C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council ______________________ 199

C. Myers - To Not accept Report / Agenda #44

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	✓				
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mr. Kenneth E. Reeves	✓				
Mrs. Sheila T. Russell		✓			
Mr. Walter J. Sullivan		✓			
Mr. Timothy J. Toomey, Jr.	✓				
Mr. William H. Walsh		✓			
Mayor Alice K. Wolf	✓				
	6	3			

C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council Aug - 7 1991

C. Myers - Moved to Substitute C. Cyr's Order to Place agenda # 44 on File

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr		✓			
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mr. Kenneth E. Reeves		✓			
Mrs. Sheila T. Russell		✓			
Mr. Walter J. Sullivan		✓			
Mr. Timothy J. Toomey, Jr.	✓				
Mr. William H. Walsh		✓			
Mayor Alice K. Wolf		✓			
	3	6			

Failed

ALTERNATIVE PLANS FOR AFFORDABLE HOUSING FEE

I. INTRODUCTION

In developing the proposed affordable housing fee, several alternative plans were considered. Those plans included:

1) a two percent of rent fee with no exemptions;

2) a three percent fee with no exemptions;

3) a five percent fee with exemptions for all tenants with incomes of less than 120 percent of median income; and

4) a five percent fee with exemptions for all tenants with incomes of less than 100 percent of income.

All plans were evaluated in accordance with the following criteria:

- Amount of money raised. In its May 6, 1991 order, the City Council requested that the plan provide for annual funding in the amount of approximately one million dollars.

- Affordability protection. This criteria relates to whether the plan provides adequate protection for low and moderate income tenants.

- Administrative cost and feasibility.

- Legality. The attorney consulted by the City in the preparation of the plan emphasized that in his considered judgement, the City can design a program which will survive legal challenge, but that a poorly designed program could fail to survive legal challenge.

- Overall compliance with City Council's May 6, 1991 order. The City Council requested inclusion of the following elements in its order:

a) Annual funding shall be in the amount of approximately one million dollars.

b) A surcharge, fee or other levy shall be paid by non-exempt tenants based upon a percentage of monthly rent, and paid monthly to the landlord, along with the tenant's rent.

c) The percentage of rent which is to be charged shall be determined by the Rent Control Board based upon a review of the existing profiles of tenants per data available to the Rent Control Board and other City agencies.

d) Exemptions are to be granted to those tenants whose ability to pay the fee is administratively determined to be limited.

Proposed exemptions include:

1) Those tenants living on fixed incomes, such as persons receiving public assistance, the elderly and the disabled;

2) In addition, it is proposed that exempt income classifications be developed for various family sizes.

e) It is proposed that any model adopted by the Rent Control Board be one which focuses upon exempt tenants filing an affidavit of exemption with the Rent Control Board and where all non-exempt tenants will be assessed the fee.

II. EVALUATION OF OTHER PLANS

1. Two Percent Plan.

It would be possible to charge the fee of 2% of the legal maximum rent to all tenants with no exemption, or with a very limited hardship exemption. Such a scheme, with no exemptions, would raise $1,245,645, which is more than the $1 million goal set by the City Council. Administrative costs would be significantly reduced because there would be no cost for processing exemptions. General mailings for the program would be half those required by a program with exemptions. So long as the program conforms to the general guidelines of the affordable housing fee program currently recommended by the City Manager (a fee which is closely connected to the rent control program as a whole, charged as a part of rent, and enforced by methods related to the rent control system), this scheme is likely to survive legal challenge.

The biggest drawback of this plan is its lack of protection of affordability. Although the average fee (as calculated on the average rent control rent of $443 per month) is only $8.86 per month, there will be situations in which the fee represents a hardship to low income tenants. A limited hardship exemption could provide some mitigation, but an administratively low-budget, limited exemption is likely to miss some of the tenants who need it most.

With regard to the criteria of how well this plan would meet Council objectives, it meets the revenue criteria, but it does not respond to the Council's stated desires to provide an extensive exemption system for protection of affordability.

2. <u>Three percent plan</u>.

This plan is identical to no. 1 above, except that the fee charged would be three percent of the rent controlled rent. For the average rent, this would amount to $13.29 per month. Under this plan, the total amount collected would be approximately $1,868,850 per year. Again, the problem presented by this scheme is the lack of protection of affordability.

3. <u>Five percent with exemption for all tenants with incomes of less than 120% of median income</u>.

Under this plan, assuming all of those persons eligible for exemptions received them, the total amount collected would be $603,000 per year. A larger amount of those funds would be used for administrative costs than in the program as currently proposed because 80% of rent controlled households would be eligible for the exemption. Because the exemption represents a public choice to confer a benefit on a group with a much higher income than those which are generally benefitted by public policies, there is an increased risk that a court will find the provisions to be unconstitutional. Legal problems may also be engendered by the fact that the fee will be charged to so small a percentage of the rent controlled tenants. With respect to the City Council's order, this plan would raise substantially less money than the goal set by the Council. Although the plan uses an exemption model, the exemption is much broader than that set forth in the Council order.

4. <u>Five percent with an exemption for all tenants with incomes of less than 100% of median income</u>.

The total amount collected under this plan would be $928,000. As in no.3 above, a larger amount of those funds would be used for administrative costs because 70% of all rent controlled units would be eligible for the exemption. As set forth in no. 3 above, there would be increased risks of a court sustaining a legal challenge to the public purpose of the benefit of the exemption.

CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT
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WHY PROPERTY OWNERS SHOULD COLLECT THE AFFORDABLE HOUSING FEE

There are several reasons for designing the affordable housing fee program to require the fee to be paid by tenants to the property owner each month as a part of the rent and then collected by the City from the owners. Several of these reasons are summarized below.

<u>Cost</u>: Billing landlords requires preparing, mailing and processing approximately 5,000 bills per billing period. Billing tenants would involve significantly more bills, and substantially more changes per billing period due to turnover. Whenever a tenant moves, until the City was notified, the bills would be sent to the wrong person. There would be increased costs to cover tracking tenant turnover. Staffing and mailing costs would be increased. While it is preferable for tenants to pay once a month rather than less frequently because each payment is smaller, the cost of billing each tenant once a month is significantly more than the cost of billing each property owner once a month. Since administrative costs must come out of the fees collected, money spent for administration is not available for the actual program.

<u>Administrative Feasibility</u>: A major problem with individual billing of tenants is that it requires discovering and tracking the names of all rent controlled tenants. This is not information that the City presently has. Past experience has established that the voter lists are not sufficiently accurate and complete for billing purposes. When the City explored the possibility of obtaining this information from the State Department of Revenue, it became clear that this information is not readily available to the City in any usable form from the Department of Revenue. In addition, individual billing of tenants would require setting up and maintaining separate accounts for each tenant, rather than for each building. This increases enormously the amount of paperwork and accounting work required.

<u>Collection and Enforcement</u>: The City has no mechanism for enforcing payment. Based on experience of City in attempting to collect automobile excise tax before nonpayment resulted in inability to renew auto registration, it is clear that

collection is significantly reduced if there is no effective enforcement mechanism. Making the fee part of the rent, which is already paid regularly by tenants increases the likelihood of collection. There is also an effective enforcement mechanism available to backup payment by the property owners to the City because if the landlords do not remit the amounts collected, they cannot receive rent adjustments for the properties. No such effective mechanism exists where the City collects from the tenants. Thus the increased administrative costs must come from a smaller base of funds collected.

Legal and Philosophical: The basic idea is that this fee is a central and necessary feature of a rent control program which protects low income people and insures the survival of the structures in which they reside. The fee is similar to a replacement reserve fund required by many finance agencies both public and private. Over time this fund will be available to all rent controlled properties and is an important feature to preserve the stock and its affordability. Therefore paying the fee as part of the rent is appropriate and underlines that this is a payment for a benefit to the renter - just as the payment for fuel or water as included in the payment of rent is a payment for the services of heat and water. So conceived and administered, the scheme is most likely to be viewed by the courts as a legitimate fee rather than an impermissible tax.

44.

CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

July 29, 1991

To the Honorable, The City Council:

Attached is additional information requested by the Council regarding the proposed Afffordable Housing Preservation Fee. Attachment 1 is a summary of possible alternative plans for the fee and an evaluation of the strengths and weaknesses of these alternatives. Attachment 2 discusses the reasons for requiring collection of the fee by the property owners and not the City.

Very Truly Yours,

Robert W. Healy
City Manager

Attachments

NON CONSENT AGENDA ITEM # 44 5-9-29

Information relative to the proposed
Affordable Housing Preservation Fee.

In City Council,

August 7, 1991

Agenda Item
Not Accepted
6-3-0.