

By Ms. Story of Amherst, petition of Ellen Story for legislation to authorize the town of Amherst to control the affordability of governmentally-involved housing. Housing and Urban Development. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT TO AUTHORIZE THE TOWN OF AMHERST TO CONTROL THE CONTINUING AFFORDABILITY OF 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 SECTION 1. *Declaration of Emergency.*

2 *Whereas*, a serious public emergency exists with respect to
3 the housing of citizens of the town of Amherst residing in
4 governmentally-involved housing, inasmuch as there is a threat
5 that many low-income individuals and families residing in such
6 housing, including those elderly and disabled, may be threatened
7 with displacement as a result of prepayment of mortgage
8 financing, loss of use or rent restrictions, expiring subsidy con-
9 tracts, and expected increases in rent, and there is a threat that
10 affordable housing stock will be lost due to expiration of use or
11 rent restrictions and such prepayment, further exacerbating an
12 extreme housing shortage within the town of Amherst for low-
13 income families and individuals; and

14 *Whereas*, in adopting Chapter 40O of the General Laws, the
15 voters did not exempt such housing from protection or regulation,
16 and whereas it is the Town's policy to encourage owners of this
17 governmentally-involved housing to accept incentives to keep
18 such housing affordable and avert displacement, that such emer-
19 gency should be met by the Commonwealth immediately with due
20 regard for the rights and responsibilities of the Town;

21 *Therefore*, this act is declared to be in the public interest.

1 SECTION 2. *Definitions.*

2 The following words or phrases as used in this act shall have
3 the following meanings:—

4 (A) “Governmentally-involved housing” is defined as housing
5 accommodations which the United States, the Commonwealth, or
6 any authority created under the laws thereof (i) owns, operates,
7 finances, or subsidizes, and (ii) regulates the individual rents
8 thereof, including such housing accommodations which have been
9 constructed or rehabilitated pursuant to Section 202, 221(d),
10 or 236 of the National Housing Act or pursuant to project-based
11 programs under Section 8 of the United States Housing Act
12 of 1937, but not including the following:

13 (1) housing accommodations constructed, owned or operated by
14 institutions of higher education for the housing of students,
15 employees or others affiliated with such institutions;

16 (2) housing accommodations owned or acquired by the Town of
17 Amherst through tax foreclosure;

18 (3) housing units in a one to four family building or structure
19 which is not part of a larger housing development, whether on one
20 or more sites;

21 (4) structures containing housing accommodations units subsi-
22 dized with mobile tenant-based rental assistance which would not
23 otherwise come within the definition of governmentally-involved
24 housing, except those subsidized units shall be considered
25 governmentally-involved housing accommodations for the
26 purposes of section 4 hereof, only;

27 (5) structures containing housing accommodation units which
28 the United States, the Commonwealth, or any authority created
29 under the laws thereof, insures the mortgage thereon, but which
30 would not otherwise come within the definition of governmentally-
31 involved housing;

32 (6) structures containing housing accommodation units which
33 were subject to St. 1976, c. 36, as amended, St. 1969, c. 797,
34 St. 1970, c. 863, St. 1971, s. 843, St. 1987, c. 45, and St. 1987,
35 c. 504, all as amended, or St. 1970, c. 843 and St. 1981, c. 601,
36 both as amended, but which would not otherwise come within the
37 definition of governmentally-involved housing;

38 (7) public housing owned or operated by a housing authority
39 under Chapter 121B of the General Laws, the United States

40 Housing Act of 1937, or any successor act or public housing
41 programs formerly assisted under the United States Housing Act
42 of 1937;

43 (8) housing units which first become governmentally-involved
44 on or after the effective date of this bylaw, unless the Town enacts
45 a different date; and

46 (9) housing units that the Town of Amherst or its designee may
47 exempt from the first paragraph of Section 3 for just cause, pro-
48 vided that in no event shall more than twenty percent of the total
49 rental units in Amherst which are or could be governed under this
50 act be exempted under this section.

51 (B) "Formerly governmentally-involved housing" is defined
52 as housing which was governmentally-involved as defined in
53 Section 2(A) as of July 1, 1994 but which may no longer be
54 owned, operated, financed subsidized, or rent-regulated by the
55 United States, the Commonwealth, or any authority created under
56 the laws thereof.

57 (C) "Low-income" is defined as an annual income which is
58 eighty percent or less of the median income for the Springfield
59 Metropolitan Statistical Area as determined by the United States
60 Department of Housing and Urban Development, with adjust-
61 ments for smaller and larger families.

1 SECTION 3. *Rents.*

2 (A) Notwithstanding the provisions of any general or special
3 law to the contrary, including without limitation, the provisions of
4 chapter 282 of the acts of 1994, for so long as the Select Board of
5 Amherst shall determine that the circumstances described in
6 section one hereof continue to exist, the Town of Amherst may by
7 by law regulate the rent for use or occupancy of governmentally-
8 involved housing to the extent such regulation is not pre-empted
9 by federal law or by section six of chapter 708 of the Acts
10 of 1966, as amended, once the basis for federal or Massachusetts
11 Housing Finance Agency (MHFA) rent preemption no longer
12 exists.

13 (B) The Town of Amherst may establish as the maximum rent
14 for governmentally-involved and formerly governmentally-
15 involved housing accommodations the rent in effect therefor on
16 July 1, 1994 or six months before the basis for federal or MHFA

17 rent preemption lapsed, whichever is later, adjusted to insure such
18 rent provides a fair net operating income as of the date of the loss
19 of rent preemption, but without consideration of any refinancing
20 or change in the carrying charges resulting therefrom, provided
21 further, however, in the event of any reduction in or forgiveness of
22 mortgage debt for governmentally-involved housing or formerly
23 governmentally-involved housing, the rent may be reduced to
24 reflect the corresponding reduction in operating expenses and/or
25 debt service. In making individual adjustments to remove hard-
26 ships or to correct other inequities, the Town or its designee may
27 observe the principle of maintaining for such housing accommo-
28 dations yields a fair net operating income, due consideration may
29 be given to, among other relevant factors: (1) increases in prop-
30 erty taxes; (2) unavoidable increases in operating and maintenance
31 expenses; (3) major capital improvement of the housing accom-
32 modations, distinguished from ordinary repair, replacement and
33 maintenance; (4) increases or decreases in living space, services,
34 furniture, furnishings or equipment; (5) substantial deterioration
35 of the housing accommodations, other than ordinary wear and
36 tear, or failure to perform ordinary repair, replacement or mainte-
37 nance; and (6) any reduction in, or forgiveness of, mortgage debt,
38 but without consideration of any refinancing or change in the car-
39 rying charges resulting therefrom.

1 SECTION 4. *Evictions.*

2 (A) The Town may provide by bylaw that no person shall bring
3 an action to recover possession of a governmentally-involved or
4 formerly governmentally-involved housing accommodation to the
5 extent that such regulation is not preempted by federal law or
6 section six of chapter 708 of the acts of 1966, unless:

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

9 (2) the tenant has violated any term (or clause of any lease or
10 rental agreement which is not in violation of the relevant landlord-
11 tenant and consumer protection laws of the Commonwealth, and
12 has failed to cure the violation after having received written notice
13 thereof;

14 (3) the tenant is causing, committing, or permitting, a nuisance
15 in, or substantial damage to, the housing accommodation, or is

16 creating substantial, interference with the comfort, safety, or
17 enjoyment of the owner, or other occupants of the same or any
18 adjacent accommodation;

19 (4) the tenant has used or permitted use of a housing
20 accommodation for illegal purposes;

21 (5) the tenant, who had a written lease or rental agreement
22 which has terminated, has refused, after written requests or
23 demand by the owner, to execute a written extension or renewal
24 thereof for a further term of like duration on terms not incon-
25 sistent with or violative of any provision of this act;

26 (6) the tenant has refused the owner reasonable access to the
27 housing accommodation for the purposes of making necessary
28 repairs or improvements required by law, or for the purpose of
29 showing the housing accommodations to any prospective
30 purchaser or mortgagee;

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

33 (8) for tenant-based rental assistance programs only, the owner
34 seeks to recover possession in good faith of a unit for the owner's
35 own use and occupancy or for the use and occupancy by the
36 owner's spouse, children, grandchildren, great grandchildren,
37 parents, grandparents, brother, sister, father-in-law, mother-in-law,
38 son-in-law, or daughter-in-law; or

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

42 (B) The provisions of this section shall be construed as addi-
43 tional restrictions on the right to recover possession of such
44 housing accommodations.

1 SECTION 5. *Removal from Rental Housing Market.*

2 The Town may provide by bylaw that no person shall remove
3 any governmentally-involved or formerly governmentally-
4 involved housing accommodation from low-income rental housing
5 use (including but not limited to sale, lease or other disposition of
6 the property which may have such an effect), or convert such
7 housing to a condominium or cooperative, without first obtaining
8 a permit for that purpose from the Town or its designee, to the
9 extent that such provision is not preempted by federal law or

10 section six of chapter 708 of the Acts of 1966. Such permit may
11 be subject to terms and conditions not inconsistent with the pur-
12 poses and provisions of this act, including, without limitation,
13 (a) incentives to continue in effect the low-income use restrictions
14 previously in place for the property, (b) where sale, lease, or dis-
15 position of the property may result in the loss of all or a portion of
16 the property for low-income rental housing use, the right of an
17 incorporated tenant association in such housing, the Town of
18 Amherst, the Amherst Housing Authority, or non-profit commu-
19 nity development corporations to negotiate for, acquire and
20 operate such property on substantially equivalent terms and condi-
21 tions as offered or available to a bona fide third party purchaser.

1 SECTION 6. *Available Resources.*

2 To the extent not preempted by federal law or section six of
3 chapter 798 of the Acts of 1966, the Town or its designee may
4 require an owner of governmentally-involved housing or formerly
5 governmentally-involved housing, to affirmatively seek out and
6 accept any prospective government housing resources, whether
7 tenant-based or project-based, which maximize affordability of
8 the housing accommodations consistent with the income character
9 of the property and the owner's right to obtain a fair net operating
10 income for the housing accommodations.

1 SECTION 7. *Occupancy Standards.*

2 To the extent not preempted by federal law or section six of
3 chapter 708 of the Acts of 1966, and, so long as such regulation is
4 consistent with the owner's right to obtain a fair net operating
5 income and the Town's housing policy, the Town or its designee
6 may establish local preferences, priorities, and income limits for
7 admission to governmentally-involved housing or formerly
8 governmentally-involved housing upon unit turnover. No regula-
9 tion shall require an owner to create a tenancy involving any
10 person with a recent history of conduct which would, if repeated,
11 be grounds for eviction from such housing.

1 SECTION 8. *Regulations. Exceptions.*

2 (F) The Town or its designee may promulgate such rules,
3 regulations, and orders as it may deem necessary to effectuate the

4 purposes hereof and may grant exemptions and exceptions thereto
5 when such action would tend to maintain or increase the supply of
6 affordable housing in Amherst, including, without limitation, to
7 promote the sale of the property to a bona fide corporation under
8 the terms and conditions which would tend to maintain the income
9 character of the property.

1 SECTION 9. *Hearings.*

2 Any hearings regarding matters related to regulation of rents or
3 removal permits for governmentally-involved housing or formerly
4 governmentally-involved housing or regarding compliance with
5 other provisions of this bylaw shall be conducted by the Town or
6 its designee in accordance with the provisions of section eleven of
7 chapter 30A of the General Laws except that requirements (7)
8 and (8) of such section eleven shall not apply to such hearings.

1 SECTION 10. *Judicial Review.*

2 All decisions of the Town or its designee may be appealed to
3 the Housing Court (if available) or the Superior Court by any
4 person aggrieved thereby, whether or-not previously a party to the
5 matter, within thirty calendar days after receipt of notice of such
6 decision. The Housing and Superior Courts shall have jurisdiction
7 to enforce the provisions hereof and any ordinance, bylaw, rule or
8 regulation adopted hereunder and on application of the Town or
9 its designee or any aggrieved person may restrain or enjoin
10 violations of any such ordinance, bylaw, rule, or regulation in the
11 interests of justice, the court may allow any necessary parties to
12 be joined in or to intervene in any action brought hereunder and
13 may in its discretion allow or require an action to proceed as a
14 class action.

15 If any person challenges the constitutionality or legal validity
16 of this bylaw in any court of competent jurisdiction, and the Town
17 of Amherst prevails in its defense of this bylaw, the person or
18 persons bringing this challenge shall compensate the Town for the
19 legal expenses incurred in its defense of this bylaw, including
20 reasonable attorney's fees incurred by the Town.

1 SECTION 11. *Criminal Penalties.*

2 It shall be unlawful for any person to do or fail to do any action
3 in violation of this act or any order, ordinance, bylaw, rule, or

4 regulation adopted or promulgated hereunder. Whoever willfully
5 violates any provision of this act or any order, ordinance, bylaw,
6 rule, or regulation adopted or promulgated hereunder or whoever
7 makes a false statement in any testimony before the Town or its
8 designee, or whoever knowingly supplies the Town or its designee
9 with false information, in connection with a proceeding under this
10 act, shall be punished by a fine of not more than five hundred dol-
11 lars or by imprisonment for not more than ninety days, or both;
12 provided, however, that in the case of a second or subsequent
13 offense, or where the violation continues after notice thereof, such
14 person shall be punished by a fine of three thousand dollars, or
15 imprisonment for not more than one year, or both.

1 SECTION 12. *Severability.*

2 The provisions of this act are severable, and if any of its provi-
3 sions shall be held unconstitutional or otherwise invalid by any
4 court of competent jurisdiction, the decision of such court shall
5 not affect or impair any of the remaining provisions.