



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR  
THOMAS M. MENINO

October 18, 2002

To The City Council

Dear Councilors

I transmit herewith for your approval, an Act to provide Fair Rent and Tenant Protection in Boston. As rents have skyrocketed in recent years, long-time residents have been priced out of their neighborhoods. Businesses have become reluctant to locate here, due to the shortage of moderately priced rental housing for their employees.

To address this problem, I propose passage of this Home Rule Petition, which exempts new construction and encourages rent reasonableness. I ask this Honorable Body to consider its passage at its earliest convenience.

Sincerely

Thomas M. Menino  
Mayor of Boston

**CITY OF BOSTON**  
**IN CITY COUNCIL**

**BOSTON FAIR RENT AND TENANT PROTECTION**  
**HOME RULE ACT**

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

Whereas, the general court finds and declares that a serious public emergency exists with respect to the housing of a substantial number of the citizens in the city of Boston, which emergency has resulted in a substantial shortage of safe, decent, and reasonably priced rental housing accommodations in the city of Boston, particularly for those who are elderly, handicapped, or who have low or moderate annual incomes; that such emergency has been particularly exacerbated because of conversion of rental housing units to other uses or forms of ownership and an insufficient supply of new housing; that unless residential rents, evictions of tenants, and conversion or sales of residential property resulting in tenant displacement or loss of particular types of housing stock are regulated and controlled, such emergency and the inflationary pressures resulting therefrom will produce serious threats to the public health, safety, and general welfare of the citizens of said city; that such emergency should be met by the commonwealth immediately, with due regard for the rights and responsibilities of the city of Boston; and therefore, this act is declared to be in the public interest.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section I. *Rent Regulation*. Notwithstanding the provisions of any general or special law to the contrary, including, without limitation, the provisions of chapter six hundred and sixty-five of the acts of nineteen hundred and fifty-six, chapter five hundred and twenty-seven of the acts of nineteen hundred and eighty-three, as amended, and chapter two hundred and eighty-two of the acts of nineteen hundred and ninety-four, and the provisions of General Law chapters forty P, one hundred and fifty-six B, one hundred and fifty-seven, and one hundred and eighty-three A, the city of Boston may, by ordinance, regulate the rent for the use or occupancy of housing accommodations in structures having three or more dwelling units, excluding motels, hotels, or inns, excluding public housing owned or operated by the Boston Housing Authority, excluding housing accommodations newly constructed after the first day of September, two thousand and two, and excluding housing accommodations in structures having three

dwelling units one of which is occupied by the owner therefore as his or her permanent residence (hereinafter, "covered housing accommodations"); provided further, however, such ordinance may provide that the city agency with oversight authority may, after hearing, exclude housing accommodations from coverage if they are owned and operated by a bona fide community development corporation or community-based organization as a part of a scheme to preserve or create affordable housing and which provides appropriate protections for rent stabilization, avoidance of tenant displacement, and security of tenure. Such rent regulation shall be supplemental to that currently exercised for housing accommodations in mobile homes and mobile home parks. pursuant to the provisions of chapter five hundred and four of the acts of nineteen hundred and eighty~seven. The ordinance may establish an agency to oversee such rent regulation and other provisions established by this act.

Rent regulation under such ordinance shall observe the following principles:

(a) Base Rents as of September 1, 2002: Rents which were in effect for covered housing accommodations as of the first day of September, two thousand and two, shall be deemed to have provided a fair net operating income and to be the base rent, unless it is shown that a higher base rent amount may be necessary, as of the effective date of the ordinance, to remove hardships or correct inequities or to provide a fair net operating income.

(b) Adjusting Base Rent for Units Newly Occupied Prior to Effective Date of Ordinance: If there is a vacancy in a covered housing accommodation after the first day of September, two thousand and two, and such accommodation is newly occupied prior to the effective date of the ordinance, the rent in effect at the time the unit is first occupied after September 1, 2002 but before the effective date of the ordinance shall be deemed (absent a showing of hardship) to have provided a fair net operating income and to be the base rent. If there is more than one new occupancy in such period, the initial occupancy closest in time to the effective date of the ordinance shall be used to establish the base rent.

(c) Tenants Remaining in Place After Base Rent Established: After the first day of September, two thousand and two, a landlord may only seek an increase in rent once in every twelve-month period where the covered housing accommodation is occupied by the same tenant or household that occupied it at the time the base rent was established. If the landlord has increased the rent beyond the base rent, no further increase for that tenant or household may be implemented until twelve months have elapsed from the effective date of the last increase. The ordinance may provide that landlords who have imposed any increases in the base rent in excess of those grievable under this act between the first day of September, two thousand and two and the effective date of the ordinance for tenants in occupancy must give such tenants written notice of their opportunity to grieve such increases.

(d) Units Vacant On or After Effective Date of Ordinance: If a covered housing accommodation is vacant on the effective date of the ordinance, or becomes vacant after the effective date of the ordinance, the landlord is free, without seeking authorization of the agency, to: (i) rent such unit at a turn-over rent which is no more than fifteen percent

(15%) higher than the base rent; (ii) rent such unit at a higher rent under the Section 8 voucher or comparable program and the rent meets rent reasonableness requirements under applicable law. If a covered housing accommodation was vacant as of the first day of September, two thousand and two, and remained continuously vacant until on or after the effective date of the ordinance, such that no base rent had otherwise been established, the base rent shall be the initial rent for that unit on or after the effective date of the ordinance. The landlord must seek authorization from the agency for any other rental. The agency shall consider any hardship that the landlord may suffer if a higher turn-over rent is not approved, as well as the requirement that an owner obtain a fair net operating income, and shall act on an expedited basis on any landlord requests. The rent established on initial occupancy shall become the new base rent.

(e) Rent Grievance: At the time the landlord seeks an increase in the base rent for an occupied unit, he or she must give the tenant or household written notice in a form approved by the agency of the tenant's right to grieve certain increases in the rent or certain changes in responsibility for utilities. Tenants who are of low or moderate income, or households that include elderly or disabled members (as defined in the ordinance), shall have the right to file a rent grievance with the agency for any percentage increase in the base rent in excess of the annual percentage increase in the consumer price index as of December 31 for the last calendar year of record at the time the notice is issued, or in excess of five percent, whichever is lower; all other tenants shall have the right to file a rent grievance for any percentage increase in the base rent in excess of twice the annual percentage increase in the consumer price index as of December 31 for the last calendar year of record at the time the notice is issued, or in excess of ten percent, whichever is lower. A change in responsibility for utilities which would result in an increase in tenant expenses above the grievable amount for such household shall also be deemed to be grievable by any tenant. A rent increase in excess of the grievable amount or a change in responsibility for utilities as described above which does not include proper notice of grievance rights is invalid. The tenant must file such grievance within forty-five days of receipt of proper notice from the owner; the agency may allow filing of a grievance late for demonstrated good cause. If the tenant does not timely file a grievance and the landlord and tenant agree to a new rent or a change in responsibility for utilities, that rent (with or without utilities) shall be the new base rent. If the tenant files a properly completed and timely grievance, the agency shall hold an expedited hearing. The landlord may challenge the qualification claimed by the tenant or household members for low or moderate income, elderly or disabled status, or may show that there are hardship factors, such as reasonable, necessary, or unavoidable increases in operating expenses or reasonable, necessary, or unavoidable capital improvements or replacements, which justify the increase or change in responsibility for utilities sought. The agency shall issue a decision within sixty (60) days of receipt of a properly completed grievance, and if a rent increase or change in responsibility for utilities is permitted in whole or in part, a new base rent shall be established in accordance with the decision.

(f) Rent Abatement: In addition to other remedies available at law, a tenant may elect, if the landlord has failed to keep a covered housing accommodation in compliance with applicable codes, to petition the agency for a downward adjustment in the base rent (rent abatement) as an incentive for the owner to remedy substandard conditions, and to insure that the tenant is paying a fair rental value for the premises. Prior to seeking such

relief, the tenant must first have obtained an inspection by the Inspectional Services Department of the City of Boston, or other government inspection agency, and the landlord must have been given a reasonable period of time (consistent with section one hundred and twenty seven L of chapter one hundred and eleven of the General Laws) to remedy such defect. The agency shall deny or revoke such relief if the tenant is found to have caused such substandard conditions, or to have denied reasonable access for repairs, or to have improperly failed to pay rent other than as authorized by applicable law. If a rent abatement is granted, the abated rent shall become the new base rent. The rent level shall be restored to the pre-existing level prospectively upon an adequate showing by the owner that the substandard conditions that prompted the abatement have been remedied, and the covered housing accommodation is in compliance with all applicable codes.

(g) Fair Net Operating Income, and Adjustments to Avoid Hardship: In determining whether base rents need to be adjusted, and in considering rent grievances the agency shall insure that rents are set at levels which will yield to landlords a fair net operating income from such covered housing accommodations. In determining whether the maximum rent for such covered housing accommodations yields a fair net operating income, due consideration shall be given to the following, among other relevant factors: (1) increases in property taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement of the housing accommodations as distinguished from ordinary repair, replacement, and maintenance; (4) increase or decreases in living space, services furniture, furnishings, or equipment; and (5) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance. Adjustments shall be made in the base rent or in the rent established after grievance as necessary to remove hardships or correct other inequities.

(b) Landlord Filing of Information With Agency: Landlords shall be required to file such information with the agency as is necessary to determine base rents (for the purpose of initial occupancy and rent grievances) or to otherwise meet the requirements of this act the ordinance, and the regulations promulgated pursuant thereto.

Section 2. *Evictions* .Such ordinance may also provide that no person shall bring any action to recover possession of a covered housing accommodation unless just cause is established, i.e.:

(1) the tenant has failed to pay the rent to which the landlord is entitled;  
(2) the tenant has violated an obligation or covenant of his or her tenancy not inconsistent with chapter ninety-three A of the General Laws, or this act or the ordinance or regulations issued pursuant thereto, other than the obligation to surrender possession upon proper notice, and the tenant has failed to cure such violation after having received written notice thereof from the landlord;

(3) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the covered housing accommodation or is creating a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants of the same or any adjacent accommodations;

(4) the tenant has used or permitted the covered housing accommodation to be

used for any illegal purposes, or the tenancy has otherwise been properly annulled/terminated pursuant to the statutory nuisance provisions of section nineteen of chapter one-hundred and thirty nine of the General Laws;

(5) the tenant, who had a written lease or rental agreement which terminated, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and on such terms as are not inconsistent with or violative of any provision of chapter ninety-three A of the General Laws or this act or the ordinance: or regulations issued pursuant thereto;

(6) the tenant has refused the landlord reasonable access to the covered housing accommodation for the purpose of making necessary repairs or improvements required by the laws of the commonwealth or any political subdivision thereof, or for the purposes of inspection as permitted or required by such tenant's rental agreement or by law, or for the purpose of showing the housing accommodation to any prospective purchaser or mortgagee;

(7) the person holding at the end of a lease term is a subtenant not approved by the landlord;

(8) the landlord seeks to recover possession in good faith for use and occupancy of the covered housing accommodation for his or her own use and occupancy or for the use and occupancy by his or her spouse or domestic partner, children, grandchildren, great grandchildren, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law;

(9) the landlord seeks to recover possession for any other just cause, provided that his or her purpose is not in conflict with the provisions and purposes of chapter ninety-three A of the General Laws or this act or the ordinance or regulations issued pursuant thereto. Sale of the property or optional renovation of the property shall not be considered other just cause. A landlord may, however, temporarily relocate tenants during the course of repairs necessary to bring housing accommodations into current compliance with health or safety codes, provided that he or she provides adequate alternative housing during such temporary relocation and the tenants are restored to the original housing accommodations at the end of such temporary relocation period on terms and conditions similar to those in effect prior to the temporary relocation.

Such eviction regulation shall be supplemental to that currently exercised for housing accommodations in mobile homes and mobile home parks, pursuant to the provisions of chapter five hundred and four of the acts of nineteen hundred and eighty-seven.

Any notice to quit or notice terminating the tenancy or requiring the tenant/occupant to vacate shall state the just cause reason or reasons for eviction, and the landlord shall be limited to such grounds in any subsequent action to recover possession.

Notwithstanding the foregoing, the United States, the Commonwealth, or any agency or political subdivision thereof may maintain an action or proceeding to recover possession of any covered housing accommodations operated by it where such action or proceeding is authorized by the statute or regulation under which such accommodations are administered.

Such ordinance may also provide that a landlord seeking to recover possession of

a covered housing accommodation shall apply to the agency for a certificate of eviction; however the ordinance may provide that for one or more of the grounds for eviction set forth above, and/or for certain classifications of covered housing accommodations, no certificate of eviction need be obtained, so long as the owner provides the agency with any documentation required regarding the eviction. In cases where a certificate of eviction is required, the agency shall hold an expedited hearing, and shall issue a decision within thirty (30) days of receipt of a properly completed application. The provisions of this section shall be construed as additional restrictions on the right to recover possession of a covered housing accommodation, and no provision of this section shall entitle any person to recover possession of such covered housing accommodation.

Section 3. *Removal and Conversion of Housing Accommodations and Rights of First Refusal.* Such ordinance may also provide that the city of Boston may regulate and control the removal of covered housing accommodations from rental housing use, the reduction in the total number of units in a covered housing accommodation, changes in the form of rental housing use, or the change in form of ownership of covered housing accommodations used for rental housing. Such regulations and controls may include without limitation the authority to:

- (a) require that no person shall remove a covered housing accommodation from rental housing use (including but not limited to the removal or conversion of lodging house units from actual or potential rental housing use) without first obtaining a permit for that purpose from the agency. Such permit may be subject to such terms and conditions not inconsistent with the purposes and provisions of this act;
- (b) regulate evictions and provide tenant protections relating to the conversion of housing accommodations to condominiums or cooperatives subject to such terms and conditions not inconsistent with the purposes and provisions of this act; and
- (c) require that, at the time of proposed sale, landlords of covered housing accommodations give the tenants of such properties, as well as community based organizations or public entities designated by the city in the ordinance, a reasonable right of first refusal to purchase the covered housing accommodations.

Such regulation and controls shall be supplemental to that currently exercised, for housing accommodations in mobile homes and mobile borne parks, pursuant to the provisions of chapter five hundred and four of the acts of nineteen hundred and eighty-seven. Upon passage of this act and the adoption of such ordinance by the city of Boston, so long as such ordinance remains in force regarding condominium or cooperative conversion and condominium or cooperative conversion evictions, the provisions of chapter five hundred and twenty-seven of the acts of nineteen hundred and eighty-three, as amended, shall no longer be applicable to the city of Boston.

Section 4. *Limiting fees to find apartments.* Such ordinance may also provide for limits on the fees that can be charged and/or collected and the arrangements that can be made in conjunction with finding and securing covered housing accommodations, in addition to such limitations as currently exist under section eighty-seven DDD 1/2 of

chapter one hundred and twelve of the General Laws and 254 CMR 7.00.

Section 5. *Fair housing considerations.* Such ordinance may also provide that the administering agency may deny relief to the owner (such as, but not limited to, authorization for an increase in the base rent, or approval of eviction) if the agency determines that a landlord has committed violation of federal or state fair housing laws or has acted in a discriminatory manner toward a tenant or prospective tenant due to the tenant's elderly, disabled, or low-to-moderate income status. The agency shall have authority to grant appropriate orders and relief if tenants or prospective tenants demonstrate discrimination by a landlord on such basis.

Section 6. *Regulations.* Such ordinance may also provide that the administering agency shall have the power to promulgate any rules, regulations, or orders, not inconsistent with the purposes and provisions of this act and the ordinance, for the enforcement of this Act and the ordinance.

Section 7. *Hearings and Judicial Review; Enforcement.* Such ordinance may provide that any agency hearings related to rent grievances, rent abatements, evictions, removal or conversion of covered housing accommodations, or compliance with the act, ordinances or regulations promulgated pursuant thereto shall be conducted in accordance with the provisions of section eleven of chapter thirty A of the General Laws except that requirements (7) and (8) of such section eleven shall not apply to such hearings. All decisions of the agency may be appealed to the housing court department of the trial court, city of Boston division, within thirty calendar days after the notice of such decision. The housing court department of the trial court, city of Boston division, shall have jurisdiction to enforce the provisions of this act, any ordinance adopted hereunder, and any rules, regulations, or orders promulgated pursuant to such ordinance, and may restrain or enjoin violations of such ordinance, rules, regulations, or orders.

Section 8. *Civil Remedies and Criminal Penalties.* The housing court department of the trial court, city of Boston division, shall also have authority to grant restitution to any affected tenants for any rent accepted, received, or retained in excess of what is permitted by this Act, the ordinance, or any rules, regulations, and orders promulgated hereunder, either on petition by such tenants or by the agency. In appropriate cases the court may award damages, reasonable attorney's fees, and costs in accordance with chapter ninety-three A of the General Laws where conduct in violation of this Act, the ordinance, and any rules, regulations, and orders promulgated hereunder would also constitute a violation of such chapter. The ordinance may provide that it shall be unlawful for any person to demand, accept, receive or retain any rent for the use occupancy of any housing accommodations in excess of what is permitted by this Act, the ordinance, or any rules, regulations, or orders adopted pursuant to the same, or otherwise to do or omit to do any action in violation of the provisions of this Act or the ordinance, rules, regulations, or ordered hereunder promulgated. Whoever willfully violates any provision of this act or any rule, regulation or ordinance hereunder promulgated or whoever knowingly makes any false statement in any testimony before the agency or whoever knowingly supplies the agency with any false information shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than ninety days or both; provided, however, that in the case of a second or subsequent offense, such person

shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than one year or both. The Housing Court of the City of Boston shall have exclusive original jurisdiction over all such actions and complaints.

Section 9 *Construing Harmoniously With Other Home Rule Legislation.* Should Other home rule legislation be adopted by the General Court granting the City of Boston Authority to regulate rents and evictions and provide other protections for governmentally or formerly governmentally involved housing, this legislation and such legislation shall be construed to both be effective, and to operate in harmony, with the greatest level of tenant protections provided under either home rule law.

Section 10. *Severability.* If any provision of the act or the application of such Provision to any person or circumstance shall be held invalid, the validity of the remainder of this act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

I HEREBY CERTIFY THAT  
THE FOREGOING, IF PASSED IN  
THE ABOVE FORM, WILL BE IN  
ACCORDANCE WITH LAW.

*Mark Sweeney*  
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for MERITA A. HOPKINS  
CORPORATION COUNSEL *MAH*