



# City of Cambridge

35.

Calendar Item #11

IN CITY COUNCIL

~~March 16, 1998~~

March 23, 1998

- COUNCILLOR RUSSELL
- COUNCILLOR BORN
- COUNCILLOR DAVIS
- MAYOR DUEHAY
- VICE MAYOR GALLUCCIO
- COUNCILLOR REEVES
- COUNCILLOR SULLIVAN
- COUNCILLOR TOOMEY
- COUNCILLOR TRIANTAFILLOU

WHEREAS: **Census 2000** will be a nationwide comprehensive effort to conduct the most thorough counting of the United States population in the history of our country; and

WHEREAS: This effort will require an organized effort on the part of several city departments, which will necessitate careful planning and coordination; now therefore be it

ORDERED: That the City Manager be and hereby is requested to form a committee of appropriate city personnel to plan this effort and provide periodic reports to the City Council.

In City Council March 23, 1998.  
Adopted by the affirmative vote of nine members.  
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury  
City Clerk

## FEDERAL TAKINGS PREEMPTIONS OF HISTORIC & TRADITIONAL STATE & LOCAL AUTHORITY

### Myths vs. Reality

**Myth:** *The legislation in no way changes substantive law or rights; it merely alters court jurisdiction and procedures.*

**Reality:** The bill represents an unprecedented effort to preempt local government handling of local land use issues and to preempt any local variations inconsistent with the national standard. The bill would dictate whether, for example, the local planning board or the zoning board of appeal can even hear a particular case. The bill would define what procedures a community can implement and would provide a wide opportunity for litigants to bypass local procedures altogether.

**Myth:** *This legislation would not change the standards and procedures governing lawsuits vs. cities and towns.*

**Reality:** H.R. 1534 allows developers to bypass local waiver and appeal procedures altogether. In addition, the legislation would allow developers to bypass state courts, which have the greatest experience with local land use matters.

H.R. 1534 would amend current federal law by adding a new section, which provides that to have a ripe property claim, claimants need not pursue local procedures for appeals or waivers where the local procedure "cannot provide the relief requested." A claimant thus can bypass these local procedures simply by contending in federal court that the local procedure does not provide the relief the claimant wants. For

example, local governments typically are not authorized to award compensation to owners whose land use proposals are denied. The legislation would allow claimants to circumvent local waiver and appeal procedures completely and sue in federal court by requesting compensation and arguing that the local procedures "cannot provide the relief requested."

**Myth:** *The legislation imposes no new unfunded mandates, costs, or liabilities on local governments and taxpayers.*

**Reality:** H.R. 1534 would impose huge new burdens on local communities that want to avoid litigation.

H.R. 1534 purports to allow local officials to avoid immediate litigation where the disapproval or a land use proposal meets certain requirements, but this narrow "escape hatch" would impose huge and unprecedented burdens on local governments. To forestall litigation, local officials would be forced to specify the "use, density, or intensity of development" that would be approved, as well as "any conditions" for such approval. Although the bill language is not entirely clear, to meet this requirement local officials presumably would need to do far more than simply refer to applicable zoning ordinances. The bill's mandate to specify "any conditions" required for approval strongly suggests that local officials would need to develop a site-specific development plan that could pass muster under local law. In other words, the bill would require local officials to identify



with specificity how development of the property at issue could meet all local zoning ordinances and other local laws. Because preparation of an approvable development plan usually requires an intimate knowledge of the site and the proposed use, current law generally requires the developer to determine how its development proposal would meet local requirements. The bill's requirement that local communities do the developer's work to avoid litigation would impose tremendous and unfair burdens on local communities, and it would compel the community to guarantee approval.

- **Example:** *Suppose a local community denies an application for commercial development, but is willing to consider residential development. To avoid a lawsuit under the narrow "escape hatch" in H.R.1534, community officials could be forced to identify and specify in detail all conditions for residential development, including precise descriptions of street locations, sewer lines, water connections, open space, building set-backs, and all other amenities and conditions that would be required for the site. Generating this information for one development proposal would be expensive enough, but having to provide it for all development proposals simply to avoid litigation would be overwhelming for a small town.*

**Myth:** *During debate in the House, the bill managers made several amendments which significantly improve the legislation from the perspective of cities and towns.*

**Reality:** The change to the bill approved by the House of Representatives during the

October 22, 1997, floor debate would further preempt traditional local authority. The amendments added by the full House make it even easier to bypass local citizens and elected leaders. The key House amendment adopted on the floor provides that property claims are ripe for federal court review as soon as the claimant "has applied for one appeal or waiver which has not been approved." In other words, developers would not even have to wait until local officials had decided the appeal or waiver request before suing in federal court. Under H.R.1534 as passed, a challenge to a local land use decision is ripe for federal court review as soon as the developer submits the appeal or waiver request. The threat of premature litigation would greatly shift the balance of power away from local officials to developers and other claimants.

**Myth:** *This legislation deals only with claims regarding federal rights and laws.*

**Reality:** This legislation has only one purpose: to preempt historic and traditional land use and zoning authority of local citizens in a community and their elected leaders, as well as the state laws enacted to ensure that residents and business leaders in cities and towns could determine the most appropriate developments, land uses, and zoning for their own communities.

**Myth:** *This legislation does not preempt traditional state and local jurisdiction.*

**Reality:** H.R. 1534 allows developers and other claimants to challenge local protections without waiting for local decisions on waiver requests or appeals. The legislation would amend current federal law to permit any claimant to bypass



traditional local procedures simply by contending in federal court that the local procedure does not provide the relief the claimant wants. In addition, the legislation would allow developers to completely bypass the state court system.

**Myth:** *This legislation would not eliminate existing federal law requirements that takings claimants exhaust all state and local remedies and appeals before filing suit against cities in federal court.*

**Reality:** H.R. 1534 allows developers and other claimants to challenge local protections without waiting for local decisions on waiver requests or appeals.

- **Example:** *Local zoning ordinances often prohibit the operation of adult bookstores and similar establishments within a specified distance (e.g., 1000 feet) of a school or church. Suppose a landowner applies to operate an adult bookstore next to a school, is denied permission under the applicable ordinance, and then submits a waiver request or an appeal. Under H.R. 1534 as passed, the owner can sue in federal court as soon as the waiver request or appeal is submitted, arguing that the appeal or waiver request "has not been approved." Faced with the prospect of expensive federal court litigation, local officials would feel pressured to approve such land use proposals at the expense of community values and the public good.*

**Myth:** *This legislation would not interfere with purely local issues.*

**Reality:** From the outset, H.R. 1534 has been designed to provide developers and other claimants with a "fast track" to federal court litigation at the expense of local planning procedures. The bill would foster a larger volume of wasteful and burdensome litigation against cities and towns. The changes in ripeness doctrine would lead to the filing of more lawsuits, result in the earlier filing of litigation, and expand the length of time required to resolve litigation. In the process, the bill would interfere with efforts to resolve land use issues in a cooperative fashion. The litigation generated by this bill would impose significantly higher litigation costs on local governments and local taxpayers.

**Myth:** *This legislation provides no special advantages for homebuilders and developers.*

**Reality:** The bill would grant special privileges to individuals asserting that restrictions on real estate development have violated their constitutional rights as compared with individuals asserting other types of constitutional violations. As amended in committee, the bill limits the restrictions on federal court "abstention" to cases involving "uses of real property." As a result, a developer claiming a taking because the local zoning board denied a variance application would have superior access to the Federal courts than, for example, litigants challenging the conditions of confinement in a juvenile detention facility, the denial of Medicaid benefits, or the denial of First Amendment rights.





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COUNCILLOR TRIANTAFILLOU

WHEREAS: **Census 2000** will be a nationwide comprehensive effort to conduct the most thorough counting of the United States population in the history of our country; and

WHEREAS: This effort will require an organized effort on the part of several city departments, which will necessitate careful planning and coordination; now therefore be it

ORDERED: That the City Manager be and hereby is requested to form a committee of appropriate city personnel to plan this effort and provide periodic reports to the City Council.

CHARTER RIGHT EXERCISED BY COUNCILLOR TOOMEY.

Russell & Born

RECEIVED BY  
OFFICE OF CITY CLERK  
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CAMBRIDGE MA.

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Consent Order #35

*Cal. 11*  
*cm-134*

Councillors Russell and Born re: form  
a committee for planning and coordination  
regarding Census 2000.

In City Council March 16, 1998

CHARTER RIGHT EXERCISED BY  
COUNCILLOR TOOMEY.

*3/22/98*

**ORDER ADOPTED**