longer is owned, operated, financed, subsidized
48 mortgage-insured, or rent-regulated by the United States, the Commonwealth, or any authority created
49 under the laws thereof, provided that "formerly governmentally-involved housing" shall include any
50 housing receiving subsidy under Section 8(t) of the United States Housing Act of 1937 (42 U.S.C.
51 §1437f(t)).

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

55 The City of Lowell shall by ordinance create an official body to establish as the maximum rent
56 for the governmentally-involved and formerly governmentally-involved housing units the rent in effect
57 therefore on July 1, 1998, or six months before the basis for federal or state rent regulation or preemption
58 lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of the date
59 of the official body's decision, provided, however, said ordinance shall authorize the official body to
60 make individual adjustments in such maximum rents as may be necessary to remove hardships or to
61 correct other inequities. In making individual adjustments to remove hardships or to correct other
62 inequities, the official body shall observe the principle of maintaining maximum rents for such housing
63 units at levels which will yield to owners a fair net operating income from such housing units. In
64 determining whether the maximum rent yields a fair net operating income, due consideration shall be
65 given to, among relevant factors established by the official body, including but not limited to: (1)
66 increases in property taxes; (2) increases in ordinary operating, repair, replacement and maintenance
67 expenses; (3) capital improvements of the building, structure or land directly related to the particular unit;
68 (4) increases or decreases in living space, services, furniture, furnishings or equipment; (5) cost of living
69 adjustments; and (6) substantial deterioration of the housing units, other than ordinary wear and tear, or
70 failure to perform ordinary repair, replacement, or maintenance.

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

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

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

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

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

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

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

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

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

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

96 (C) Such ordinance shall also provide that no person shall remove any governmentally-involved
97 or formerly governmentally-involved housing accommodation from low-income rental housing use
98 (including but not limited to sale, lease, or other disposition of the property which may have such an
99 effect), or convert such property to a condominium or cooperative, without first obtaining a permit for
100 that purpose from the official body, to the extent that such provision is not preempted by federal law or
101 section six of chapter 708 of the acts of nineteen hundred and sixty-six, as amended. Such permit may be
102 subject to terms and conditions not inconsistent with the purposes and provisions of this act, including,
103 without limitation, (a) incentives to continue in effect the low-income restrictions previously in place for
104 the property and (b) where sale, lease, or disposition of the property may result in the loss of all or a
105 portion of the property for low-income rental housing use, the right of an incorporated tenants association
106 in such housing, the City of Lowell, the Lowell Housing Authority, non-profit community development
107 corporation, or other equivalent bona fide non-profit organizations to negotiate for, acquire and operate
108 such property on substantially equivalent terms and conditions as offered or available to a bona fide third-
109 party purchaser.

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