

AMENDED REPORT

City of Cambridge

The Housing and Community Development Committee held a public meeting on January 14, 1997, beginning at 4:00 p.m. in the Ackermann Room for the purpose of reviewing recommendations of the City Manager regarding the December 2, 1996 agenda and making recommendations to the City Council.

Present at the meeting were Councillor Francis H. Duehay, Chair of the Committee, Vice Mayor Kathleen Born, Councillor Henrietta Davis, Councillor Antony D. Galluccio, Councillor Kenneth E. Reeves, Mayor Sheila T. Russell, Councillor Michael A. Sullivan, Councillor Timothy J. Toomey, Jr. and Councillor Katherine Triantafillou. Also present were Robert W. Healy, City manager; Susan Schlesinger, Assistant City Manager for Community Development; Roger Herzog, Housing Director, Community Development Department; Donald Drisdell, Deputy City Solicitor; and Vali Buland, Legal Counsel.

Councillor Duehay convened the meeting and explained the purpose. At the last meeting the City Manager was asked to present a specific proposal for case management; the concept of incentive zoning was approved; and the City Manager was asked for additional information regarding condominium conversion protection and a real estate transfer tax.

Councillor Duehay began the discussion regarding a local Condominium Conversion Ordinance (Item 21 on the January 6, 1997 City Council agenda) that would strengthen the state ordinance. He asked Mr. Drisdell to explain the state law.

Mr. Drisdell explained the state ordinance (Chapter 527) and provided a written summary (Attachment 1). Ms. Buland explained that state law provides some rights for existing tenants: a 90 day right of first refusal for existing tenants to buy their units and rent and eviction protections.

Councillor Duehay asked what other cities and towns were doing regarding local condominium ordinances. Mr. Drisdell distributed a summary of other cities and towns local rules under Chapter 527 (Attachment 2). Mr. Drisdell noted that most cities and towns have a permit conversion requirement; and while Lexington tenants have five years to move rather than 1 or 2, most cities and towns don't strengthen tenant protections.

Councillor Duehay asked if a local ordinance can require a removal permit. Mr. Drisdell said that since the passage of Chapter 282 and 400 likely supersedes Chapter 527, that he questions whether requiring a removal permit will now be allowable under Chapter 527.

Councillor Duehay asked if there is a reason for local adoption of the State Law. Mr. Drisdell said there may be some advantages to strengthen local enforcement.

There was further discussion among the Councillors and Mr. Drisdell about the advantage to the local ordinance. Mr. Drisdell explained that the realistic mechanism for enforcement is defense of eviction proceedings.

Councillor Galluccio asked how many master deeds were filed after the passage of Question Nine. He said that the Council should look at the number of conversions before enacting new ordinances. He said that the discussion of enacting a local ordinance could spur new conversions. Mr. Healy said there were 40-50 Master Deeds filed in 1995. The City Assessor is working on getting information for 1996. Councillor Galluccio asked that previous years' (early 90's) data be provided.

Mr. Drisdell said the trigger for tenant protections is "Intent to Sell" not the filing of a Master Deed. He said that enactment of a local ordinance requires a 2/3 vote of the City Council.

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Councillor Duehay said that there was consensus on extending Chapter 527 protections for low and moderate income, elderly and disabled tenants. He asked that the following information be provided: additional conversion information from City Assessor, and if there has been an adverse impact on protected tenants in other communities as a result of conversions.

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Councillor Duehay then moved to the subject of real estate fees and regulations. He asked Mr. Healy to comment on the proposed real estate fees and regulations.

Mr. Healy said that the proposed Housing Bond is a complex, non-traditional, municipal purpose. It requires special legislation. The debt service on the bond could be covered by the revenues from a Real Estate Transfer Tax. The Housing Bond proposal is supportable only if it is offset by a revenue stream.

Mr. Healy said that the proposed Real Estate Transfer Tax is an appropriate approach given the increase in property value due to the end of Rent Control. The Real Estate Transfer Tax could provide a revenue stream to service the bond debt.

Mr. Healy said the proposed Rent Subsidy is bad municipal finance since it doesn't preserve affordability and it doesn't end.

Councillor Sullivan said that the revenue stream isn't necessarily consistent with bond debt service. He is not sure we can handle the additional revenue loss to handle the debt service; we're already allocating \$2.25 million to the Cambridge Affordable Housing Trust. Mr. Healy said the transfer fee and bond debt service wouldn't match exactly.

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Councillor Duehay asked how many units per year can be built without further infusion of City Bond Funds. Ms. Schlesinger said 100-150 units. She said that while we are spending our resources, it is costing much more money per unit to produce housing.

Councillor Francis Duehay said that local real estate prices are rising, federal money is decreasing, and state spending levels are down .

Councillor Duehay asked Ms. Schlesinger what would we do with \$20 million in bond money. Ms. Schlesinger said that we would buy existing property, buy land and bank it for future development, do more new construction, and have the opportunity to compete on the private market.

Councillor Duehay asked Mr. Healy if the Cambridge Housing Authority has the authority to issue bonds. Mr. Healy replied that they do have the authority; but he doesn't know what Housing Authority revenue stream would exist to service the bond.

Vice Mayor Born asked who will have the say over how the money is spent. Bond expenditures would not be location specific - where is the comfort level? She likes the idea but is having trouble with the specifics of it. Ms. Schlesinger said that the Affordable Housing Trust would review and provide recommendations about the funding decisions.

Councillor Galluccio said that he is initially opposed to the Real Estate Transfer Tax but could reconsider if it were based on a higher purchase price threshold.

There was a discussion among Mr. Healy and the Councillors about increased tax revenues and the savings gained from the dismantling of the Rent Control Board and whether or not all that revenue should be earmarked for affordable housing..

Councillor Galluccio asked what the priorities are: long-term development of affordable housing? Expiring use properties? Or short-term solutions to the end of Rent Control? He said another priority is the people who live here now who just lost their protections. Councillor Galluccio stated that if we do effective case management then we could do a short-term subsidy. He wants to separate two issues: the short-term and the long-term.

Councillor Duehay suggested the use of Real Estate Transfer Tax in part for subsidies and in part for long-term affordable housing development. He said that his priorities are: 1. steadily increasing permanently affordable housing using the real estate transfer tax to provide a permanent new income stream, and 2. to fashion an overall package to alleviate the problem.

Councillor Sullivan suggested that \$250,000 might not be the right threshold for the Real Estate Transfer Tax because it could exclude First Time Homebuyers. He asked what security do we have in affordable housing projects to ensure continued public benefit over the full term of the bond repayment.

Councillor Triantafillou asked whether there was a consensus on approving the \$20 million Housing Bond.

Mr. Healy said that in individual discussions with each of the Councillors, there was not a consensus.

Councillor Duehay stated that he is in favor of proposals that will increase the supply of long term affordable housing. He sees the need for a short term subsidy as well.

Councillor Davis stated that she is in basic agreement with Councillor Duehay. She believes that a Transfer Tax should be pursued, and that the Council needs to agree on a level. She is not supportive of rent subsidies, given the problems previously noted.

Vice Mayor Born stated that the rent subsidy proposal ought to be reframed as emergency assistance. She approves of a \$250,000 emergency pool of funds to assist tenants in the transition to market rate housing. She would like to see an identified revenue source for the Bond repayment. She supports a long range plan to achieve an affordable housing goal of 25-30% of the City's housing. She needs to understand more about the process of using municipal bond funds. She does have reservations about the use of such funds on low quality housing.

Councillor Galluccio asked who the City is trying to assist. He believes that Transfer Tax revenues ought to be used for rent subsidies.

Councillor Duehay requested that another Committee meeting be scheduled for January 21, 1997 at 4:00 to continue the discussion of housing issues and proposed programs.

The meeting was adjourned at 6:30 p.m.

For the Committee,

Francis H. Duehay
FDH

Councillor Francis H. Duehay
Chair

SUMMARY OF OTHER CITIES AND TOWNS LOCAL RULES UNDER CHAPTER 527

Cities and towns in the Commonwealth are authorized to adopt local ordinances further regulating the conversion of residential property to either condominium or cooperative forms of ownership. Local legislation must be accompanied by findings that local conditions constitute an acute rental housing emergency.

The majority of existing local ordinances and by-laws do not provide increased tenant protections but appear to be primarily designed to regulate conversions through a removal permit or licensing system, generally linked to the vacancy rate in rental housing.

The only court to review this type of ordinance in the post rent-control era found that the authority to regulate removals is limited by the provisions of St. 1994, chapter 282. In Greater Boston Real Estate Board v. City of Boston, et al., Housing Court Civil Action No. 96-00752 (1996), Judge Daher of the Boston Housing Court found that the City of Boston exceeded its authority in enacting the ordinance in question under Chapter 527. The Court declared that the removal permit provisions of the Ordinance were invalid "[a]s it does not seek to protect tenants facing displacement as authorized by chapter 282, but rather to ban conversion in their entirety."

The Court further reasoned that:

"... the purpose of chapter 527 is to protect tenants and not to regulate housing accommodations. Thus, an insufficient logical nexus exists between the Ordinance's removal permit requirements which regulate buildings and do not protect tenants -- and chapter 527's purpose of protecting tenants." Id. at page 46.

Although the Boston Housing Court decision is not technically binding in Cambridge, it is likely that an ordinance that seeks to regulate removals would be viewed as highly suspect by an appellate court.

A brief summary of some of the cities and towns which have adopted local ordinances or by-laws pursuant to chapter 527 is attached.

Town of Framingham - Condominium Conversion By-law"

Tenant protections track state law. Conversion permit required. Conditions may be applied including affordable housing set-aside. By-law does not apply to buildings of fewer than ten units.

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Tenant protections track state law.

City of Haverhill - Chapter 255 of the City Code -
"An Ordinance Relating to Zoning, Condominium/Cooperative Conversions"

Special permit required to convert. Tenant protections track state law except that a tenant may stay up to three years if the tenant can not be relocated into "housing of equal type for the same rent."

Town of Lexington - "Lexington Housing Conversion and Eviction By-law"

Tenant protections track state law. By-law provides that license required before conversion. Conditions may be imposed including set aside of units for low-income tenants. Tenants may have up to five years to move.

City of Malden - Chapter 13 of the Revised Ordinances of the City of Malden "Condominium Conversion Regulation"

Condominium conversion evictions not allowed unless rental vacancy rate exceeds 3.5%. All tenants receive two year notice, elderly tenants may receive additional time.

City of Northampton - "Housing Conversion and Eviction Ordinance"

Tenant protections track state law. Rental housing can not be converted if vacancy rate is 5% or less.

City of Somerville - Ordinance No. 1985-9, "Condominium Conversion and Removal of Rental Units"

Somerville's ordinance requires a removal permit in order to convert a rental unit occupied by a tenant to a condominium. The application for the removal permit can not be filed with the board until the tenants residing in the unit are given a Notice of Intent to Convert, and the notice period (one year/two years) has expired. Otherwise, the protections essentially track state law.

SUMMARY OF STATE LAW REQUIREMENTS FOR CONDOMINIUM CONVERSIONS

Any owner of a building containing four or more residential apartments ^{1/} who converts or intends to convert to a condominium form of ownership after January 1, 1995, is required to give each tenant notice of intent to convert ("conversion notice"). "Conversion" in this context, means offering one or more condominium units for sale. The conversion notice must include a statement of the tenant's rights and must be hand-delivered or sent to each tenant by certified mail.

Once the tenant receives the conversion notice, the state law guarantees protections against rent increases and eviction as well as help locating different housing. These protections and benefits apply for one year after the owner gives the conversion notice (two years for elderly, handicapped or low- or moderate-income tenants).

These protections are summarized below:

1. Definitions.

"Low or Moderate Income" -- where the total household income for year before the conversion notice is received, is not more than 80% of the median income set by HUD.

"Handicapped" -- where any member of the household, as of the date of receiving the conversion notice, is physically handicapped in that he or she has a disability that substantially limits one or more major life activities.

"Elderly" -- where any member of the household is 62 or over as of the date of receiving the conversion notice.

2. The Right of First Refusal. Every conversion notice must include the price that the owner is asking for that unit. The tenant in the unit then has ninety days to negotiate the sale of the unit with the owner. The owner cannot offer the unit for sale to anyone else during those ninety days. If the tenant does not purchase the unit, the owner cannot offer it for sale to anyone else at a lower price for an additional ninety days.

^{1/} Two or more adjacent or adjoining buildings under common ownership, which together contain four or more residential units, are subject to this law.

2

3. Rent Protections. Rent increases are limited to 10% of the current rent or the increase in the Consumer Price Index for the prior year, whichever is less.

4. Eviction Protections. A tenant can be evicted only for non-payment of rent or violation of the tenancy agreement.

Elderly, H-C, low-income - no evict to 2 yrs/all other types

5. Relocation Benefits. The owner is required to help his elderly, handicapped and low- or moderate-income tenants find comparable housing in the same city at a comparable rent. If the owner does not do this, the tenant is entitled to receive an additional two years of protections.

6. Moving Expenses. If the tenant voluntarily relocates before the notice period is over, and if the tenant does not owe rent, the owner must pay the tenant's documented moving expenses up to a maximum of \$750 (\$1,000 for low- or moderate-income, elderly or handicapped tenants).

7. Court Proceedings. The tenancy is ended when the conversion notice expires. If the tenant has not moved, the owner can file an eviction action in court.

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ORIGINAL REPORT

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A report was received for a meeting held on January 14, 1997 for the purpose of reviewing recommendations of the City Manager regarding the December 2, 1996 agenda to continue discussion on the various options for preserving affordable housing in the City.

In City Council January 27, 1997

*Report as
amended accepted
Placed on file*