

D. Sullivan

6/22/11

Clarifying Amendment to
Rent Control Committee Report on
Rental Housing Removal Ordinance Amendments

Amend the proposed ordinance by adding at the end of subsection (c $\frac{1}{2}$) the following sentence:

Nothing in this subsection shall prevent an owner of a building or any portion thereof from conveying his entire interest in the building in good faith to one purchaser, who shall then be subject to the provisions of this subsection to the same extent as the original owner.

This language makes it clear that a rent-controlled landlord will continue to be able to sell his property to a successor landlord without a removal permit, even after a master deed is recorded or units in the building are sold to condominium purchasers. But the successor landlord is subject to the same ordinance provisions about sales to condominium unit purchasers as the original landlord.



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

David E. Sullivan
City Councillor

May 28, 1981

REPORT OF THE COMMITTEE ON RENT CONTROL

To the Honorable, the City Council:

The Committee on Rent Control, to which was referred the proposed ordinance amending the rental housing removal ordinance (see Order No. 3 of May 4, 1981), reports recommending that the attached substitute ordinance ought to pass. (Councillor Crane dissenting with respect to section 2).

The Committee believes that the proposed ordinance which it reports today represents a fair balancing of the legitimate interests of present and future rent-controlled tenants and present and future condominium unit owners. The reported ordinance would:

1. Clarify that the present ordinance exempts condominium units purchased for the first time before August 10, 1979, whether or not they were being used for rental housing on the effective date of the 1979 ordinance. The proposal would also reiterate that once a condominium unit has been legally occupied by its owner, it will never again be subject to the ordinance.

2. Require a removal permit before a condominium developer could sell a rent-controlled apartment. Bona-fide sales to current tenants who occupied their apartments as such before August 10, 1979 would be exempt from this requirement. The current ordinance requires a permit only before a non-exempt unit owner actually occupies the unit if the last previous occupant was a tenant.

The proposal does not attempt to resolve certain long-range issues, such as the problem of "hybrid" buildings. The Committee believes that these require further discussion, some of which has already begun.

The Referred Proposal

The proposed ordinance referred to the Committee for hearing and report, besides the provision requiring permits for developer sales which the Committee reports in modified form as section 2 of its draft, contains provisions restricting tenant purchases of condominium units and tightening the standards for granting removal permits. As the result of substantial testimony at the May 13 public hearing (see attached summary) and subsequent correspondence opposing these changes, the Committee does not recommend them for adoption.

Background

The rent housing removal ordinance, Cambridge City Code ch. 23, § 1, was first passed by this City Council on August 13, 1979. Ordinance No. 926. The ordinance has been amended three times since: to include certain demolitions (Ordinance No. 929 of March 3, 1980), to exempt non-profit rehabilitation for low- and moderate-income home ownership (Ordinance No. 932 of April 28, 1980), and to make explicit the coverage of cooperative conversions (Ordinance No. 941 of August 4, 1980).

The removal ordinance forbids any rent-controlled apartment from being removed from the rental market without a permit from the Rent Control Board. Cambridge City Code ch. 23, § 1(c). Removal is defined to include owner-occupancy of a condominium unit if the last previous occupant was a tenant. Id. § 1(b)(4)(i). Exempt from regulation are: pre-August 10, 1979 tenants purchasing their own units (§ 1(b)(4)(i); Rent Control Board reg. 13-01(u), (v)); owner-occupants of non-condominium units (§ 1(b)(4); reg. 13-01(w)); condominium unit owner-occupants temporarily renting out their units; and condominium units purchased before August 10, 1979 (§ 1(b)(4)).

The City Council passed the original ordinance in 1979 because it found that condominium conversion, demolition, and other removals of rent-controlled apartments from the market were worsening a serious public emergency in housing. More than 2,000 or over 10 percent of the city's rent-controlled apartments had already been removed. Cambridge City Code ch. 23, § 1(a). In the words of the Supreme Judicial Court:

immediately prior to passage of the ordinance, conversion of controlled rental housing _____ was sharply reducing the supply of rental housing in Cambridge Even if the conversion rate did no more than level off, the power . . . to control rents would steadily and irreversibly be transformed into the power to control nothing.

Flynn v. City of Cambridge, 81 Mass. Adv. Sh. 692, 699, 418 N.E.2d 335, 339 (1981).

In the Flynn case, the Supreme Judicial Court unanimously upheld the validity of the original ordinance. It must be emphasized that the ordinance was in full effect throughout that litigation, because the Superior Court denied a preliminary injunction on December 21, 1979, and then upheld the ordinance on its merits on May 13, 1980. Id. at 693, 418 N.E.2d at 336.

Exempt Unit Owners

Section 1 of the Committee's proposed ordinance exempts condominium units purchased before August 10, 1979, whether or not they were being used for rental housing on the 1979 effective date. The Committee believes this clarification to be helpful in alleviating concerns that the Rent Control Board would interpret the Ordinance to cover such units in view of the Flynn case, 81 Mass. Adv. Sh. at 700, 418 N.E.2d at 339.

Section 1 of the reported ordinance also restates what the Committee understands to be the law now*: that once a condominium unit owner legally occupies his or her unit, the ordinance will never again apply to that unit. The Committee wishes to reassure all legitimate condominium unit owners that restrictions on further conversions are in no way aimed at them. In fact, such regulation can only increase the value of their holdings, as the president of the Cambridge Council of Realtors has correctly pointed out. Camb. Chronicle, March 19, 1981, at 10.

Developer Liability

Despite the present ordinance, large numbers of rent-controlled apartments continue to leave the market, according to a recent study of the subject by an MIT student. R. Heller, The Cambridge Condominium Conversion Ordinance 20-21 (1981) (unpublished paper on file with Committee). Of course, some of these removals are exempt, mostly because of current tenants purchasing their own apartments.

*There may be one situation as to which this provision changes the law: when the owner and former legal occupant of a condominium unit, who is now renting it to a tenant, sells to a purchaser who desires to occupy. The Committee wishes to make it clear that even in these circumstances the ordinance will not apply and no removal permit will be necessary.

But the Committee finds that a substantial number of violations of the current ordinance have been and are occurring, perhaps as many as several hundred to date. The Committee bases this finding on repeated testimony at its March 25, 1981 public hearing, Rent Control Board records, personal observations, and press reports. Camb. Chronicle, March 19, 1981, at 1, col. 4; Apr. 23, 1981, at 1, col. 1; Real Paper, April 30, 1981, at 8, col. 1; Harv. Crimson, March 10, 1981, at 3, col. 4; March 14, 1981, at 4, col. 1. Some of these are blatant cases of condominium unit owner-occupancy without the required permit, such as have been alleged at 1572 Massachusetts Avenue, 50 Follen Street, 10 Dana Street, and 285 Harvard Street, among others. Other illegal removals are more sophisticated, involving such sham transactions as taking title to a unit through a trust or close relative that then "rents" to the beneficial owner at less than arm's length, or purchasing through a previous tenant who "buys" immediately before leaving. See Cambridge Rent Control Board v. First Highland Development Corp., Civil Action No. 81-1226 (Mass. Super., Middlesex April 24, 1981) (granting preliminary injunction by consent against latter scheme). These violations have occurred both before and after the March 12, 1981 Supreme Judicial Court decision.

The Committee also finds that the present ordinance can be enforced against such illegal removals only with considerable difficulty. A violation occurs only when a condominium unit owner actually occupies without a permit. Enforcement thus requires continuous monitoring of each newly-sold unit's occupancy, an intrusive and impossible task, especially under Proposition 2 1/2's funding constraints. Too much room is left for elaborate evasion schemes of the kind described above. A civil remedy must involve eviction of a unit owner

already in occupancy. Most importantly, developers are able to disclaim all responsibility for violations, since the purchasers could have been interested only in an investment. See Harv. Crimson, March 10, 1981, at 3, col. 4 (quoting developer as saying of condominium units, "I sold them to people who were aware of the laws. . . . It's not up to me to enforce the law").

The Committee believes that this state of affairs is unacceptable and proposes to end it on July 1. Section 2 of the reported proposal would impose liability on condominium developers for any sale (including an offer or agreement to sell) of a rent-controlled apartment after that date.* Sales to current tenants would be exempt, and they would merely file a form affidavit with the Rent Control Board to qualify. By requiring that this affidavit recite that such a tenant occupied the apartment before August 10, 1979, the Committee means to ratify Board regulations 13-01 (u), (v), construing the present ordinance so as to limit the exemption to those tenants. The Committee means to apply the present considerations for granting removal permits under section 1(d) of the ordinance to decisions about whether to grant permits before unit sales -- that is, to presume that such developer sales are tantamount to removal from the rental market, because that is what the evidence shows.**

*This is in essence already the rule for cooperative conversions under section 1(b)(4)(iv) of the current ordinance. This rule has proved easily enforceable - it brought a quick end to the illegal cooperative conversion of 12-16 Ware Street. Barry v. Hurley, Civil Action No. 80-5661 (Mass. Super., Middlesex Nov. 10, 1980) (granting preliminary injunction against sales of, or offers to sell, shares in cooperative).

**In this connection, the Committee recommends that the Board rescind regulation 46-08, which it believes to be confusing, seldom applied, and contrary in part to section 1(d) which sets forth the exclusive considerations.

The following arguments support section 2 of the Committee draft:

1. It does not in any way further limit condominium unit purchases for owner-occupancy, as compared with the present ordinance.
2. It imposes initial liability on developers, who are more likely than purchasers to be aware of the law.
3. As such, it protects innocent purchasers against potentially unscrupulous developers.
4. By allowing a court to enjoin illegal sales, offers, and agreements, it provides a meaningful civil remedy short of an order requiring an owner-occupant to vacate.
5. It simplifies and reduces the cost of enforcement by limiting proof of violation to the recording of an initial unit deed after July 1, 1981 without the issuance of either a removal permit or an exemption certificate.
6. For similar reasons, it furnishes future legitimate unit purchasers with a clear documentary record of valid sale and occupancy, and clears future titles on resale.
7. By requiring issuance of an exemption certificate before a developer may make an offer to sell to a current tenant, it prevents harassment of older or poorer tenants (see Camb. Chronicle, April 23, 1981, at 1, col. 1) who may have no desire or ability to buy, while entirely preserving their freedom to do so if they wish.
8. It tends to prevent future fragmented ownership of rental housing in the same building, which interferes with provision of necessary and legally-required services to tenants in an efficient manner.

Against this array of prospective protections for both legitimate condominium unit purchasers and current and future tenants, the Committee is aware of only one substantial opposition argument: the alleged need to provide tax shelters for buyers who are mere investors. See Camb. Chronicle, May 14, 1981, at 1, col. 6. To be sure, section 2 of the Committee's recommendation would tend to prevent future developer sales to such investors, because they would be unlikely to meet the current tests for removal of such apartments from the rent-controlled market.

There are several responses to this argument. First, a large number of new and previously-converted condominium units, not to mention many other suitable investments, are otherwise available to these investors. Second, the Committee is informed that a typical rent-controlled apartment is a sensible investment only as a tax shelter for someone whose annual income exceeds \$70,000, because the current rent control formula correctly does not allow financing costs to be recovered from tenants in increased rents. The Committee regards the "needs" of these wealthy individuals under the circumstances as subordinate to responsible actions taken to meet a declared housing emergency, especially since a major cause of the emergency is a bizarre federal tax policy which ironically rewards precisely these investors at the expense of the low- and moderate-income tenants whom the city is striving to protect. See Goetze, The Housing Bubble, Working Papers, Jan.-Feb., 1981, at 44. Finally, the overwhelming evidence before the Committee causes it to find that most purchases by "investors" wind up sooner or later as violations of the ordinance by one of the schemes described above. In this light, the Committee has no difficulty concluding that continued preservation of the city's stock of decent,

affordable rental housing justifies, from both legal and policy perspectives, its broad, prophylactic rule that presumes rent-controlled condominium units to be purchased for owner-occupancy.

There is another, less worthy argument against section 2 of the Committee's proposed ordinance. It is that better enforcement of the present rules will restrict too much additional condominium conversion. The contention is made in bad faith. It seeks to bring about by nonenforcement of the rules an outcome which ought to result only from changing the rules. The Committee now turns to that outcome, which is vacancy decontrol.

The Threat of Vacancy Decontrol

The real alternative to passage of the Committee's report is not continuing the status quo, but rather vacancy decontrol under one disguise or another.

This city's rent control and conversion control programs seek to protect existing tenants against unfair rents, arbitrary evictions, and destruction of their homes. But they also attempt to safeguard the city's supply of decent, affordable housing for low- and moderate-income people and elderly people on fixed incomes, thus providing for the future diversity of the city's population and the housing needs of future tenants as well. See Cambridge Community Development Department, Condominium Conversions in Cambridge 46, 79 (1980) (finding that without government intervention 45 percent of Cambridge apartments in buildings of seven or more units would be converted by 1990, displacing 53 percent of the present tenants, about half of whom would be low-income elderly people).

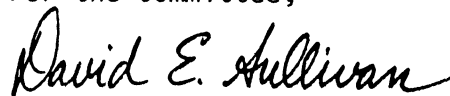
Vacancy decontrol subverts both of these policies. It attempts to manipulate current tenants into believing that their housing needs will be met, even if future tenants' will not. In fact, as Boston's experience has shown since 1976, it fails even present tenants by promoting harassment to force them to leave and by depriving them of any meaningful choice in housing when they must move.

That is why this City Council has repeatedly and consistently rejected vacancy decontrol. A proposal to draft a vacancy decontrol amendment to the rent control law was defeated last December. Order No. 5 of Dec. 15, 1980 (failed Dec. 22, 1980). The very Councillors who voted to pass the present removal ordinance in August 1979 also voted at that time to reject a vacancy decontrol amendment to it.

The same approach is being proposed again now in more subtle ways: Oppose amendments to make the current ordinance more easily enforced against vacant units. Better yet, direct the Rent Control Board actually to stop enforcing the law. Order No. 11 (charter-righted May 18, 1981). Amend the present ordinance to exempt vacant units altogether. Or accomplish the same result by allowing a "tenant" to move in today and purchase the apartment tomorrow.

The Committee recommends that this City Council continue to reject vacancy decontrol in its various forms, and begin by ordaining the attached proposal without delay.

For the Committee,



David E. Sullivan
Chairman

PROPOSED ORDINANCE

Be it ordained by the City Council of the City of Cambridge as follows:

That Chapter Twenty-Three entitled "Regulations Pertaining to Controlled Rental Housing Units," section 1 entitled "Removal of Controlled Rental Units from Market," as appearing in Ordinance No. 945 of October 6, 1980, is hereby amended as follows:

1. In subsection (b)(4), by striking out the period at the end of the concluding paragraph and adding the following: ", whether or not the unit was being used for rental housing on August 13, 1979. No condominium unit once legally occupied by the unit owner shall ever again be subject to this section for any reason."

2. By inserting after subsection (c) the following new subsection:

(c $\frac{1}{2}$) Prohibited acts by developers. After July 1, 1981, no owner of a building for which a condominium master deed has been recorded shall directly or indirectly sell, offer for sale, or agree to sell any controlled rental unit therein, unless the board has granted a removal permit for that unit, or unless the sale or offer is to, or the agreement is with, a current tenant of the unit who holds an exemption certificate. The board shall issue an exemption certificate to any person who files with it an affidavit in a form prescribed by the board, stating that he is a current tenant of the unit, that he occupied it as a tenant before August 10, 1979, and that he intends in good faith to occupy it indefinitely as its owner. No person shall file a false affidavit under this subsection.

The Committee on Rent Control conducted a public hearing on Wednesday, May 13, 1981 in the City Council Chamber at City Hall beginning at 5:30 PM. Members present: Councillor David E. Sullivan, Chairman, Councillor Kevin P. Crane, Councillor Walter J. Sullivan, Vice Mayor Leonard J. Russell. The purpose of the hearing was to discuss and receive testimony regarding four amendments to Ordinance No. 945 entitled "Regulations Pertaining to Controlled Rental Housing Units."

Councillor David Sullivan, Chairman of the Committee, outlined the amendments which he proposed within a historical perspective of the establishment of Rent Control including local and state legislation which regulated same up to and including Chapter 36 of the Acts of 1976 giving Cambridge the authority to directly administer it.

Councillor David Sullivan further stated he was submitting these amendments to strengthen the existing ordinance and does the following:

- Repeal exemption which allows tenants to occupy their unit without a permit.
- Permits the Rent Control Board to issue conditional permits.
- Prohibits certain transactions to take place without a permit being granted, i.e., a developer's selling a unit presently under Rent Control.
- Tightens the criteria for granting removal permits.

Councillor David Sullivan emphasized his belief that none of these amendments affect anyone who presently owns a condominium.

At this time Councillor Crane outlined to those assembled the committee hearing process.

Councillor David Sullivan proceeded to take questions of fact from those present including such topics as:

- Examples for how someone could place their units on the market for sale if these amendments were adopted.
- Retroactivity of amendments, if adopted.
- Possibility of getting financing for the purchase of a unit in the future.
- Whether or not the date of August 10, 1979 as outlined in the original ordinance was changed.
- What input the voters may have on any proposed amendments or to Rent Control itself.
- The number of permits requested versus the number issued by the Rent Control Board.

At this time the committee received testimony opposed to the amendments from the following:

Anne Thomas, Esq. - 32 Shepard Street

Hubert Tower - Dana Street

James White - 12 Remington Street

Jean Voke - 626 Huron Avenue

Don Garth - 31 Concord Avenue

Gene Andrese - 45 Trowbridge Street

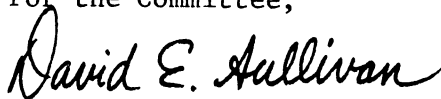
Councillor Crane stated he supports the right of any individual who may wish to purchase a condominium.

Vice Mayor Russell stated he would introduce an order at the upcoming council session which would call for a halt to all prosecutions of occupants of alleged illegal units.

Councillor David Sullivan stated he viewed Rent Control as a consumer protection program overseeing a vital resource which needs preserving, that is the housing market.

The hearing was adjourned at 9:52 PM.

For the Committee,

A handwritten signature in cursive script that reads "David E. Sullivan".

Councillor David E. Sullivan
Chairman

Miriam Shiffer - 993 Memorial Drive
Olive Gilliam - Broadway
Robert Emhaff - 315 Harvard Street
Saul Moffe - Architect
Nancy Miller - 361 Harvard Street
Lee Mason - Chauncy Street
William Rules - Irving Street
George Christadulo - Belmont
Sally Alcorn - 4 Avon Street
Joseph Polesk - Dana Street
Angie Overback - 885 Massachusetts Avenue
Jean Rice - Massachusetts Avenue
Joseph Benoit - 190 Concord Avenue
Eric Fisher, Esq. - 46 Shepard Street
Alex Steiner - 101 Fayerweather Street
James Perini - 20 Concord Avenue
Nickolas Colse - 67 Walker Street
Robert Folgelson - 41 Linnaean Street
Mark McGrath - Langdon Street
Richard Currier - 23 Cambridge Terrace
Fred Meyer - 83 Hammond Street
Richard Sevet - Dana Street

At this time the committee received testimony in support of the amendments from the following:

Frances Siegel - 36 Highland Avenue
Arthur Gallagher
James Mason - 21 Ellery Street

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Comm. from Councillor David E. Sullivan,
Chairman, Committee on Rent Control, trans-
mitting a report of said committee for a
meeting held on May 13, 1981

6/22/81

See Attached Report
w/ amendments #2 & 3
Pub #11 rec'd

6/1/81

Report Received
Proposed Amendments
Passed to 2nd Reading

6/24/81 Resolutions
by C. Sullivan - to Council
for June 1, 1981 6/29/81

Passed to second
reading

Published Hearings

Published Chronicle
- Monday 11, 1981 -
6/29/81 Ordained as
amended to August 1st