

To: Cambridge City Council
From: Alex M. Steinbergh, 3 Clinton Street
June 1, 1989

Subject: Rent Control

A recent NY Times Editorial (Attachment 1) suggested vacancy decontrol of New York City's units. Although I do not support complete vacancy decontrol, I have previously suggested to the Rent Control Subcommittee a partial vacancy decontrol system similar to the Washington D.C. system (see attached).

Unless the City Council and/or the Rent Board takes a leadership position in reforming the existing system, eventually there will be a radical reform that will wipe out many of the worthwhile features of the existing rent control system, which many believe to be the strictest in the country.

Isn't it more reasonable to have a moderate system?

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Attachment 1

May 30, 1989 New York Times

How Rent Control Hurts the Poor

With a flourish of oratory, the two tenant representatives on New York City's Rent Guidelines Board quit last week after it tentatively approved 6 and 9 percent increases. They complained they had received too little information with which to appraise landlords' costs. Nothing on the record suggests that they cared to know anything about tenants' ability to pay.

That prejudice mirrors perfectly the distortions that rent regulation imposes on housing, and the ability of poor people to find it.

Rent regulation started in New York in 1943 to protect tenants in a wartime economy oblivious to housing needs. Then it turned into a scheme to subsidize existing individual tenants, whether or not they needed it, at the expense of individual landlords, whether or not they could afford it. A law intended to preserve tenant freedom to move in wartime now offers perverse incentives to stay put.

Many upper- and middle-income families pay rents much lower than they would without regulation. In a freer market, many of them would have moved as children grew up, opening their former homes to others with lower incomes. Some families in the highest income groups became even richer by buying apartments they rented, reselling them later at 10 and 15 times what they paid.

Behold the losers. They include owners of small apartment houses who expected to retire on the rental income. Often, their costs exceeded regulated rent; many have lost their properties in mortgage or tax foreclosures. The losers also include their former tenants, who often clung desperately to their fading apartments after rent collection stopped. Homeowners also are losers to rent regulation. It diminishes the taxable value of apartment houses,

requiring higher taxes on owner-occupied homes.

Perversely, many poor families are the hardest losers. Rent regulation does not protect those who live in undesirable apartments that have frequently changed hands. Trying to make landlords alone subsidize housing for the poor is an inadequate, evasive substitute for targeted rent assistance grants subsidized by society. A municipal program of rent subsidies is needed for families not aided by Federal and state programs.

After 46 years, rent control seems the normal state of affairs. Yet it's a stifling state of affairs. In the early 1920's, after World War I, rent controls were allowed to expire; apartment house construction boomed, then flickered in the early 1930's in New York and revived as the economy improved before Pearl Harbor. If there were a continuing development of new apartment houses now, more people could move up, opening apartments for families in income groups below them.

Never having seen a free housing market, today's tenants fear that without controls they will be subject to gouging and capricious eviction. They do not understand that rent control has benefited the lucky, not the needy. As the prospect for profitable ownership of apartment houses improves, the supply increases. Competition for tenants among owners controls rents more effectively than governmental regulation.

It is reasonable to fear a sudden removal of all rent regulation. But there's a reasonable way to start: End rent regulation for apartments as they become vacant. Vacancy decontrol works; it was the law until 1974. It would increase housing supply for the benefit of most people — while direct assistance would help provide decent housing for poor people. The least humane supposition about housing poverty is that rent regulation relieves it.

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October 20, 1988

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Dear City Council Members:

Your Committee on Rent Control is concluding its hearings on October 20, 1988, concerning five topics: spreading capital rent increases over time; adequate maintenance of rent controlled buildings; including financing for necessary improvements; establishing a city revolving loan fund, especially for small landlords; possible restriction of "optional upgrades"; and solutions for "distressed" buildings. I shall comment on each of these topics and suggest some additional ideas that I believe will assist both housing providers and current tenants deal with the currently misdirected rent control laws and regulations of the City of Cambridge.

SPREADING CAPITAL RENT INCREASES OVER TIME

There has been extensive tenant testimony supporting the proposition that capital rent increases should be spread over time. Predictability of rent increases is important to tenants, especially those of low and moderate incomes. However, there is a significant need for capital improvements throughout the city.

The housing providers should be encouraged, not discouraged, to make future capital improvements. Thus, I do not recommend spreading capital rent increases over time. If there were a means test that identifies low to moderate income tenants, I would support an amendment to the rent control laws that would limit rent increases to any low and moderate income tenant so that his/her housing expenditure did not exceed 33% of his/her income, provided the housing provider receives an increase of an amount equal to the annual increase in the Boston Area consumers price index. However, under these circumstances, the housing provider should not be penalized. Any costs for capital improvements or other costs for which recovery is deferred, should be carried forward at a return that fairly reflects the cost of money and risk. Thus, those costs not recovered as a

Cambridge City Council
October 20, 1988
Page 2

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result of this cutoff for low to moderate income tenants should be carried over to future years and the housing provider allowed to earn 15 percent per year on his/her investment.

However, total deferral should be limited both in amount and time since housing providers are not banks. Moreover, deferral should not become a substitute for use of Section 8 or or Chapter 707 funds when housing costs exceed 30 percent of tenant income.

ADEQUATE MAINTENANCE OF RENT CONTROLLED BUILDINGS, INCLUDING FINANCING FOR NECESSARY IMPROVEMENTS.

In my judgement, about half of the rent-controlled buildings in Cambridge are adequately maintained and the other half are poorly maintained. The smaller buildings, consisting mostly of less than 12 units, comprise the majority of the poorly maintained group.

Unfortunately, the trend is towards less adequate maintenance rather than greater maintenance. In March 1987, the Rent Control Board voted for a new policy that penalized large landlords in relation to small landlords 4 percent per year and lowered the interest rate for large landlords from 15 to 10 percent per year. Despite a City Council order sponsored by Mayor Vellucci to allow landlords a rate that covered their costs, the Rent Board has done nothing. In addition, the Rent Board now interprets the Removal Ordinance to require housing providers to obtain removal permits prior to renovating vacant apartments. Such removal permit proceedings routinely take 3 to 6 months. Thus, a housing provider would have to leave his apartment vacant 3 to 6 months to get permission to improve electric service, replace old plumbing fixtures and toilets, replace old kitchen cabinets, and even sand floors. Also, if a housing provider does this work without a removal permit, chances are the work will be disallowed in a subsequent rent adjustment hearing and he/she risks criminal prosecution and fines of \$500 per incident. Housing providers now need "permission" from the Rent Board to remove asphalt shingles, to fix rotted exterior carpentry, and to paint their buildings. In a recent case, we were denied 50 percent of all exterior renovations because we did not obtain such permission. Unknowledgable or incredulous housing providers simply don't do the work.

Our own company has cut back significantly on capital improvements. We are investing our money in other cities, including other rent controlled cities where capital improvement regulations are more reasonable.

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Banks are also showing greater resistance to financing capital improvements in rent-controlled apartments. Prior to 1984 banks showed great reluctance to finance rent-controlled capital improvements. From 1984-1987, an increasing number of banks have lent money on rent-control apartments in Cambridge, as a result of seeing that housing providers could achieve reasonable rent increases for capital improvements. Recently, banks have pulled back as news of the Rent Control Board's new policies on capital improvements has reached them.

I strongly recommend two major changes to the rent-control regulations/laws.

- Request the Rent Board to reinstate its previous policy (prior to March, 1987), of allowing 15 percent per year return to all housing providers. It's a stable, predictable policy that's clear to all housing providers and tenants. And it's fair, giving housing providers a 2-3 percent risk margin over their likely cost of capital. Finally, it allows housing providers to raise money for necessary repairs.

- Clarify the Removal Ordinance to allow upgrading of vacant apartments. It's time the City Council told the Rent Board that it doesn't want a deteriorated housing stock. Yet the Rent Board must interpret your misguided Removal Ordinance that prohibits rehabilitation, repairs or improvements "other than as required by the laws the Commonwealth or the city, in such a way as to prevent residential occupancy during the course of the rehabilitation, repair or improvement." Many times, the Rent Board tells housing providers that they sympathize with their need to perform certain "common sense" capital improvements, but that the Removal Ordinance specifically prohibits them from approving capital improvements that are not required by law or prevent reasonable occupancy. It's time to change the Removal Ordinance's definition of "Removal from the market."

ESTABLISHING A CITY REVOLVING LOAN FUND, ESPECIALLY FOR SMALL LANDLORDS.

I thoroughly support this policy and think it should receive priority funding from the soon-to-be-created Affordable Housing Trust.

RESTRICTION OF "OPTIONAL UPGRADES"

I would support the restriction of "optional upgrades" under the following set of circumstances. First, "optional upgrade" should be specifically defined by the City Council in the Removal

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Ordinance. Thus, the City Council could exclude such legitimate "optional upgrades" as jacuzzi tubs, Grohe faucets, custom-made kitchen cabinets, teak floors, baseboard moldings, and tiled kitchen floors. However, it should carefully consider excluding from such regulations such "optional upgrades" as full-sized refrigerators, dishwashers, micro-wave ovens, modern kitchen cabinets, new toilets, modern sinks, sanded floors, PVC piping, modern circuit breakers, restored plaster ceilings (instead of dropped ceilings), additional closet space, restored and painted clapboards (instead of asphalt or asbestos siding), and landscaping. This latter list are some of the types of upgrades that the Cambridge Tenants Union has opposed in the past.

Second, optional upgrade should be allowed if the existing tenant wants such upgrades or if the unit is vacant. A tenant frequently asks us to do work in their apartment which we must say no to because such work would violate the Removal Ordinance. At the time a unit is vacant the housing provider has the most flexibility to renovate the unit and restore it so that future tenants are not living in sub-standard units. Please do not continue to restrict these much needed improvements.

PROVIDING SOLUTIONS FOR "DISTRESSED" BUILDINGS

Because of the aging housing stock, the high proportion of wood-framed buildings, and the impact of 18 years of rent control regulations, a significant percentage - perhaps as many as 5-20 percent of the city's rent-controlled buildings may properly be considered as "distressed". Symptoms of buildings that are "distressed" include: failed structural integrity, improper egresses, failed electrical and plumbing systems, the existence of gas "space" heaters, and deteriorated exteriors. "Distressed" buildings share a common problem - fixing them will usually require expenditure levels beyond the means of current housing providers or, if the means exist, will result in rents double or triple existing levels. The only solutions to distressed buildings are mandated "fix up" of code violations through existing procedures, decontrol or taking by eminent domain. I suggest a combination of the first and third alternatives.

The existing "distressed" building regulation (Regulation 47) is a cumbersome one. It typically takes 12-14 months for a housing provider to get removal permits under the regulation. And it is likely that the removal permits come with conditions the housing provider cannot subsequently meet. It is simply too difficult to implement the existing regulation. The existing Reg. 76, properly amended to provide returns of 15 percent per year, would work for many housing providers.

Decontrol runs against City Council and Rent Board's policy not rewarding housing providers for their "neglect" of property. This is true even if the property was neglected by a previous owner.

The only responsible solution to "distressed" buildings, I suggest, is for the City of Cambridge to put pressure on existing property owners to fix up the buildings or to take them by eminent domain if property owners do not have the wherewithal to fix them up themselves. By strictly enforcing the State Sanitary Code through inspections of all rent-controlled buildings annually, many distressed buildings can be properly identified for fix up through the City's Revolving Loan Fund or eminent domain purchase. The Affordable Housing Trust should finance such fix ups or purchases and, in conjunction with non-profit organizations, redevelop the buildings for use by low and moderate income tenants.

ADDITIONAL IDEAS

As important as dealing with the five topics that your Committee on Rent Control is currently studying is the need to examine the basic problems with the current Cambridge rent control scheme. It is a scheme based on maintaining 1967 or later base year income. It is a scheme that is badly flawed. It is a scheme that is unfair to tenants and housing providers alike. It is a scheme that even the Rent Board and its supporters on the City Council agree needs fixing. Consider the following problems created by the existing laws and regulations:

- If a housing provider has lost his/her 1967 records or a subsequent purchaser of a building cannot locate the 1967 owners or find his/her records, chances are high that his/her current net operating income is 40-60 percent less than it would be if he/she had the 1967 records. The culprit here is the ".8 check." Ask the Rent Board to explain to you why this ".8 check" regulation was adopted and whether it's fair. It's not fair.
- Even if a housing provider has his/her 1967 records, if his/her Net Operating Income in 1967 was low, it will always be low. These buildings will never be well-maintained and there is and will be a strong incentive for housing providers to get these buildings declared "distressed" as quickly as possible in hopes of decontrolling their units. City policy should not be directed toward giving housing providers incentives to let their buildings deteriorate.
- Low to moderate income tenants have little control over rent increases. For example, a long-time housing provider can own

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their building with rents in the \$100-200 per month range. The owner gives up and sells to a well-capitalized housing provider, who makes up for 20-30 years of absolute neglect by fixing up building systems and correcting code violations. The rents can more than double. Despite how well-intentioned the new housing provider is, how important it is to the City of Cambridge to see that these units are "fixed up", inevitably many of the existing tenants are displaced. Tenants, as a result, call in the Cambridge Tenants Union to lobby for new regulations that severely limit housing providers' return on capital. Housing providers pull their hair out, curse the CTU and cut-back on capital improvements. The capital improvement neglect cycle begins anew.

Before suggesting solutions to these problems, the City Council must recognize there are four highly vested interests that need to be protected: existing low to moderate income tenants want predictable controlled rents; housing providers want reasonable, which often means increased, profit levels; the City Council wants to keep up the quality of the housing stock; and the Rent Control staff want to keep their jobs. It is important to agree on a set of goals that satisfy all four of those concerns. I suggest the following goals of a new rent control policy:

1. All existing low to moderate income tenants should have predictable rent increases that allow them to stay in their units.
2. Housing providers should be given positive incentives to fix up their units before they become distressed and allow them to make a reasonable profit.
3. Prospective tenants should be given some rent control protection upon vacancy and their renting a unit but less protection than existing tenants. Once they become a tenant, however, they should receive the same protections as all other tenants.
4. The Rent Control System should be greatly simplified so that most housing providers and tenants can understand it without the need for scores of public assistance officers and former Rent Control Board employees turned lawyers.
5. The system should be geared to give housing providers an incentive to rent to low-and-moderate income tenants without creating an administrative nightmare.

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The following set of policies should do much to satisfy these goals:

1. The ".8" check should be eliminated and all rents and expenses calibrated as if a 1967 base year existed for all rent controlled properties. However, no low to moderate income tenant's rent should be increased more than 20 percent per year as a result of this adjustment.
2. Existing rents, adjusted only for rent adjustments currently applied for at the Rent Board, should become the new monthly base rents. The old system, based on maintaining 1967 net operating income, should be thrown out.
3. The new monthly base rent should in the future be adjusted as follows:
 - a) For tenanted units, annually according to a general adjustment based on changes in the Boston area, consumer price index ("CPI") only.
 - b) Upon vacancy of a unit, but no more than once per year, by an amount equal to the greater of twelve percent or the rent of a comparable unit in the building. No capital improvement adjustment would be allowed for work within a vacant unit.
 - c) For capital improvements, an amount equal to 1/72 of the amount expended, which equals a 15 percent per annum return for a 15-year amortization period. This adjustment should stay in the rent base in perpetuity. However, housing providers would be required to have their capital improvement adjustments approved by the Rent Board before beginning work, except for emergency repairs as requested by Inspectional Services. Thus, the Board could restrict "optional upgrades" before they occur. And for all capital improvement adjustments, except for emergency repairs, no housing provider could raise an existing low to moderate income tenant's rent more than 20 percent annually. However, annual rent increases could exceed this limit if they are for "optional upgrades" which a tenant requests in writing, or if the tenant does not qualify as a low to moderate income tenant.
 - d) A housing provider who can demonstrate to the Rent Board that he cannot make a minimal return on his equity investment, say 10 to 12 percent, could apply to the Board under a hardship petition for an increase based on his previous years cost of operation plus a 10 to 12 percent return on equity, equity being defined as "assessed value"

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minus bona fide mortgage debt. However, all increases under this rule would be limited to 20 percent per year to an individual low to moderate income tenant.

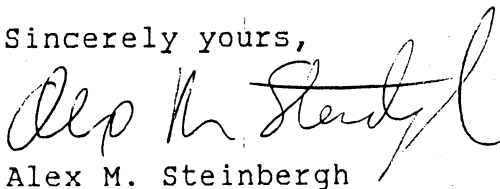
e) Housing providers should be given subsidies above the controlled rent (5 percent for moderate income tenants, 10 percent for low income tenants), paid for by the City's Affordable Housing Trust, if they rent to pre-qualified low to-moderate income tenants under the Rent Board's vacancy match program. Section 8 tenants should continue to be exempt from Rent Control.

4. All existing eviction laws would stay in place.

The recommended system is one similar in many aspects to one already in place in the second largest rent-controlled community in the country - Washington D.C. It correctly balances the needs of existing low to moderate income tenants and housing providers. Under this system existing low to moderate income tenants, most housing providers, the City of Cambridge and the Rent Control staff would all be "winners". The only losers would be future tenants. And future tenants are the ones who should lose somewhat to protect the other interests. The majority of future tenants are likely currently to be non-Cambridge residents, a good number of whom are not of low to moderate income. The city of Cambridge cannot continue to be the housing provider of last resort in the Greater Boston Area, especially when Boston itself has full vacancy decontrol, the Town of Brookline is passing major reforms, and other nearby communities have no rent control at all.

By providing added controls for current low and moderate income tenants and incentives for housing providers to rent to future low and moderate income tenants, hopefully with preferences to those who are previous Cambridge residents, the desirable income mix of tenants and homeowners which all members of the City Council support will be preserved in Cambridge. I believe the proposed system is worthy of consideration by the City Council.

Sincerely yours,



Alex M. Steinbergh

cc: Ellen Semonoff
Margaret Drury

5. S-457

Comm. from Alex M. Steinbergh Re: a recent New York Times editorial suggesting vacancy decontrol of N.Y. units & his previous suggestion to the Rent Control Subcommittee of a partial vacancy decontrol system, similar to that in Washington, D.C.

In City Council,

June 12, 1989

Placed on file