



# CITY OF CAMBRIDGE

831 MASSACHUSETTS AVENUE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL 499-6161

RENT CONTROL BOARD

D. MARGARET DRURY, EXECUTIVE DIRECTOR

To: Robert W. Healy, City Manager  
From: Margaret <sup>MD</sup> Drury, Executive Director  
Date: October 4, 1989  
Re: City Council Order No. 11 of June 26, 1989 Concerning  
Affiliate Housing

Please be aware that there are several problems raised by the City Council Order directing you to order me to initiate the necessary procedures to subject Harvard's affiliate housing to rent control.

One very significant problem is that Harvard is not the only educational institution which maintains affiliate housing. M.I.T. also owns units which are currently exempt as affiliate housing. According to Rent Control records, 109 rental units owned by M.I.T. are exempt as affiliate housing. Since the Rent Control Board did not require that an educational institution apply for and receive a removal permit to exempt units as affiliate housing until 1984, it is also possible that other educational institutions within the city of Cambridge have rental units which have been maintained as exempt affiliate units since prior to 1984.

Even if the Board were the proper body to make such a change in the treatment of affiliate housing, which, as discussed below, is highly questionable, it would not be proper to attempt to treat Harvard's affiliate units differently from other affiliate units. Such an action would, of course, be subject to legal action on a myriad of legal grounds, e.g., due process and equal protection.

In view of the history of the judicial and administrative treatment of affiliate housing, I do not believe that the Board is the proper body to legislate a change in the status of affiliate housing from exempt to controlled. In 1972, in Searls v. Lefkowitz, Third District Court of Eastern Middlesex, No. E-4 of 1972, the Court decided that affiliate housing was exempt from rent control under Section 3(b)(5) of the Rent Control Act. In that case, Judge Feloney ruled that the Sec. 3(b)(5) exemption "includes all living quarters supplied by M.I.T. to the members of their community." This decision, to which the Board was a

party, was not appealed, and has governed the Board's actions for the last seventeen years. Thus there is a settled, long-standing judicial interpretation of the exemption as embodied in the Rent Control Act. In such a situation, change in the exemption should be effectuated by change in the Act. This is particularly true where, as here, it is absolutely predictable that attempting to make this change by regulation would result in substantial and protracted legal challenges, whereas such litigation could be curtailed substantially if the change were made by a Home Rule petition to change the enabling act.

Furthermore, in 1984 the Board, after extensive public policy discussion, reaffirmed its concept of affiliate housing as exempt under sec. 3(b)(5) of the Rent Control Act in its enactment of Regulation 48-07, which provides that after February 1, 1984, no rent controlled unit may become exempt as affiliate housing unless the Board issues a removal permit for the unit. Through promulgation of that regulation the Board took steps to ensure that there would not be any additional removals of controlled rental housing through conversion of units to affiliate housing except in limited instances. Thus the Board's relatively recent re-examination and reaffirmation of this exemption supplies yet another reason why it would be imprudent to undertake such a change by regulation rather than by Home Rule petition by the City Council.

It should be noted that in the one instance in which the Board effectuated a change by regulation in the interpretation of an exemption, which had been construed by the Court, the new construction exemption in sec. 3(b)(2) of the Act, the Board did not retroactively remove any exemption available for the units under the previous definition of new construction. Thus in some ways, the Board's change in the area of the new construction exemption in Reg. 13-01(dd) is more analogous to the Board's action in the promulgation of Reg. 48-07. In each instance the Board has taken action to prevent any additional units from being removed, but has not attempted to remove exemptions granted under a long standing judicial interpretation.

cc: Members, Cambridge Rent Control Board

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS:

THIRD DISTRICT COURT  
OF EASTERN MIDDLESEX  
NO. E-4 OF 1972

RONALD SEARLS, ET AL

VS

ALAN L. LEFKOWITZ, ET AL

FINDINGS, RULINGS AND JUDGEMENT

INTRODUCTION

This is a bill of complaint brought under the provisions of Chapter 842 of the Acts of 1970 (the Rent Control Act), hereafter called the act.

The petitioners, tenants, seek a declaratory judgment (Chapter 231A), that the rental units in Cambridge which they occupy in the buildings owned by the respondent, Northgate Community Corporation, are subject to rent control under the act.

They complain of rulings by the former administrator and by the present members of the Rent Control Board of the City of Cambridge, the respondents Lefkowitz et al, which rulings have declared exempt from rent control all units rented or reserved by Northgate for rental to persons affiliated with the Massachusetts Institute of Technology, and the petitioners pray for a declaratory judgment that those rulings are in violation of the rent control act and are unconstitutional.

The City of Cambridge accepted the provisions of the rent control act on September 17, 1970 and the activities under the act were first directed by an administrator and lately by a board of five members.

FINDINGS OF FACT

Massachusetts Institute of Technology is a university located in Cambridge, which was organized under a charter given by the Great and General Court of the Commonwealth of Massachusetts. It is basically

Northgate Community Corporation was organized in 1965 under Chapter 180 of the General Laws, as a nonprofit corporation. It was formed by, and is directly under the control of M.I.T. The university is using Northgate as a vehicle to "acquire and create good housing resources at reasonable rents for persons affiliated with M.I.T.". Northgate is exempt from federal and state income taxes but pays real estate taxes to the City of Cambridge on the property it owns.

Northgate's capital was obtained by a loan from M.I.T. under favorable terms which constitutes a subsidy. Its only income is from the rents, and it passes along to the tenants in reduced rents the savings in income taxes and in provision for profits that are included in the consideration of rents for investor owned property. Its charter provides that upon liquidation its entire assets would be transferred to M.I.T. Northgate's operations resulted in net losses in the two years ending June 30, 1971.

Northgate applied to the administrator previously and in May of 1972 to the rent control board for an exemption from rent control for the rental units occupied or reserved for tenants with M.I.T. affiliations. At that time Northgate owned or leased 27 different residential buildings in Cambridge, not on the M.I.T. campus. Of 359 dwelling units, 261 were occupied by tenants affiliated with M.I.T.

Both the administrator and the board granted the exemption. The board's order dated June 16, 1972 stated, "Rental units owned or leased by the Northgate Community Corporation and rented or reserved for rental to persons required to have an affiliation with the Massachusetts Institute of Technology in order to be entitled to enter into an agreement to rent such units are not included within the definition of "controlled rental units" within the meaning of the Rent Control Act, St. 1970 c 842, by virtue of the provisions of Section 3(b)(5) of the Act, as long as the Northgate Community Corporation continues to be operated as an affiliate of the Massachusetts Institute of Technology as a corporation organized under Chapter 180 of the General Laws and the rental units contained in the property presently owned or leased by the Northgate Community Corporation and registered with the Rent Control Office are reserved for persons having a affiliation with the Massachusetts Institute of Technology.

Those units presently rented to persons who

forced into an agreement to rent such units are not exempted and are controlled rental units".

The order results in some units under rent control and others exempt in the same building.

### ISSUES

The pertinent language of the act to be construed is contained in section 3(b)(5) (Chapter 842, Acts of 1970) which provides for exemption from rent control of "rental units in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes". The executive director of the board notified the tenants of Northgate that "the units are exempt because they are units in a public institution or college and the institution or college is operated exclusively for charitable or educational purposes". The previous order of the administrator was similar in all important respects.

Petitioners claim that Northgate is a legal entity separate and distinct from M.I.T., and that the status of M.I.T. as a public institution or college is irrelevant to the issue of eligibility for exemption from rent control.

They allege that the exemption of some units and control of rents in other units in the same building is arbitrary and capricious.

They claim that the two exemption rulings were erroneous and should be reversed.

Other complaints contained in the petition claiming failure by the administrator to communicate his ruling to the tenants and asserting that the exemptions are unconstitutional were not substantiated and require no particular analysis.

### RULINGS

An actual controversy has arisen between the parties as to these exemptions.

Northgate Community Corporation is a vehicle used by M.I.T. and has no independent identity, and, therefore, it is clothed with all the attributes of M.I.T. as regards the rent control law.

M.I.T. is a "public institution ... operated

exclusively for charitable purposes within the provisions of Section 3(b)(5) of the rent control act. The public nature of the rent control act began with a charter issued by the General Court, and Mass. case law as cited in the brief of the respondent has established the status of universities and colleges as public institutions. The exemption is proper under the public institution clause. 7

The rental units are in "a college or school dormitory operated exclusively for charitable or educational purposes". Petitioner's argument for a narrow definition of dormitory based on an image of Frank Merriwell's living quarters at Yale would make this 1970 statutory language meaningless. It is unfortunate that more creative, clearly relevant language was not adopted in this and other sections of the rent control act. I rule that the college or school dormitory exemption includes all living quarters supplied by M.I.T. to the members of their community.

Exemption of some of the units and control of others in the same building does not conflict with the act which directs itself to rental units and not to residential buildings. The exemption, therefore, is also proper under the college or school dormitory clause.

This interpretation of the act is consistent with the purpose of the legislation which is to allow the government of large cities to control rents for the benefit of those citizens who reside there regularly and who must look to city hall for assistance.

The exemption of these rental units of Northgate, which are operated without profit and under a form of subsidy by M.I.T. is entirely in harmony with the purpose of the act which is to control the high rents for housing which has resulted in great part from inflated profits and increased costs of financing.

#### DECLARATORY JUDGEMENT AND DECREE

The orders of the rent administrator and of the rent control board exempting from rent control certain rental units owned or leased by Northgate Community Corporation are valid and in conformity with the provisions and purposes of the rent control act and are to be given full force and effect.

6 NOVEMBER 1972

/s/ Lawrence T. Palone  
JUSTICE



# CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE  
CAMBRIDGE, MASSACHUSETTS 02139  
TEL. 681-0400-0401-0402-0403-0404

## RENT CONTROL BOARD

Alan L. Lefkowitz, CHAIRMAN

### MEMBERS

Alfred Cohn  
Paul Newman  
Paul Watkins  
Lorraine Williams

June 16, 1972

## ORDER OF THE BOARD

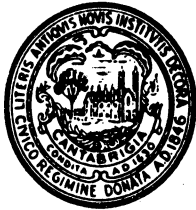
"Rental units owned or leased by the Northgate Community Corporation and rented or reserved for rental to persons required to have an affiliation with the Massachusetts Institute of Technology in order to be entitled to enter into an agreement to rent such units are not included within the definition of "controlled rental units" within the meaning of the Rent Control Act, St. 1970 c 842, by virtue of the provisions of Section 3(b) (5) of the Act, as long as the Northgate Community Corporation continues to be operated as an affiliate of the Massachusetts Institute of Technology as a corporation organized under Chapter 180 of the General Laws and the rental units contained in the property presently owned or leased by the Northgate Community Corporation and registered with the Rent Control Office are reserved for persons having an affiliation with the Massachusetts Institute of Technology.

Those units presently rented to persons who were not required to have an affiliation with the Massachusetts Institute of Technology at the time they entered into an agreement to rent such units are not exempted and are controlled rental units.

Those units presently rented to persons required to have an affiliation with the Massachusetts Institute of Technology at the time they entered into an agreement to rent such units will not cease to be exempt once such person's affiliation with the Massachusetts Institute of Technology ends unless such unit is subsequently rented to a person, by the Northgate Community Corporation or its agents, not required to have an affiliation with the Massachusetts Institute of Technology at the time they enter into an agreement to rent such unit.

Those units which are not exempted by this order may be exempted under the provisions of Section 3(b)(5) of the Rent Control Act only if: (1) the unit is subsequently vacated by the present tenant; (2) the unit is subsequently rented to persons required to have an affiliation with the Massachusetts Institute of Technology; and (3) the Massachusetts Institute of Technology, the Northgate Community Corporation or its agents submits a written request to the Rent Board for such an exemption.

Persons having an affiliation with the Massachusetts Institute of Technology shall be: full and part-time students, employees, staff members, and any other persons so designated by the Massachusetts Institute of Technology as long as such designation, in the opinion of the Rent Board, is not in conflict with the Rent Control Act or this order."



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
TEL. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

RICHARD C. ROSSI  
Deputy City Manager

October 30, 1989

To the Honorable, the City Council:

In response to Awaiting Report Item No. 33 & 51, regarding Harvard Affiliated Housing, enclosed please find a report from the former Executive Director of the Rent Control Board, which essentially states that such an action would be illegal without amending the Rent Control Statutes. Such amendment would also have to include a broader range of institutions and could not single out Harvard University.

Very truly yours,

Robert W. Healy  
City Manager

RWH/dls

Agenda # 3

S-738

Response to Awaiting Report Item Number 33 and 51  
regarding Harvard Affiliated Housing.

In City Council,

October 30, 1989

*Placed on file*