



RENTAL HOUSING ASSOCIATION • 101 FEDERAL ST. • BOSTON, MA 02110 • 617-345-0070 • FAX# 617-345-9327

January 23, 1995

**BY FAX AND BY HAND**

Cambridge City Council  
Cambridge City Hall  
Cambridge, MA

Dear Councillors,

The Rental Housing Association (RHA), a division of the Greater Boston Real Estate Board, is a private trade association of rental housing owners and managers from around the Commonwealth. As an organization, RHA represents in excess of 100,000 units of housing throughout Massachusetts, with many of these units being in the City of Cambridge.

We have reviewed the proposed ordinance inserting a new Chapter 8.45, entitled "An Ordinance Relating To The Conversion Of Rental Housing To Condominiums And Cooperatives", into the Municipal Code of the City of Cambridge. The attached memorandum of opposition outlines several legal flaws in the proposal.

For the reasons outlined in the enclosed, we would strongly urge you to reject this amendment.

Sincerely,

  
John A. Coppola  
President

MEMORANDUM IN OPPOSITION TO PROPOSED  
CAMBRIDGE ORDINANCE RESTRICTING CONDOMINIUM CONVERSIONS

The City Council of Cambridge has proposed the adoption of a new ordinance (Chapter 8.45) to prohibit certain apartments from being converted to condominiums or cooperatives without a permit. For the reasons set forth below, it is respectfully submitted that the ordinance, if adopted, would be unlawful:

1. The City Council is purporting to act pursuant to authority conferred by Chapter 527 of the Acts of 1983. That statute generally enables cities and towns to regulate certain aspects of conversions. However, Section 2 of Chapter 527 states that:

"Any city or town, which has adopted an ordinance or by-law for the regulation of the conversion of housing accommodations to the condominium or cooperative forms of ownership and evictions related thereto pursuant to the authority conferred upon such city or town by special act, shall be exempt from the provisions of this act. . . ."

When Chapter 527 was enacted, the City of Cambridge clearly had adopted a detailed scheme of conversion restrictions pursuant to its special rent control enabling act. Thus, Cambridge is not empowered to rely on Chapter 527. In a similar context, the Supreme Judicial Court has held that the City of Boston may not utilize Chapter 527. Greater Boston Real Estate Board v. Boston, 397 Mass. 870, 875 n.5 (1986).

2. Even if Cambridge may avail itself of Chapter 527, that statute does not contemplate the type of sweeping restrictions embodied in the proposed new ordinance. From a procedural perspective, local ordinances adopted under Chapter 527 must be accompanied by findings that local conditions constitute an acute rental housing emergency. The alleged findings set forth in Section 1(a) of the proposed ordinance are clearly insufficient and comprise little more than a recitation of economic factors which existed, if at

all, a decade or so ago. For example, Section 1(a) refers to the "conversion of significant numbers of rental units into condominiums or cooperatives", ignoring the protracted real estate recession which reduced such conversions (even where legally allowed) to a mere trickle.

3. Substantively, Chapter 527 mandates that any locally-imposed restrictions be designed "for the protection of tenants". In this regard, it is too late for Cambridge to seriously suggest that barring conversions is necessary to prevent abuses to which tenants might otherwise be subject. Indeed, the Supreme Judicial Court has already so ruled in Steinbergh v. Rent Control Board of Cambridge, 406 Mass. 147 (1989). There, the Court explained that conversions and the sale of individual units to investors do not diminish the rights of occupants living in those units. Likewise, in the Greater Boston Real Estate Board case, the same Court found that there was "minimal, if any, logical nexus" between conversion restrictions and the preservation of the local rental housing stock:

"Investors, who by definition would be likely to offer their units for rent, are prohibited from obtaining permits necessary for condominium and cooperative housing transfers even in circumstances where no tenant is evicted and no unit is in fact removed from the rental market." 397 Mass. at 878.

A similar result was reached by a single justice of the Court in a decision involving comparable restrictions which the Town of Brookline attempted to impose. Zuker v. Brookline Rent Control Board, Supreme Judicial Court No. 87-77 (1988).

4. Absent Chapter 527, there is no other source of authority for what Cambridge proposes to do. Chapter 282 of the Acts of 1994, which was recently enacted in order to bring rent control and similar regulatory systems to an end, states that:

"Notwithstanding any general or special law to the contrary, no city or town shall have authority to enact, implement, maintain,

administer or enforce rent control except to the extent expressly set forth in this act. . . ."

For this purpose, the term "rent control" is defined in Chapter 282 to include "controls, restrictions or other regulations imposed by any city or town with respect to . . . the conversion of . . . housing accommodations to the condominium or cooperative form of ownership."

5. The United States Supreme Court, in cases such as Nollan v. California Coastal Commission, 483 U.S. 825 (1987), has made it clear that governmental regulations which unnecessarily restrict the use of property can be deemed confiscatory and therefore unconstitutional. Although protecting tenants may constitute a legitimate governmental purpose, that purpose, for the reasons already explained, would not be served by the adoption of Chapter 8.45. See Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977). Property owners deserve to be free from the invidious premise that those wishing to buy and sell condominium units have as their motive the devious displacement of existing tenants and the eventual removal of units from the rental housing market.

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Consent Communication #4

A communicaiton was received from John A. Coppola  
President of the Rental Housing Authority (RHA)  
a division of the Greater Boston Real Estate  
Board, regarding the proposed ordinance entitled  
"An Ordinance Relating to Conversion of Rental  
Housing to Condominiums and Cooperatives."

In City Council Janaury 30, 1995