

**CITY OF BOSTON
IN CITY COUNCIL**

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 One (1) of Section Eight (8) of Article Two (2), as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

**PETITION FOR A SPECIAL LAW RE:
THE JIM BROOKS STABILIZATION ACT**

SECTION 1. DECLARATION OF EMERGENCY.

The general court finds and declares that a serious public emergency exists with respect to housing in the City of Boston and in particular the displacement of tenants of rental housing through no-fault evictions and declares that deferred operation of this Act would tend to defeat its purpose, which is to protect forthwith the citizens and neighborhoods of Boston, and therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

SECTION 2. PURPOSE.

The purpose of this law is to defend, preserve, and promote the stability of housing and neighborhoods in the City of Boston and maintain diversity in Boston neighborhoods and communities by protecting residential tenants and former homeowners living in their homes post-foreclosure, against arbitrary, unreasonable, discriminatory, or retaliatory evictions, and by making sure that tenants and former homeowners are aware of their rights under state law. It is intended to address housing problems in the City of Boston so as to preserve the public health, safety, and welfare, and to advance the housing policies of the City with regard to low and moderate income persons and families and people of color, and those needing special protections or who fall under a protected category under G.L. c. 151B, including but not limited to national minorities, linguistic minorities, families with children or that include persons who are elderly or have disabilities, or persons who are gender non-conforming, gender expressive, lesbian, gay, bisexual, transgendered, or queer.

SECTION 3. DEFINITIONS.

“Applicable Laws” means all controlling applicable federal, state and local statutes, regulations and ordinances and administrative rules and orders that have the effect of law, as well as all applicable final, non-appealable judicial opinions.

“Child/Parent” means a child/parent relationship in which a child is either a parent’s biological child, adopted child or child under legal guardianship, provided that such relationship was established at least one year prior to the attempted eviction. At the time of attempted eviction pursuant to Subsection 5(A)(8), a child of an owner of record must be over the age of eighteen (18) or be legally emancipated.

“Entity” means a business organization, or any other kind of organization including, without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, development or project, or any other category of organization and any employee, agent, servant or other representative of such entity, to the extent not inconsistent with or prohibited by Applicable Laws.

“Former Homeowner” means any natural person or group of natural persons who, prior to foreclosure of a housing accommodation, had been the title owner or owners of such housing accommodation, or who has a legal or beneficial interest in the housing accommodation by dissolution of marriage, separation agreement, survivorship, devise, or intestate succession, and who at the time of foreclosure actually occupied such housing accommodation as a resident or residents.

“Foreclosing Owner” means any natural person or entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Grandchild” means a grandparent/child relationship in which a grandchild is either a grandparent’s biological grandchild or adopted grandchild or grandchild under legal guardianship, provided that such relationship was established prior to the child’s eighteenth birthday and at least one year prior to the attempted eviction. At the time of attempted eviction pursuant to Subsection 5(A)(8), the grandchild of an owner of record must be over the age of eighteen (18) or be legally emancipated.

“Health Facility” means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, and treatment of human illness, physical or mental, including convalescence and rehabilitation, and including care during and after pregnancy, or for any one or more of these purposes.

“Housing accommodation” means a building or structure, or part thereof or land appurtenant thereto, and any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property, in the City of Boston.

“Landlord” means an owner of record, or lessor or sublessor of an owner of record, or any other person, project, housing development, or other entity entitled either to receive rent for the use or occupancy of any rental unit or to maintain an action for possession of a rental unit, or an agent, representative, successor, or assignee of any of the foregoing.

“Lease nonrenewal notice” means any notice sent by a landlord to a tenant under a lease to rent a rental unit stating that the tenant’s lease will not be renewed or that tenant must vacate the rental unit subsequent to the expiration of the lease.

“Notice of fixed term lease expiration” means, in the case of a written lease with a fixed term, a written notice given at least one full month prior to the date that the fixed term will end reminding the tenant of the date when the fixed term expires.

“Notice to quit” means any written notice sent by a landlord or a foreclosing owner to a tenant or former homeowner of a residential rental unit or housing accommodation seeking to terminate the tenant’s tenancy or the former homeowner’s occupancy of such rental unit or housing accommodation.

“Office of Housing Stability” means the office of the City of Boston created in 2016 in order to address the problem of displacement in the city, and/or any subsequent or successor office or entity similarly empowered and/or with like purpose or responsibility, or if no such office exists the city office or entity with the closest corresponding such purpose or responsibility.

“Owner of record” means an entity that holds legal or beneficial title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a residential rental unit or housing accommodation.

“Property” or “Real Property” means a parcel of land, along with all fixtures, structures and improvements thereupon, located in the City of Boston that is assessed and taxed as an undivided whole.

“Reasonable Rent” means, in the case of a former homeowner occupying a housing accommodation after foreclosure thereof, the Fair Market Rent as established by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. § 1437f(o), as it exists or may be amended, for a unit of comparable size in the individual or small area in which the housing accommodation is located, or as otherwise agreed to by the parties.

“Rent” means the consideration, including any deposit, bonus, benefit, or gratuity demanded or received for, or in connection with, the use or occupancy of rental units and housing accommodations. Such consideration shall include, but not be limited to, moneys and fair value of goods or services rendered to or for the benefit of the landlord or foreclosing owner under a rental agreement, or in exchange for a rental unit or housing accommodation of any kind.

“Rental Agreement” means an agreement, oral, written, or implied, between a landlord and a tenant, or between a foreclosing owner and a former homeowner, for the use and/or occupancy of a rental unit or housing accommodation.

“Rental Unit” (a.k.a. “Unit,” aka “Premises”) means any unit in any real property in the City of Boston, regardless of zoning status, including the land appurtenant thereto, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes), together with all housing services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the tenant.

“Skilled Nursing Facility” means a health facility or a distinct part of a hospital that provides, at a minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide twenty-four (24) hour inpatient care, an activity program, and medical, nursing, dietary, pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

“Tenant” means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees of a rental unit, or any other person entitled to the use or occupancy of such rental unit, or any successor of any of the foregoing.

“Tenants’ Rights Organization” means any unincorporated or incorporated association, nonprofit, or City of Boston department or office which provides housing assistance or tenants’ rights advocacy or foreclosure prevention and post-foreclosure assistance to homeowners or former homeowners.

SECTION 4 - APPLICABILITY.

The provisions of this chapter shall apply to all rental units and housing accommodations in the City of Boston, in whole or in part, including where a notice to quit, lease nonrenewal notice, and/or notice of fixed term lease expiration has been served or should have been served on the tenant or former homeowner of any such rental unit or housing accommodation as of the effective date of this Act, but where any such rental unit or housing accommodation has not yet been vacated or a summary process judgment has not been issued as of the effective date of this Act. However, Section 5 and Section 6 of this Act shall not apply to the following types of units:

- A. Rental units in any hospital, skilled nursing facility, or health facility.
- B. Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.
- C. Rental units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than

twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

- D. Rental units in a residential property where the owner of record occupies a unit in the same property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the tenants of such rental units. For purposes of this Subsection 4(D), the term owner of record shall not include any person who claims a real estate property tax exemption on any other residential real property in the State of Massachusetts.
- E. Rental units in public housing and Low Income Housing Tax Credit multifamily housing that are already subject to just cause eviction restrictions under applicable state or federal laws, except private rental units occupied under a tenant-based rental assistance voucher with tenant-based vouchers or subsidies.
- F. Any residential property where the owner of record is a natural person who owns six (6) or fewer residential rental units, including any unit owned by any entity in which the owner of record has a legal or beneficial interest, and the owner of record resides in the Commonwealth of Massachusetts.
- G. A unit that is held in trust on behalf of a developmentally disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a developmentally disabled parent, sibling, child, or grandparent of the owner of that unit.
- H. Any rental unit that is owned or managed by a college or university for the express purpose of housing undergraduate students.

SECTION 5. GOOD CAUSE REQUIRED FOR EVICTION.

- A. No landlord or foreclosing owner may recover possession of a residential rental unit or housing accommodation in the City of Boston, in any proceeding pursuant to Chapter 239 of the General Laws or otherwise, unless the court finds that:
 - 1. the tenant has failed to pay the rent to which the landlord is entitled, in which case a landlord is entitled to bring a nonpayment of rent action under applicable state law;
 - 2. the tenant has violated an obligation or covenant of his or her tenancy not inconsistent with Chapter 93A of the General Laws, or this Act, or the regulations issued pursuant thereto, other than the obligation to surrender possession upon proper legal notice, and the tenant has failed to cure such violation after having received valid written notice thereof from the landlord;
 - 3. the tenant or former homeowner has committed or permitted to exist a nuisance in or caused substantial damage to the rental unit or housing accommodation, or has created 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 or former homeowner has used or permitted the rental unit or housing accommodation to be used for any illegal purposes;

5. the tenant under a written lease or rental agreement (either written or oral), has refused, after written demand by the landlord, to execute an extension or renewal of the lease or rental agreement on such terms that are not inconsistent with or do not violate any provision of Chapter 93A of the General Laws, or of this Act, which ground shall be treated as no-fault under applicable state law;
 6. the tenant or former homeowner has refused the landlord or foreclosing owner reasonable access to the rental unit or 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 purpose of inspection as permitted or required by such tenant's rental agreement or by law, or for the purpose of showing the rental unit or 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 or foreclosing owner seeks in good faith to recover possession of a unit which is a rental unit for his or her own use and occupancy or for the use of occupancy by his or her spouse, children, grandchildren, great grandchildren, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law, which ground shall be treated as no-fault under applicable state law (any such eviction shall also be subject to any additional restrictions or provisions applicable if it is a condominium/cooperative conversion eviction within the meaning of St. 1983, c. 527, as amended, and such local legislation as the City of Boston has adopted regarding condominium/cooperative conversion evictions); or
 9. the foreclosing owner seeks to recover possession from a former homeowner who refuses to pay a reasonable rent requested in writing by the foreclosing owner.
- B. Any notice to quit, lease nonrenewal letter, or notice of fixed term lease expiration sent pursuant to Section 5 of this Act (collectively, "City Termination Notice") must be sent to the City of Boston's Office of Housing Stability within two (2) days after the notice to quit or lease nonrenewal notice and/or notice of fixed lease expiration is served on the tenant or former homeowner, and also filed with the court before the service of any summons and complaint commencing a proceeding to recover possession of any rental unit or housing accommodation pursuant to G.L. c. 239. A landlord or foreclosing owner who fails to comply with this Subsection 5(B) shall not be entitled to recover possession in any proceeding for summary process.
1. Within five (5) days of receipt of any notice pursuant to Subsection 5(B), the City of Boston shall mail to all tenants and former homeowners identified on any City Termination Notice, a notice of basic housing rights and resources, including a list of tenants' rights organizations with their contact information ("City Rights Notice").
 2. The City of Boston shall keep a record of the receipt of all City Termination Notices and the sending of all City Rights Notices including, *inter alia*, when

such notices were received and sent, and the means of transmission (e.g. mail, hand delivery, fax, or electronic mail).

3. The City of Boston shall keep all City Termination Notices received from landlords or foreclosing owners pursuant to this Subsection 5(B) for a minimum of five (5) years.
- C. The following additional provisions shall apply to a landlord or foreclosing owner who seeks to recover a rental unit or housing accommodation pursuant to Section 5:
1. The evicting landlord or foreclosing owner shall bear the burden of proof in any applicable summary process action to establish compliance with the conditions set forth Subsection 5(A).
 2. A landlord or foreclosing owner shall not initiate any action to recover possession of a residential rental unit or housing accommodation unless at least one of the good cause grounds enumerated above in Subsection 5(A) above is stated in the City Termination Notice, and that stated ground is the primary basis for seeking to recover possession; and the landlord or foreclosing owner acts in good faith in initiating any action to recover possession.
 3. Nothing in this Act shall be construed to relieve the landlord or foreclosing owner seeking possession under a good cause ground under Subsection 5(A) from the obligations, requirements, and prohibitions set forth in all Applicable Laws, including but not limited to G.L. c. 239; G.L. c. 139, s.19; G.L. c. 184, s.18; G.L. c. 186; and G.L. c. 93A.
- D. Nothing in this Act shall be construed to relieve, limit or constrain in any way the obligations and rights available to tenants and former and current homeowners under all Applicable Laws, including but not limited to G.L. c. 239, G.L. c. 93A, and G.L. c. 186.

SECTION 6. REMEDIES.

- A. Remedies if a non-exempt landlord or foreclosing owner proceeds with any legal action to recover possession of a residential premises located in the City of Boston in violation of Subsection 5(A) and/or Subsection 5(B) shall include the following:
1. Failure to state a good cause ground for eviction specified in Subsection 5(A) shall constitute grounds for dismissal of the action.
 2. Failure to file timely with the City of Boston a City Termination Notice shall constitute grounds for dismissal of the action.
 3. Failure by a non-exempt landlord or foreclosing owner to comply with Subsection 5(A) or Subsection 5(B) shall entitle the tenant or former homeowner to all actual and punitive damages, costs of suit, and reasonable attorney's fees and expenses in connection with efforts to interpret or enforce the terms, conditions, and applications of this ordinance.

4. The remedies available in this Section 6 shall not preclude or be construed to be exclusive, but may be cumulative with any other existing remedies, which may be available to the tenant or former homeowner.

SECTION 7. CONFIDENTIALITY.

City Rights Notices and City Termination Notices shall not be subject to the mandatory disclosure provision of the Public Records Law.

SECTION 8. NON-WAIVABILITY.

The provisions of this Act may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit a tenant's or former homeowner's substantive or procedural rights under this ordinance are contrary to public policy, unenforceable, and void, unless and to the extent permitted by Applicable Laws.

SECTION 9. PARTIAL INVALIDITY.

If any provision of this Act or application thereof is held to be invalid or in conflict with Applicable Laws, this invalidity or conflict shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Act are severable.

SECTION 10.

This act shall take effect upon its passage.

I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.
BY Eugene L. O'Flaherty
EUGENE L. O'FLAHERTY
CORPORATION COUNSEL



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

January 9, 2017

TO THE CITY COUNCIL

Dear Councilors:

I transmit herewith for your approval a home rule petition to the General Court entitled "Petition for a Special Law Re: The Jim Brooks Stabilization Act." This Home Rule Petition is being re-filed in identical form to the version previously submitted in order to align with the City Council's new legislative docket for 2017.

If enacted by the state legislature, this law would help protect residential tenants and former homeowners living in their homes post-foreclosure against arbitrary, unreasonable, discriminatory, or retaliatory evictions, and help ensure that tenants and former homeowners are aware of their rights under state law.

Among other provisions, this law would clearly state the permissible grounds upon which a non-exempt landlord could legally seek to evict a tenant or former homeowner from residential property in the City of Boston, require that all non-exempt landlords send a copy of any notice to quit, lease non-renewal letter, or notice of fixed term lease expiration sent to a tenant or former homeowner in the City of Boston to the Office of Housing Stability, and require that the Office of Housing Stability send a notification of basic housing rights and resources to the resident served with such notice or letter.

I urge your Honorable Body to join me in this effort to regulate the process by which landlords seek to evict tenants in the City of Boston to ensure that the residents of the City of Boston are afforded a fairer process.

Sincerely,

Martin J. Walsh
Mayor of Boston