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SPOA SMALL PROPERTY OWNERS ASSOCIATION
102R INMAN STREET, CAMBRIDGE MA 02139 • (617) 497-5341

December 9, 1996

Mayor Sheila Russell
City Manager Robert Healy
City Councillors
City Hall
Cambridge, Massachusetts 02139

Re: Accuracy in Reporting Federal Laws and Policies Affecting Expiring-Use Tenants

Dear Mayor Russell, City Manager Healy and City Councillors:

Since last Monday's hearing (12/2/96) of the Council's Subcommittee on Housing and Community Development, we have carefully reviewed the federal laws affecting expiring-use properties and tenants.

We were surprised to discover some serious inaccuracies and omissions in the public debate.

This letter attempts to convey the current state of federal law and correct certain misinformation resulting from last Monday's hearing. The City Solicitor and the HUD Office of General Counsel can verify its accuracy.

IN GENERAL

Throughout the many months of discussion on expiring-use housing, tenants have been told that rent control is a procedurally permissible option. In fact, federal law (not just Question 9) specifically and categorically preempts any rent control or other local regulation directed only at current or former expiring-use properties.

Cambridge's expiring-use home-rule petition is, therefore, null and void under federal law. This information has not been communicated to tenants and possibly not even to City Councillors.

We hereby request that the City Council ask the City Solicitor to review and publicly report the legal status of the expiring-use home-rule petition relative to federal preemption law.

In addition, City policymakers have repeatedly told current expiring-use tenants that they have little or no protections, and most protections they might have had have been repealed. This assertion is not true.

This letter will explain the federal preemption of expiring-use rent control and then outline federal subsidy protections for current tenants.

FEDERAL PREEMPTION OF RENT CONTROL

So far entirely overlooked in the months of expiring-use debate is Section 4122 of the expiring-use statute (U.S. Code Title 12, Chapter 42, Subchapter 1) which is still in effect and contains an express preemption, first, of any state or local law or regulation that "inhibits prepayment" and, second, any state or local law or regulation that is "limited only to" expiring-use housing.

Both of these express preemptions apply directly and precisely to Cambridge's expiring-use home-rule petition.

Specifically, Section 4122(a)(1), (3) and (4) provides that "no State or political subdivision of a state may establish, continue in effect or enforce any law or regulation that":

> "(1) restricts or inhibits the prepayment of any mortgage...
>
> "(3) ...limits or impairs the ability of any owner...to increase rental rates..."
>
> "(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage....Any law, regulation, or restriction described under paragraph (1), (2), (3) or (4) shall be ineffective..."

The Cambridge expiring-use home-rule petition violates:

> Paragraph (1) above because it "inhibits prepayment," its clear intent.
>
> Paragraph (3) above because it regulates rents and thus "limits ability to increase rental rates." And it violates
>
> Paragraph (4) above because it "is limited only to" prepaid housing or, as the petition says, "formerly governmentally involved housing."

"Rent control" is even specifically mentioned in Section 4122, which says that preemption shall not prevent "...rent control...*to the extent such law or regulation is of **general** applicability to both housing receiving Federal assistance and nonassisted housing.*"

The home-rule petition is not "of general applicability" because it does not apply to nonassisted housing but only to "governmentally involved and formerly governmentally involved housing."

The home-rule petition is exactly the kind of law that Congress intended to prevent and is a legal nullity.

The City has failed to inform Cambridge citizens that the expiring-use home-rule petition faces a head-on confrontation with federal preemption law. Not only does the petition have little chance of passage in the State Legislature, but if passed, it would clearly be knocked out in court -- at great expense to Cambridge taxpayers.

INACCURATE TESTIMONY ON TENANT PROTECTIONS

Susan Schlesinger at Monday's hearing deemed only two out of Cambridge's seven expiring-use buildings as "safe" and said: "Tenants should not be overly concerned in those buildings that they will lose their housing." She is saying that tenants in the other five buildings "should be concerned" about losing their housing. But that is untrue. The truth is that *all low- and moderate-income tenants presently occupying all Cambridge's expiring-use buildings will* *(if their owners prepay) be eligible to receive "enhanced" federal subsidies so generous that the owners can be expected to accept them* (as we shall describe more fully below). Tenants, therefore, need not be overly concerned about their housing in any of the expiring-use buildings.

Schlesinger's remarks are misleading to tenants because she is not distinguishing between *units*, which may go up to market rent, and *tenants*, who will get tenant-based subsidies to fill the gap. As director of Community Development, Schlesinger is obviously concerned about development -- permanent affordable housing units owned directly or indirectly by the city. She is not concerned about current tenants. She therefore portrays the loss of permanent affordable units as a "housing disaster" for tenants, needlessly scaring current tenants and failing to inform them of what exactly they can expect.

Schlesinger made another misleading statement unnecessarily frightening to current tenants. She said: "The property owner [in some buildings] can raise their rents up to 30% of 95% of median, which...could be a pretty stiff rent increase for people." Again, she fails to mention "enhanced" federal subsidies available to current tenants, which will fill the gap between 30% of the *tenant's* income whatever it is (50% or 80% or 95% of median) and whatever the new rent is.

Mindful of the effects of prepayment, the federal government has provided a sort of "vacancy decontrol" for all current expiring-use tenants, protecting them with vouchers indefinitely while letting the units go to market rent. Current tenants are not being told about this protection.

Similarly, Susan Hegel from Cambridge and Somerville Legal Services said at Monday's hearing: "In September of 1996, when Congress passed the appropriations bill for HUD, they made numerous changes to the statute that's on the books and one of the changes is very explicit that those tenant protections no longer apply." [All quotations transcribed from video tape.]

Ms. Hegel failed to point out that the September appropriations bill ***replaced previous tenant protections with broader, "enhanced" ones***. To say that certain tenant protections "no longer apply" and neglect to mention the new protections that replaced them is misleading.

TENANT PROTECTIONS OLD AND NEW

The September 1996 Appropriations Act (H.R. 3666) replaced subsections (b), (c) and (d) of Section 4113 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 which allowed expiring-use owners to prepay.

The 1996 Act *leaves intact* subsection (a) of Section 4113, which authorizes section 8 certificates/vouchers for all low-income tenants displaced by prepayment. And the 1996 Act *leaves intact* subsection (e) of Section 4113, which requires HUD to allocate assistance so that "the total number of assisted units...does not decrease because of prepayment." The federal government has been unwavering since 1990 in its intention to provide indefinite subsidies to current tenants in expiring-use buildings.

Now to the changes.

THE OLD LAW: The original 1990 Act provided vouchers indefinitely for *low-income* tenants with incomes up to **80%** of median in expiring-use buildings and provided that all other tenants could remain in their units at the same rent for three years after prepayment. Also, all get some relocation assistance if needed.

THE NEW LAW: The new 1996 Act provides vouchers indefinitely for all *low- and moderate-income* tenants with incomes up to **95%** of median, *and the vouchers are "enhanced."* Middle-income tenants (over 95% of median income) lose their 3-year rent freeze. And relocation assistance is dropped.

The old law would have indefinitely protected only 49% of the tenants in Cambridge's expiring-use buildings; the new law indefinitely protects 89% of the tenants in these buildings. This is hardly a reduction in protections. (Figures based on numbers of low- and moderate-income tenants supplied on Fact Sheets on Expiring-Use Buildings, Community Development, 11/25/96).

Unlike the old vouchers, the new vouchers are "enhanced," which means they will pay ***more than*** the HUD-defined standard rent up to whatever the owner asks for rent so long as it is "reasonable in comparison with rents charged for comparable unassisted housing units in the market." The deleted subsection (d) in the old law, which required owners to accept section 8 vouchers at reduced HUD-defined rents, is therefore not necessary under the new law. Again, "enhancing" vouchers is hardly a reduction in protections.

In view of these vastly improved tenant protections, dropping relocation assistance and a 3-year rent freeze for *middle*-income tenants is not a serious loss. Tenants with incomes above 95% of median can afford market rents and moving expenses.

The following table summarizes these changes:

Changes in Protections for Cambridge's Expiring-Use Tenants

(referenced to subsections (a) - (e) of Section 4113 of 1990 Act)

	(a) Continuous vouchers authorized	**(b)** Relocation assistance	**(c)** 3-year rent freeze	**(d)** Owners must accept vouchers	**(e)** No. of assisted units to remain the same
THE 1990 LAW (Sec. 4113)	**YES** for low-income tenants only (up to 80% median) at HUD-defined rent	**YES**	**YES** all tenants	**YES**	**YES**
THE 1996 LAW (H.R. 3666)	**YES** for low- and moderate-income tenants (up to 95% median) ***and*** enhanced to full market rent	**NO**	**NO** low & mod protected by continuous vouchers; tenants over 95% median lose this protection	**NO** but not necessary since vouchers are enhanced to what owners ask if comparable to market rents in area	**YES**

Note: all vouchers kick in when a new rent exceeds 30% of tenant's income.

To describe the 1996 law as a repeal of tenant protections is untrue and very misleading.

APPROPRIATIONS FOR VOUCHERS

In the old and the new law, all vouchers are "subject to appropriations." This is not a change.

Susan Schlesinger has repeatedly said that vouchers are authorized only for one year and that it is "unclear" whether or not the government will continue to fund vouchers beyond one year. At Monday's hearing she said: "If you are a tenant and if you live in a building where there is prepayment, at least you will be receiving a section 8 voucher for at least a year."

What the City has not done is inform tenants:

(1) that all government funding appropriations (federal, state, and city) are voted for just one year at a time and

(2) that the federal government has never cut any already existing subsidy program. Never. Ever.

The City appears to want to upset tenants and lead them to believe their own housing (as opposed to the City's stock of affordable housing) is in danger.

Morris Barry, the expiring-use specialist from the HUD Regional Office who testified at Monday's hearing, said in a phone conversation that the federal government has "never cut vouchers for as long as I have been here" -- nine years -- and said further: "I have never heard them remove a voucher from circulation."

The critical distinction is between existing levels of subsidy and expansion of programs to new levels. The only cutting the federal government has done is in the *expansion* of programs to new levels. Existing subsidy levels are being maintained without fail.

Mr. Barry also said that, if the federal government were to cut housing subsidies more than at present, it would phase out funding for currently authorized vouchers *after* existing tenants no longer needed them. The government is not going to take subsidies away from presently eligible tenants. They will remain protected as long as they need to be.

Instead of telling the simple truth, the city is needlessly engendering fear in tenants that is completely unjustified.

CONCLUSION

We believe that the City Council should have the home-rule petition reviewed immediately by legal counsel and should direct City administrators to make a concerted effort to inform expiring-use tenants of their federal subsidy protections in clear, unmistakable language.

Sincerely,

Lenore Schloming
President

Jon R. Maddox
Vice-President

Skip Schloming
Newsletter Editor

Consent Communication #12 S-633

Communication was received from Small Property Owners Association, regarding the accuracy in reporting Federal Laws and Policies Affecting Expiring-Use Tenants.

In City Council December 16, 1996

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