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Cambridge City Council
Cambridge, Massachusetts

Re: Application of Rent Control Act and Ordinance to
Cooperative Apartment Ownership

Gentlemen:

We have reviewed Chapter 36 of the Acts of 1976 (the "Act"), Ordinance 926 of the City of Cambridge and such other statutes as deemed by us to be relevant to render an opinion as to whether, under present law, the City of Cambridge has the authority to regulate rents and eviction proceedings for a Cooperative Housing Corporation.

Chapter 36 of the Acts of 1976 (the "Act") sets forth the statutory authority for the City of Cambridge to control rents and evictions., The Act is the basis for the enactment of Ordinance 926. See Flynn v. City of Cambridge (Superior Court Decision).

Section 3(a) of the Act defines "rental units" in all encompassing language. Section 3(b) of the Act then defines "CONTROLLED RENTAL UNITS" as all rental units except the specified exceptions. These definitions, of course, are critical because the provisions of both rent control and evictions under the Act and the Condominium removal permits requirements under the Ordinance are restricted to "controlled rental units."

Section 3(b)(4) of the Act exempts "rental units in cooperatives." Accordingly one must conclude that the City of Cambridge either acting by its City Council or its Rent Control Board would have no authority to place any restrictions on the development of a Cooperative Housing venture. Thus, there is no mention of the word Cooperative in the Act, the Ordinance or the Regulations promulgated under the Ordinance or the Act except for the exclusion of Cooperatives from rent control

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under Section 3(b)(4).

We are not aware of any cases dealing with the Cooperative issue under the Act. It would seem that the rationale for the Cooperative exemption set forth in the Act is based upon the fact that a Cooperative Shareholder's "occupancy charges" meet the requirements of "Rent" under Section 3(c) of the Act and, therefore, the Cooperative would have been subject to rent control but for the exemption. This would be absurd as an interference between the relationships of the Cooperative and its shareholder owners.

Thus it would appear that the primary reason for the 3(b)(4) exemption is that the Cooperative concept is more like a rental arrangement than individual ownerships. Indeed, a cooperative is a common rental arrangement by and between the shareholders and the only difference with a customary rental arrangement is that there is no third-party landlord -- the landlord is the cooperative corporation.

Quite clearly, the Cooperative acting by its duly elected Board of Directors must be free to establish occupancy charges for the Tenant Shareholders which reflect the aggregate costs of occupancy - whatever they may be - without interference from the City of Cambridge. The normal Cooperative has little or no equity and must operate on the basis of occupancy charges even for emergency cost items.

Secondly, the Legislature has clearly enunciated, in including the "Cooperative exemption" a public policy of encouraging the development of cooperative housing, a policy that cannot be fostered in consonance with the strictures of rent control. See Zussman v. Rent Control Board of Brookline, 367 Mass. 561, 566 (1976).

Accordingly, we believe that the City Council cannot validly and with legal authority, enact an amendment to the Ordinance barring or limiting sale, rental terms and occupancy of cooperative units. We are of the opinion that such an amendment would be invalid. Section 5(c) of the Act gives to the Board the power to promulgate rules and regulations "as will further the provisions of this Act, and shall recommend

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to the City for adoption, such ordinances as may be necessary to carry out the purposes of the Act."

We believe that (i) an Ordinance cannot contravene the clear language of Section 3(b)(4) of the Act and (ii) Regulations cannot subvert the language of the enabling Act. See Marshall I, cited above.

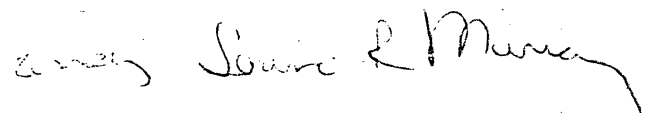
It is our opinion that any action taken by the Cambridge City Council to include regulation of cooperatives, under the auspice of legal authority granted by the Act, will be an unconstitutional exercise of power in violation of the Act and the Home Rule Amendment, and a denial of fundamental property rights secured by the Federal Constitution.

In this respect we call your attention to the recent Supreme Court case of Owen v. City of Independence, Missouri, 48 U.S.L.W. 4389, 100 S. Ct. 1398 (1980), which held that a municipality has no immunity from liability under 42 U.S.C. 1983 flowing from its constitutional violations and may not assert the good faith of its officers as a defense to such liability.

Accordingly, any action taken by the City Council, which interferes with the developer's and present tenants' efforts to form a cooperative housing project could, quite conceivably, render the City and its Council members liable to the owners of the property for considerable money damages.

We do not believe that the members of the Council would act so cavalierly in disregarding the solemn oath of their public office. If cooperatives are to be so regulated, this decision can only be made by the Legislature.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ramsey, Serino & Murray".

Ramsey, Serino & Murray

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