C. C. 106

City of Cambridge

PETITION OF City Council - Low & Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional & Retail Development - October 24, 1984

Petition filed with the City Clerk

(all hearing to be completed 65 days from filing date with the City Clerk)

2 days Oct.
30 days Nov.
31 days Dec.
2 days Jan.
65 days = January 2, 1985 = all hearings

In City Council — October 29, 1984

Referred to the Planning Board for report — October 29, 1984

Planning Board Hearing — December 18, 1984

(CITY COUNCIL must act within 90 days of the Planning Board's hearing which would be March 4, 1985.)

27 days December
31 days January
28 days February
4 days March
90 days = March 4, 1985

City Council hearing published - Chronicle - November 15, 1984 and November 22, 1984

Hearing before the City Council — December 4, 1984 at 5:30 p.m.

Report to the City Council — December 10, 1984 - Tabled

Passed to a second reading — January 21, 1985
published — Chronicle - January 24, 1985

Ready for Ordination
. published

COMPLETION DATE: March 4, 1985

3/4/85 Placed on file due to expiration of time limit

C. C. 106

City of Cambridge

PETITION OF the City Council ~~David Sullivan~~

re: Low & Moderate Income Household Inclusionary Housing Requirements for Residential, office & Institutional & Retail Development.

Petition filed with the City Clerk October 24, 1984

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Nov 30 days
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In City Council Oct. 29, 1984

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published

COMPLETION DATE: March 18, 1985

Be the One Who Can Save a Life!

Simply Because You've Cared Enough to Take a Few Hours of CPR Training.

You're there when it happens! Someone — maybe a family member or a friend — suffers a heart attack. Or drowning, suffocation, drug overdose, electrocution, severe choking . .

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The hope, they say, is that a growing number of concerned people are seeking CPR training and certification.



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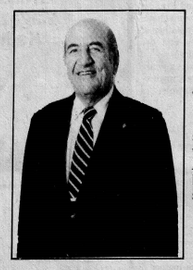

Join the Cambridge CPR Today

"You could be the one to save a life! With CPR training, you know what to do when someone suffers cardiac arrest. And you know — because you're trained — that giving CPR is as simple as A-B-C. By giving a few hours of your time now, to become certified in CPR, you might just be giving someone, some day, a chance to go on living."

George Haddad, Chairman
Cambridge CPR Program

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City Hall
Cambridge, MA 02139
ATT: Donna
TEAR SHEET C NOV. 15

Cambridge Chronicle

VOL. 138, NO. 46 Copyright 1984 Cambridge Sun Publishing Company THURSDAY, NOVEMBER 15, 1984 TWO SECTION PAGES 1-20; 21-12A 30 CENTS



CHRIS CONNAIRE (Photo by Don West/Fotografiks)

For art's sake

Connaire ushers city arts council into second decade

By Reva Levin
Special to the Chronicle

Chris Connaire sees Cambridge a bit differently than the rest of us.

As executive director of the Arts Council for the last three years, her main concern is with the quality and frequency with which Cantabrigians experience the arts.

Ideally, she would like to see art so much a part of neighborhood life that every person would be touched by it daily. She would like people who have never been to a dance concert or a live play to go — often, if possible. And, for good measure, she would like all residents, not just local artists, to have something creative in which to participate.

Her long-range vision is to have the arts be a regular meal — not just an occassional dessert.

What exactly, then, is meant by art? The Arts Council definition is broad, which is best shown by the array of projects it has funded since its creation ten years ago. They include the annual River Festival, a wind sculpture in the Central Square triangle, the fireman's mural in Inman Square and a brick sculpture in Rindge Field. Then there are music workshops in the Kennedy School daycare program, dance workshops for grammer school children, and bluegrass concerts at senior centers. Not to mention "The Works" lettering on city DPW trucks and choosing the city's official letterhead. And that is only the beginning.

Ten years ago the Council had one paid staff member and a $ 25,000 budget. There are now nine fulltime staff members, plus volunteers and interns; the budget has grown to nearly $400,000, and there are branches specializing in community arts, public art, and arts on the MBTA.

But in the early part of 1975, the Arts Council was nothing more than an idea.

"It actually began when my neighbor said to me one day 'why is Cambridge such an ugly city?,'" remembers Ronald Lee Fleming, an urban planner who has been active with the Council since its inception. "He happened to be on the board of Dayton-Hudson Corporation, who owned Lechmere at the time. He asked me how they could invest their money to make the city look better."

That inquiry was enough to motivate Fleming to write a proposal, signed by the city manager, to apply for a $25,000 grant from the National Endowment for the Arts. Fleming's proposal was timely. Just six months earlier, Councillor David Wylie introduced a measure to create a Cambridge Arts Council. The ordinance passed, but it wasn't until the grant was approved

(Continued on page 13)

Special Cambridge Arts Council anniversary section begins on page 9

Charge 'bad faith'

Teachers launch contract job action

By Jack Hayes
Staff writer

Two and a half months after their last contract expired, Cambridge's 880 public school teachers and administrators are still without a contract and they're growing impatient.

Following a marathon negotiation session last Thursday night that teacher representatives say yielded "little progress" toward a new contract, teachers were asked to withhold voluntary services at their schools beginning Tuesday.

The request came from the Cambridge Teachers' Association's (CTA) negotiating team and was intended to draw attention to what teachers have described as "bad faith bargaining" on the part of the school committee's negotiating team which is made up of six high-level school dept. administrators.

School Superintendent Robert Peterkin last Friday called the move by the CTA "premature." He added that school committee negotiators had "extended themselves significantly" and had worked with the CTA negotiators to reduce the points of disagreement about the contract from 300 to about ten.

In spite of a suggestion by Peterkin that teachers continue to provide voluntary services, teachers at schools around the city have been performing only those services required by their contract since Tuesday.

The action, known in union jargon as a "work-to-rule" protest, means that teachers were not available after hours for parent or student conferences, that they put in no extra time correcting student papers or preparing classes, that they were unavailable to monitor hallways or to help in any way other than what is specifically spelled out in their contract.

As part of the action, teachers entered their schools 15 minutes before their first class and left for the day 10 minutes after classes ended as stipulated in their contract.

This situation causes a "moral dilemma" for most teachers, according to Edward Sarasin, principal of the Cambridge Rindge and Latin School (CRLS) and a member of the MTA.

"They don't want to hurt the students, yet they want to make a statement in terms of their needs," he said while cheerfully ushering students into the high school on the first day of the work-to-rule action.

Negotiators for the CTA claim their needs are far from being met by contract proposals put forth thus far by the school committee's negotiating team.

Among the main points of contention are pay increases, health benefits and whether teachers and administrators should be required to put in more hours per week and more days per year.

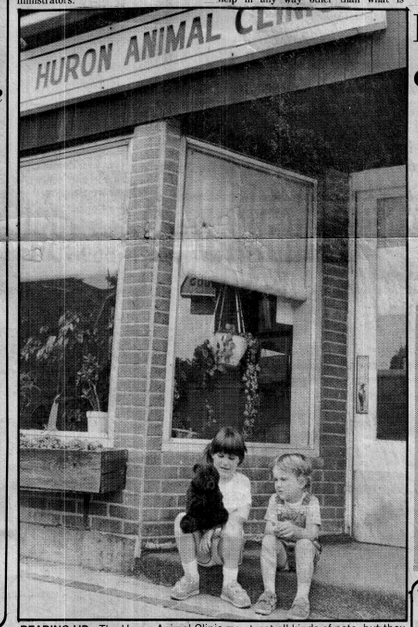
Noonan-Forster said that proposal of such contract change so far into the negotiation process outraged the MTA's negotiators and prompted the association to file an unfair labor practice complaint with the state.

"You don't go after the major benefit your employees have and treat it so casually," she said.

The school committee's negotiators maintain that they offered the proposal at the behest of the city manager who hopes to reduce the city's expenses by lowering the city's share in employee health care payments.

The school committee has also proposed that teachers spend an additional three

(Continued on page 23)



BEARING UP—The Huron Animal Clinic may treat all kinds of pets, but they apparently couldn't do much for the stuffed teddy bear named Katie belonging to Anna, left, and Lucas Coffeen-Fillingham. (Photo by Carolyn Hine)

Red Line users may get early Christmas present

The MBTA just might have an early Christmas present for area merchants and residents.

According to State Sen. George Bachrach, D-Watertown, the MBTA is drafting a "working plan" to open the Porter and Davis stations on Dec. 8.

Bachrach said the MBTA was to finalize the opening date either yesterday or today, after "Chronicle" presstime.

But Listo Fisher, an MBTA spokesman, said Tuesday evening that MBTA General Manager James O'Leary had no announcement to make concerning a date for the opening.

He asserted that several dates for the opening were under consideration, but he declined to comment further.

Despite Fisher's remarks, though, Cambridge Mayor Leonard Russell said MBTA officials told him earlier this week that the stations would be opened "within the first weeks of December."

Like Bachrach, Russell said a formal announcement was expected from the MBTA either yesterday or today.

"I'm disappointed that the original date (Nov. 19) was not adhered to," said Russell. "Like their service, (the MBTA) has been very unpredictable."

Russell said he is "disturbed" that the

(Continued on page 2)

Early deadlines, distribution set for next week's 'Chronicle'

Because of the Thanksgiving holiday, next week's issue of the "Chronicle" will be distributed on Wednesday, Nov. 21.

Accordingly, the "Chronicle" has established early news and advertising deadlines for next week's issue.

All display and legal advertising copy must be submitted to the main office of Dole Publishing, 145 Elm St., Somerville, by 3 pm, tomorrow, Nov. 16. The deadline for help wanted and classified advertising will be Monday, Nov. 19, at 4 pm.

The deadline for all listings — What's happening and Arts at a glance — is today, Thursday, at 5 pm at the "Chronicle" news office, 678 Mass. Ave., Central Square, Cambridge. The deadline for news releases, letters to the editor and photos is tomorrow, Friday, at 3 pm.

Both the "Chronicle" news office and the main office of Dole Publishing will be closed all day on Thursday, Nov. 22.

We wish all of our readers a most happy Thanksgiving holiday.

On the inside

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Plugging in

Who's who in the bidding for city cable franchise

(There are many people in Cambridge these days asking the simple question, "When are we getting cable?"

The answer, though, is not so simple. The city is in the final stages of awarding its cable license, but the actual viewing of cable in homes is still at least a year and some months away.

Perhaps the more appropriate question at present would be, "Who is going to provide cable?" It is a question more immediate and more crucial because the city will probably award its 15-year franchise sometime within the next three or four months.

Three applicants are vying for the license. A fourth, Cablevision of Cambridge, withdrew from the competition a few weeks ago for fear that its application was not sufficiently unique to impress city officials.

In a word, uniqueness may best describe the cable sweepstakes so far. After all, one applicant has submitted a six-volume application, and another has presented itself as a cooperative. A third applicant, meanwhile, has a corporate structure so complex that it produces vertigo.

In the next three weeks, a series of articles will examine the remaining applicants for the Cambridge cable license. This week's segment will study each applicant's corporate structure and will also examine the applicants' experiences in other communities.)

By Anthony Baldo
Staff writer

There was a time when cable television just meant better television reception.

But with the arrival of special sports, movie, and community channels, those times are long gone.

For the casual observer, cable television has been a medium with a troubled recent history. With enormous programming potential, cable's promise as a technology — and as a moneymaker — enraptured Wall Street.

Investors flocked to invest, and operators flocked to operate. Big cable firms were spawned to build sprawling urban and suburban systems. Op-

(Continued on page 19)

Modern thinking

Modern Productions becomes force in area music

Details, details, details.

For David Archer, a Perry street resident, details are no small matter.

After all, Archer produces avant garde musical and dance performances in the Greater Boston area, so details are his livelihood.

Moreover, producing contemporary performances here is no easy task, especially because this area is surprisingly conservative when it comes to performing arts, according to Archer.

But Archer believes headway is being made, and he and his cohorts in a venture called Modern Productions are making an impact on the local arts scene.

Modern Productions is a Cambridge-based production and promotion consulting company, and it has been responsible for bringing such performing artists as Nigerian singer King Sunny Ade, and new wave composers Laurie Anderson and Philip Glass to area audiences.

"One of the things we're good at is breaking eclectic and unique works into the Boston area," says Archer, who is Modern Productions along with Randy Harrison and Carol Ann Biederman. "We've established a good reputation and found a niche for our type of programming, (and) performers know we do a good job in this area promoting their work."

Last week, in collaboration with the Dance Umbrella, Modern Productions introduced Boston to Sankai Juku, the Japanese dance theater company.

The ensemble, a critical success in Europe and at last summer's Olympic games in Los Angeles, received prominent media play recently when it descended from a building on Newbury street. The group danced last week at Boston's Opera House.

Bigger things, meanwhile, are in the wings. Archer says Modern is bringing the Twyla Tharp contemporary modern dance ensemble to Boston's Colonial Theatre next March.

The ensemble performs a choreographed dance routine to nine Frank Sinatra songs and has achieved critical acclaim during its run at the George Gershwin Theater in New York.

With some soft jazz playing on his stereo, Archer talks about just what Modern does to produce acts in the area. He is sitting in a director's chair, but he is all producer, as he fields phone calls that provide information about how ticket sales are doing for one of Modern's upcoming events.

"One of the exciting things in producing is that, if you do well with it, you don't know what can happen," he says, noting that bringing avant garde performers here has enabled him to develop valuable business contacts with ascending artists.

As a notable example, Archer uses John Hassel, a progressive trumpet player. Modern Productions produced a Boston show for Hassel two years ago, and, because of that contact, he called up the Modern when he had an idea for a musical project.

Modern helped Hassel secure a $53,000 grant from the Massachusetts Council of the Arts and Humanities "new artist" program to develop the project, and he will be performing at MIT's new theater next year.

Another instance Archer uses is King Sunny Ade, whose agent called Modern two years ago.

Critics had seen and liked the singer and band leader, so Modern decided to introduce his act in Boston. The result was three successful shows.

"The thing making us successful is that what we do is very tasteful," says Archer, a Presque Isle, Maine, native. "Everything is very unique and top of the line."

As a production company, Modern attends to all the logistic details involved in bringing a progressive act to perform here. As a promotional consultant, it places advertisements and deals with the local media to promote acts when they come to the area.

According to Archer, Modern first determines whether a progressive act is known and if it can be sold to audiences. The company also studies whether producing the act would be economically feasible.

The company has done well so far, and Archer says this year will probably be the first where cash flow, ticket sales, and grants revenue will hit the $1 million mark. Nonetheless, such a

(Continued on page 21)

Cambridge capsules

Thanksgiving feast for seniors set

Mayor Leonard J. Russell and the management and staff of 33 Dunster Street have announced that the Annual Thanksgiving Day dinner for senior citizens who cannot be with their families, will be held on Thursday, November 22, 1984 from 11:30 am to 5 pm, at 33 Dunster St., Harvard Square.

The menu will consist of the traditional Thanksgiving favorites.

Tickets will be available for the dinner at the Council of Aging, Committee of Elders, 116 Norfolk St., and the office of Mayor Leonard J. Russell. Any further questions, call 498-9090.

Tickets are limited and will be available starting Thursday, November 15, until Wednesday, November 21.

CELCo users get rate break

Rates paid by customers of the Cambridge Electric Light Co. (CELCo) will be reduced by a smidgeon as a result of a settlement reached last week between the electric company and the state Department of Public Utilities (DPU).

The rate reduction may mean a savings to the average residential user of approximately $1.50, according to Albert Mullaly, supervisor of consumer relations for CELCo. Mullaly cautioned, however, that final figures have not yet been tabulated.

The reduction reflects decreased property taxes paid by CELCo in Cambridge.

As a result of the settlement, electric rates in the area will be at their lowest level since July, 1982, according to a statement from Attorney General Francis Bellotti's office. The attorney general's staff worked with the DPU and CELCo to negotiate the settlement.

Assistant Attorney General Edward Bohlen said the rate change will probably appear on December's electric bills, and will take the form of a slight additional credit on users' bills.

In February of this year, the DPU approved a rate rollback of $2.26 million. That rollback has appeared on bills as an 8.5 percent credit. The recent settlement will increase that credit to approximately 9.58 percent.

According to Bohlen, the credit "will become significant in March of 1985 because it was due to expire then, and now it will continue."

The review of CELCo's electric rates that resulted in the additional credit "is part of a concerted effort to bring the full measure of the law's protection to utility consumers," Bellotti said in the statement announcing the settlement. "In the late seventies and early eighties many utilities sought rate increases every year. It is only right that now that some companies' earnings are showing significant improvement, they should share that improvement with customers."

Bohlen pointed out that CELCo officials have been "very cooperative" during the process that led to the rate reduction.

He added that CELCo paid $1,856,000 in property taxes in the fiscal year which ended last June.

CELCo provides electric service to approximately 40,000 customers in Cambridge.

—JACK HAYES

Births

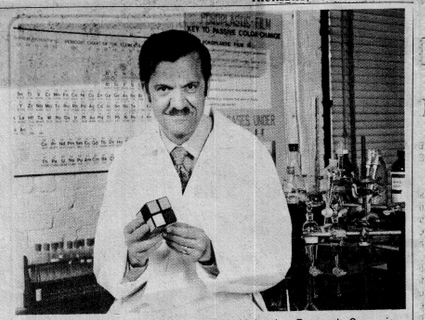
At The Malden Hospital:

To May (Gibbons) and Philip Derrick of Malden, a son, Philip Jr., born September 24. Grandparents are Thomas and Florence Gibbons of Cambridge, and Milton and Ejenore Derrick of Hyannis. Great grandparent is Anne Gibbons.

To Joanne and Richard Dell'Olio of Medford, a daughter, Stacey Lee, born October 2. Grandparents are Cidalia Paiva of Somerville and Mary Dell'Olio of Cambridge.

To Janice (Spingel) and Joseph Carbone of Medford, a daughter, Casie Elizabeth, born September 29. Grandparents are Mr. amd Mrs. Arthur Spingel of Somerville and Mrs. Laura Carbone of Cambridge.

Have you tried your luck at solving 'Nichols Cube?'



DR. LARRY NICHOLS, chief scientist at Moleculon Research Corp., is shown with his invention, the Nichols' Cube.

Millions of people have tried and succeeded in solving the Nichols' Cube, but it took a federal court to solve the puzzle of the toy's patent.

The Nichols' Cube — better known as the Rubik's Cube — has been produced and marketed by the Ideal Toy Corp. since 1981, but the Cambridge-based Moleculon Research Corp. sued the toymaker for patent infringement in May of 1982.

Moleculon, a Kendall Square chemical development firm, was granted a patent for the puzzle in 1972. Last month, a federal District Court in Wilmington, Delaware, agreed with Moleculon and ruled that Ideal infringed on the patent.

The popular toy is a three-dimensional puzzle consisting of small, colored cubes that are connected to make one large cube. The object of the puzzle is to move the small cubes so that the colors match on each side of the large cube.

Moleculon, which had 1983 sales of $1 million, is asking for $20 million in royalties and $40 million in penalties from Ideal for use of the cube. Ideal, however, has yet to decide whether to appeal the court's decision, so the matter of Moleculon's compensation will have to wait.

Ideal has produced and marketed the cube based on the Hungarian patent of Erno Rubik. Rubik was granted the patent in 1976, but Hungarian patents have no legal force in the United States.

According to published reports, the cube helped Ideal come back from a $15 million loss in Fiscal 1981. In Fiscal 1982, the toymaker made a $12 million profit.

Dr. Larry Nichols, Moleculon's chief scientist and a game hobbyist, designed the puzzle and demonstrated it for Moleculon's president, Dr. Arthur Obermayer, in 1969.

Moleculon then sought a patent for the toy and tried to market it to a toy manufacturer. Ideal and other firms were approached by Moleculon, but no one expressed an interest in the game.

"I feel extremely happy about (the decision)," said Nichols, adding that he was astonished at the tremendous popularity of the puzzle.

He said Moleculon, as a chemical company, would like to negotiate an agreement with a toy company for the production and marketing of the cube. "I don't think we have any real desire to produce and market games ourselves," he added.

—ANTHONY BALDO

Red Line stations

(Continued from page 1)

Davis station in Somerville and the Porter station in Cambridge have not yet opened. He added that citizens, especially the elderly, have been unnecessarily inconvenienced by the delay.

Merchants in the North Cambridge area, too, have been disappointed with the lack of an opening and the lack of information from the MBTA.

"We're not sure what's holding it up," said Karen Swaim, the president of the Business Association of North Cambridge (BANC). "(Porter) seems like it's ready. We just don't know."

When asked about the station opening, Somerville Mayor Eugene Brune said Tuesday, "Yes, it is supposed to be on schedule for December 8, and I don't see any reason for any change."

The Christmas shopping season is quickly approaching for Porter and Davis Square merchants, and most of the small businesses in both squares depend on good Christmas seasons.

"Christmas could be the difference between life and death for the small retailer," said Edward Murphy, general manager of the Sears, Roebuck & Co. department store in Porter Square and immediate past president of the Cambridge Chamber of Commerce.

Murphy said the MBTA had told him recently that the Porter station would be opened in late January, an opening date he dismissed as "ludicrous."

—ANTHONY BALDO

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Who's who in bid for cable license

(Continued from page 1)

timism ran high, and subscriber and revenue projections were pie-in-the-sky.

But growth was too quick, too poorly planned. And, in the early eighties, a shakeout in the cable industry took place.

Fewer cable operators exist nowadays, and doubts about the cable industry linger. Unfulfilled promises to cities and subscribers plague the industry's past, so choosing a cable operator today should not be something taken for granted.

Operators have learned from their painful experiences in the suburbs of Dallas, St. Louis, and Pittsburgh, where market projections never reached expectations.

"Over optimism" is what David Korte calls the cable phenomenon of the late seventies and early eighties. Korte, a vice president with the Cable Television Information Center, says operators are now paying more attention to details.

"What we're seeing is a much-scaled down feeling of the future," he asserts, "and a conservative view about the potential of cable urban markets and the penetration and revenues that can be expected in those markets."

The three Cambridge applicants — American Cablesystems of Cambridge, Cambridge Cablevision Corp. (3C), and Cambridge Consumer-Owned Telecommunications (CCOT) — reflect that more thoughtful attitude.

Officials of the three applicants are excited about their proposals, but they are also measured in the manner in which they discuss them.

Financial projections are more reserved, and construction and marketing plans are not as brazen as they may have been in past years.

"We have been conservative and we didn't overcommit," says Sheila Willard, a franchising coordinator who is working with CCOT. "There is a reason for everything we did."

Limited partners

All three firms have structured themselves in partnership arrangements.

Limited partnerships are the trend in the cable industry, and provide a benefit for both the investor in a cable system and the operator building it. Investors get a better return on their investment, and operators can build a system without borrowing as much money from banks as before.

In their basic form, all three bidding firms start as partnerships in the same ways. Differences between the applicants, however, do emerge when one considers the goals of each proposal in years seven and eight of the Cambridge license.

For instance, American Cablesystems of Cambridge would be a managing general partner and would fund its proposed $18.5 million system through a limited partnership scheme.

The firm would secure $12 million in "debt financing," or money borrowed from banks. American would then raise the remaining $6.5 million through its own funds and through "equity financing," or limited partners.

Limited partners are in the investment game for tax write-off purposes. They invest their money — usually in increments of $60,000 to $100,000 — for only six to seven years with the hope of achieving the best rate of return possible.

Instead of paying taxes to the government right away, investors invest the tax money for a number of years so they can make a return on it. When it comes time to finally pay the taxes they owe the government, the investors are bought out of the partnership at a profit.

In its proposal, American would be the entity that eventually buys out its limited partners.

The proposed CCOT limited partnership is similar to American's, but its corporate structure leads to a cooperatively-owned cable system.

CCOT would form a limited partnership, and subscribers to the $20.5 million system would eventually be the ones who bought out the limited partners in year seven or eight.

Nashoba Communications Inc. and CCOT would be managing partners in the system. Nashoba, a for-profit cable operator, would own 15 percent of the franchise while CCOT would own 20 percent.

CCOT would not have a financial stake in ownership. Its stake would be in the form of a controlling interest in how the system is run.

Nashoba, though, would have an equity interest in the franchise and, like other investors, would eventually be bought out by subscribers.

Like CCOT, and unlike other investors, Nashoba would not invest money in the franchise itself. Instead, the firm would have an investment position in the CCOT plan because it has financed office space, salaries, and other expenses in the effort to win the franchise.

The 3C concept, while confusing, would have an end result similar to CCOT's. 3C would be owned by an amalgam of for-profit and not-for-profit investors, but it would be bought out by subscribers in year seven or eight of the license and be operated as a cooperative.

At the outset, private investors and the for-profit Cambridge Cable Development Corp. (CCDC) would hold ownership shares of 3C. Two not-for-profit organizations — the Cambridge Cablevision Consumer Co-operative (4C) and the Information Society Foundation (ISF) — would also own shares.

3C would handle construction of the cable system and operate it as the general managing partner. Subscribers, meanwhile, would pay a membership fee to 4C instead of a basic fee for cable service.

Under the 3C proposal, 4C will then have the right-of-first-refusal to purchase the cable system when 3C sells it. So subscribers paying to become members of 4C would be the owners of the system once 4C purchases it.

"We think we have the advantage of using capital markets (to) end up with a cooperative, which we think Cambridge wants," says Richard Leghorn, one of 3C's principal shareholders.

Experience elsewhere

Corporate structure may provide a glimpse of an applicant's preparedness to handle a cable franchise, but track record is probably a better indicator of the bidder's abilities.

Cambridge will have over 41,000 households eligible for cable, and that number is larger than many of the other franchises that the applicants have been involved with in the past.

American is a strict for-profit corporation with no pretense of a subscriber-owned system. CCOT is a strict cooperative, where a for-profit operator, Nashoba, will build and manage the system while a 15-member board governs it.

3C is neither an outright corporation or cooperative. As an applicant, 3C is a private development company. As a programmer, 3C will defer to 4C, which will initiate cable programs throughout the city and organize community involvement with them.

3C is the brainchild of Leghorn, who has built cable systems elsewhere. Joining Leghorn as an investor in the 3C venture is Kalba-Bowen Associates Inc., a Cambridge-based cable consulting firm which is highly respected in the industry.

According to Leghorn, he and Kalba-Bowen have controlling interests in 3C because they want to maintain continuity and control of the system.

Leghorn has operated and sold cable systems in Springfield, Illinois, and on Cape Cod, and he is currently in the process of selling his 42 percent interest in Natick Cablevision Corp. to Commonwealth Cablevision.

Industry observers say he is astute when it comes to Federal Communications Commission (FCC) regulations and is an staunch defender of cable television's First Amendment rights.

The 27,000-subscriber Cape Cod system, which serves Barnstable and four other towns, was sold by Leghorn to TCI-Taft Cablevision Associates in 1982.

Cape Cod has had cable for many years because of the poor television reception there. When Leghorn owned the system it only had a 12-channel capacity and "only five different things could be seen," says David Cole, the chairman of the Barnstable Cable Advisory Committee.

Running cable lines to all parts of the towns serviced was a problem during Leghorn's ownership that has continued to the present, Cole says.

He also notes that, under Leghorn's tenure, subscribers were upset about paying premium prices for less than premium programming.

Cole says Leghorn sold his controlling share in the system after conceding that it needed to be handled by a larger cable operator.

For his part, however, Leghorn says he sold the Cape Cod system because he had other business interests to pursue.

He says Cape Cod is a semi-rural area and that wiring homes in sparsely-populated areas was not economically feasible. Further, he says people in densely-populated areas did not want to subsidize cable service to sparsely-populated zones.

He did propose to build a 30-plus channel system in 1980, Leghorn says, but subscribers rejected the offer and wanted him to put more money into extending cable service to more areas.

Leghorn says he sold his first system in 1971 because he decided to retire. Retirement bored him, though, and he returned to the cable field.

"I always wanted to build an urban system," he says, "That's why I was interested in Cambridge."

Leghorn says he also plans to sell the Cambridge system if 3C wins the franchise. He explains that he would sell his 4000-share interest in 3C to 4C by year seven or eight of the license.

In line with his strong First Amendment stance, Leghorn adds that he will

(Continued on page 22)

Obituaries

ROBERT DERBY

George Roberto

George S. Roberto, of Cambridge, died November 7 at his residence after a long illness.

Born in Wakefield, he was a painter by trade.

NOTICE
Annual Report of **The Leo L. Beranek Foundation** for period 1 July 1983 to 30 June 1984 is available for inspection at the office of the administrators, Grants Management Associates, 100 Franklin Street, Boston, MA 02110 during business hours for 180 days after this date. Please telephone 357-1500 for appointment.

Leo L. Beranek
Trustee

(CiNov.15

Reg. 41575
COMMONWEALTH OF MASSACHUSETTS
Land Court
(Seal)
To the City of Cambridge, a municipal corporation, located in the County of Middlesex, and said Commonwealth; **Ellen Blumenstiel, Marina Fox, David R. Leslie, Clare Walker Leslie, Randall Davis, Christine Chamberlain, Martin J. Van Denburgh, Madelynn M. Wright, Christine Chamberlain, Barbara Silberman, Louise R. Silberman, John W. Belash, Giorgia Fiocco, Gabriella Fiocco, Harold S. McElarney, Eileen E. McElarney** and **No. 76 Garfield Street Condominium Trust**, all of said Cambridge; **James Chiccarelli, Anna M. Chiccarelli, Luigi Chiccarelli** and **Luigi Lombardi**, all of Arlington, in the County of Middlesex, and said Commonwealth; **Middlesex Federal Savings and Loan Association**, a duly existing corporation, having an usual place of business in Somerville, in the County of Middlesex, and said Commonwealth, and to all whom it may concern:

Whereas, a petition has been presented to said Court by **Theresa F. Muzzioli,** of Belmont, in the County of Middlesex, and said Commonwealth, to register and confirm her title in the following described land:

A certain parcel of land with the buildings thereon, situate in said Cambridge, bounded and described as follows:

Northerly by Garfield Street, 60 feet;

Easterly by land now or formerly of No. 76 Garfield Street Condominium Trust, 110.18 feet;

Southerly by land now or formerly of **James Chiccarelli, Anna M. Chiccarelli, Luigi Chiccarelli** and **Luigi Lombardi** and by land now or formerly of **Giorgia Fiocco** and **Gabriella Fiocco,** 60 feet; and

Westerly by land now or formerly of **Harold S. McElarney** and **Eileen E. McElarney,** 110.14 feet.

The above described land is shown on a plan filed with said petition and all boundary lines are claimed to be located on the ground as shown on said plan.

If you desire to make any objection or defense to said petition you or your attorney must file a written appearance and answer under oath, setting forth clearly and specifically your objections or defense to each part of said petition, in the office of the Recorder of said Court in Boston (at the Court House), on or before the third day of December next.

Unless an appearance is so filed by or for you, your default will be recorded, the said petition will be taken as confessed and you will be forever barred from contesting said petition or any decree entered thereon.

Witness, William I. Randoll, Esquire, Chief Justice of said Court, this first day of November in the year nineteen hundred and eighty-four.

Attest with Seal of said Court.
(Seal) Jeanne M. Maloney
Deputy Recorder

Joseph E. Morino, Esq.,
Box 455,
Winchester, MA. 01890
(C)Nov.8,15,22

SHOW REMOVAL
Sealed Proposals will be received by the Middlesex County Commissioners, through the Central Purchasing Dept., New Superior Court House, E. Cambridge, Ma., 02141 until 2:00 P.M. Tuesday, November 27, 1984. Proposals will be opened and read for **Snow Removal for Lowell Superior & Lowell District Courts** at 4:00 P.M., Tuesday, November 27, 1984 at the Commissioner's Hearing Room, New Superior Court House, E. Cambridge, Massachusetts. Specifications may be obtained at the Central Purchasing Dept., New Superior Court House, E. Cambridge, Ma. The said Commissioner's reserve the right to reject any and all bids or port thereof and waive any informalities they may deem in the best interest of Middlesex County, or accept any bid or port thereof they may deem in the best interest of Middlesex County.

Middlesex County
Commissioners

(C)Nov.15

PUBLIC NOTICE
RELATIVE TO ZONING
AMENDED NOTICE
CITY OF CAMBRIDGE
MASSACHUSETTS
Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p.m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by the City Council to **amend the Zoning Ordinances of the City of Cambridge by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.**

The purpose of this section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the Rent Control Coalition will be heard at the same time since they are concerned with the same subject matter.

For the Committee,
Councillor
David Sullivan,
Chairman.

(C)Nov.15,22

Annie Holmes

Annie E. (Sinclair) Holmes, 77, of Cambridge, died November 6 at the Somerville Hospital after a long illness.

Born in Queensland, Nova Scotia, she was a retired employee of the National Biscuit Company for 40 years. She was also a member of the Salvation Army Silver Threads and the First Baptist Church of Cambridge.

She was the sister of Pearl Brown of Noranda, Quebec, and she is survived by several nieces and nephews.

Funeral services were conducted at the Chapel of the Watson Funeral Home in Cambridge.

Margaret Francis

Margaret A. (Galvain) Francis, 83, a lifelong resident of Cambridge, died November 6 at the Cambridge Hospital.

A dietary worker for the City of Cambridge, she was the wife of the late Anthony and the mother or Dorothy Teixeira of Peabody and James Francis of Weymouth. She was the sister of Anne Geddry, Mary Artone and the late Helen Selfridge, Catherine and Edward Galvin. She is also survived by seven grandchildren and nine great grandchildren.

A Mass said in the Church of the Sacred Heart was followed by a funeral from the Donovan-Aufiero Funeral Home on East Cambridge. Interment was at Cambridge Cemetery.

Angela DiGiovanni

Angela (Vittore) DiGiovanni, 65, a native of Italy and a resident of Cambridge for many years, died November 7 at the Cambridge Hosptial after a brief illness.

She was the wife of Gennaro DiGiovanni, and the mother of Anna Biasella of Stoneham, and Tonino DiGiovanni of Wilmington. She was the mother-in-law of Mario Biasella and Maria Cutone DiGiovanni. She is also survived by three grandchildren.

A Mass said in St. Francis Church was followed by a funeral from the DeVito & Sons Funeral Home in Watertown. Interment was at Mount Auburn Cemetery in Cambridge.

Helen Roach

Helen L. (Welch) Roach, 85, a lifelong resident of Cambridge, died November 7 at her residence.

She was a dental hygenist for 44 years and a supervisor for the Board of Health in Cambridge.

She was the mother of Walter H. Roach, and the grandmother of of Stephen Roach. She was the sister of the late Anna Monagle and Alice Walsh.

A Mass said in The Church of the Sacred Heart in East Cambridge followed a funeral from the Donovan-Aufiero Funeral Home. Interment was at Cambridge Cemetery.

Sister Madeline Mary SSND

Sister Madeline Mary (Linehan) SSND, 81 formerly Sr. Mary Florentine of St. Peter's Convent, and a longtime resident of Cambridge, died November 7 at Sancta Maria Hospital after a lengthy illness.

Born in Mission Hill, Roxbury, she attended Mission Grammar School and later entered candidature of the School Sister Notre Dame in Baltimore, Maryland.

She taught at St. Peter's Grammar School for 20 years, and in 1973 she became principal there. She retired from St. Peter's Parish in 1983.

She was the daughter of the late Cornelius and Mary (Driscoll) Linehan, and the sister of David Linehan of Melrose, Lilian Cummings of Hyde Park, Mary Kirby of Wayland, Neil Linehan of Roxbury, Florence Basso of Roslindale and Sr. Frances Borgia of Demarest, New Jersey, and the late Helen Sullivan.

A Mass of Christian Burial was said in St. Peter's Church in Cambridge. Interment was at Mount Benedict Cemetery in West Roxbury.

In lieu of flowers, please send donations to Lourdes Health Care Center, 345 Belden Hill Rd., Wilton, Conn., 06897 in Sister's memory.

Russell Carmen

Russell E. Carmen, 68, a lifelong resident of Cambridge, died November 7 at the Norfolk County Hospital in Braintree after a long illness.

A retired machinist, he was also a member of the Mizpah-Faith Lodge AF/AM.

He was the husband of Marguerite (Dingee) Carmen, and the father of Floyd S. of Belmont, Lt. Cmdr. Kevin R., USN, Monterey, Calif., and Russell E. of Cambridge. He was the brother of Gardner J. of Cambridge, Gertrude Grohe of Rhode Island, and Oliver Russell of Avon, Conn. He is also survived by three grandchildren.

Funeral services were conducted in the Chapel of the Watson Funeral Home in Cambridge. Interment was at Mount Auburn Cemetery.

J. Arnold Thomas

J. Arnold Thomas, a lifelong resident of Cambridge, died November 6 at Mount Auburn Hospital after a recent illness.

He worked in the Supply Department at Northeastern University and was a member of the Gospel Chorus at the Union Baptist Church in Cambridge and the Massachusetts Choir.

He was the husband of Josephine (Reddick) Thomas and the step-father of Alvin Reddick. He was the brother of Francis Thomas and Ollie Brown and he leaves a host of nieces, nephews, and other relatives and friends.

Funeral services were conducted at the Union Baptist Church in Somerville. Interment was at Cambridge Cemtery.

Josephine Thompson

Josephine P. Thompson, of Cambridge, died November 8.

She was the wife of John H. Thompson and the sister of Allen Thompson. She was the sister-in-law of Brenda Pearson and Nadine Thompson, William Pearson and Leonard Thompson. She was also the aunt of Dorice Lightbourn.

Funeral services were conducted at St. Batholomew's Church in Cambridge.

Paul D'Alba

Paul D'Alba, 81, a longtime resident of Cambridge, died November 9 at Cambridge Hospital after a brief illness.

Born in Italy, he owned and operated a small grocery store in East Cambridge for many years.

He was the husband of Sarah (Mazullo) D'Alba of East Cambridge, and the father of Ralph, Paul, Jack, Sabina Mullen, Sarah Ferdinand, Geraldine Gaspar and Marie DeVellis. She is also survived by 14 grandchildren and one great grandchild.

A Mass said in St. Francis of Assisi Church in East Cambridge followed a funeral from the DeVito and Sons Funeral Home in Watertown. Interment was at Cambridge Cemetery.

In lieu of flowers, please made donations to St. Francis of Assisi Church

Joseph Mello

Joseph Mello, 77, a lifelong resident of Cambridge, died November 9 at his residence after a long illness.

A self-employed upholsterer, he was a World War II Navy veteran.

He was the husband of Gladys (Evans) Mello and the father of Maureen Hammond, Joseph Mello, Jacqueline Tibbets and Jane Kryjak. He was the brother of Herbert and John Mello, Gloria Martin, Mary Martin, Margaret LePage, Helen Parris, Virginia Hutt, Emily Cockery and the late Evangelina Aceto. He is also survived by six grandchildren.

A Mass said in St. Anthony's Church followed a funeral from the Rogers Funeral Home in Cambridge. Interment was at Cambridge Cemetery.

Contrubutions may be made in his memory to Hospice of Cambridge, 35 Bigelow St., Cambridge.

Phillip Hofer

Phillip Hofer, 86, of Cambridge, an art collector, scholar and former curator of printing and graphic arts in the Houghton Library at Harvard University, died November 8 at his home.

Mr. Hofer founded the department of printing and graphic arts in the Harvard College Library in 1938 — the first of its kind in the Americas. He stepped down at the age of 70 in 1968. For 12 of those years, he also served as secretary of Harvard's Fogg Art Museum.

Born in Cincinatti, he was a graduate of the Pomfret School, Pomfret Conn., and of Harvard, from which he received an A. B. degree cum laude in 1921 and, after several years in business, a master's degrree in 1929.

He was the son of Charles F. and Jane (Arms) Hofer, and the husband of the late Frances L. (Hecksher) Hofer of New York, who also gave many Asian manuscripts and art objects and European drawings to the Fogg.

He leaves a son, Dr. Myron A. Hofer II of New York, and three grandchildren.

A memorial service will be announced at a later date.

Gertrude O'Connell

Gertrude A. (Barron) O'Connell, 82, a resident of Cambridge for most of her life, died November 12 at a local nursing home in Weymouth after a long illness.

Born in Cambridge, she was the wife of the late William H. O'Connell, and the mother of Edward J. of Woburn, Robert F. of Kingston, formerly of South Weymouth, and the late William H. Jr. She is also survived by seven grandchildren and four great grandchildren.

A Mass said in St. Francis Xavier Church followed a funeral from the C. C. Shepherd Funeral Home in South Weymouth. Interment was at Holy Cross Cemetery in Malden.

Coleman Andelman

Coleman Andelman, 84, of Cambridge, died November 12 at Mount Auburn Hospital.

He was a retired manager in the meat department of Stop and Shop Inc., for 45 years. He was a member of Temple Beth Shalon in Cambridge, and he also belonged to the Mizpah Lodge of Cambridge and the Aleppo Temple Shrine of Boston and Wilmington.

He was the the husband of Etta (Zelickman) Andelman, and the father of Melven Andelman of Bloomfield, Conn., Edith Paster of Lexington, Janet Hartman of New London, Conn., Evelyn Allen of Chestnut Hill, and Frances Nigberg of Framingham. He was the grandfather of 11 grandchildren and two great grandchildren.

Funeral services were conducted at the Stanetsky Memorial Chapels in Brookline.

Helen Maloney

Helen M. Maloney, 77, died November 8 in Humana Hospital in California after a lengthy illness. She was a native of Cambridge until 1962.

She is survived by her husband, Arthur Maloney, and she was the mother of Paul Maloney of Cambridge, Barbara McManus and Sheila Evans of Los Angeles and the late Robert Maloney of Vallejo, Calif.

A Mass of Resurrection was said at St. Joseph's Church in Reseda, Calif., on Monday, Nov. 12. Burial took place in San Fernando Mission Cemetery Hills, Calif.

Robert Maloney

Robert J. Maloney, 44, died Thursday, Oct. 25, in St. Helena Hospital after a lengthy illness.

He was a native of Cambridge and lived in Vallejo, Calif., for 10 years.

He is survived by his wife, Martha Maloney, and two sons, Robert and Brian. He was the son of Arthur and the late Helen M. Maloney.

He was also the brother of Paul Maloney of Cambridge, Barbara McManus and Sheila Evans of Los Angeles and the late Donald Maloney of Los Angeles.

A Mass of Resurrection was said at St. Basil's Church in Vallejo, Calif. Burial took place in San Fernando Mission Cemetery in Mission Hills, Calif.



OCTOBER CARRIER OF THE MONTH

Gordon Beeferman School: Graham & Parks Alternative School Area: William St. Magazine St. Kelly Rd.



SPREAD THE WORD

THE CAMBRIDGE CHRONICLE NEEDS CAMBRIDGE STUDENTS

The Cambridge Chronicle needs Cambridge students to deliver their community's news. Keep your family and neighbors informed with the best coverage of local issues. Delivering the Chronicle is more than just a job. It is part of a great institution, that of the free press! You have the opportunity and the responsibility to spread the word!

Not only do you have a steady income each week, you also gain the chance to win cash bonuses and over 150 prizes in the 1984 carriers' contest. Routes are now available on Fayette St., Antrim St., Maple Ave. and Highland Ave. Take the challenge! For more information, call 625-6300 or stop in the circulation office Tuesday to Friday 9:00 A.M. to 5:00 P.M. or Saturday morning 9:00 A.M. to 1:30 P.M.

C. C. 106

Calendar #11 - City Council Petition

City of Cambridge

MASSACHUSETTS

In City Council 3/4/ 1985

CMTS to take from the Table

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton	✓			
Mr. Thomas W. Danehy	✓			
Mr. Francis H. Duehay		✓		
Ms. Saundra Graham		✓		
Mr. David E. Sullivan		✓		
Mr. Walter J. Sullivan	✓			
Mr. Alfred Vellucci	✓	~~✓~~		
Ms. Alice K. Wolf		✓		
Mayor Russell		✓		
	4	5	0	

Failed to be taken

Robert J. La Trémouille
ATTORNEY AT LAW

131 State Street, Suite 201
Boston, Massachusetts 02109-3201

Telephone
(617) 523-2621

RECEIVED
OFFICE OF CITY CLERK
FEB 25 12 06 PM '85
CAMBRIDGE, MASS.

February 25, 1985

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

RE: Petition of William S. Noble, et al. on behalf of the Cambridge Rent Control Coalition, November 5, 1984, concerning inclusionary zoning and linkage

I have been requested by the Cambridge Rent Control Coalition to provide you a more detailed legal analysis of our petition in response to the City Solicitor's letter of January 31, 1985.

Our petition constitutes a downzoning combined with the creation of a special permit process. The downzoning is based on our opinion that the as-of-right zoning presently in Cambridge is creating a situation which is unfair and which is against the clear intent of state housing policies. The special permit process attempts to correct the situation.

The Massachusetts Supreme Judicial Court has frequently provided direction to communities concerning how it evaluates zoning ordinances and by-laws. It recently reaffirmed its position in Sturges v. Town of Chilmark, 380 Mass. 246, 402 N.E.2d 1346, 1352, 1353 (1980) as follows:

> The constitutional test, which is easier to state than to apply, is whether the by-law is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." Euclid v. Ambler Realty Co., 272 U.S. 365, 395, 47 S.Ct. 114, 121, 71 L.Ed. 303 (1926); Wilbur v. Newton, 302 Mass. 38, 39, 18 N.E.2d 365 (1938), and cases cited. Our role in review of zoning enactments is limited. Crall v. Leominster, 362 Mass. 95, 100-103, 284 N.E.2d 610 (1972). Every presumption is made in favor of the by-law, and if its reasonableness is fairly debatable, it will be sustained. Turnpike Realty Co. v. Dedham, 362 Mass. 221, 233, 284 N.E.2d 891 (1972), cert. denied, 409 U.S. 1108, 93 S.Ct. 908, 34 L.Ed.2d 689 (1973). The plaintiffs have the heavy burden of showing a conflict with applicable constitutional provisions. See Moss v. Winchester, 365 Mass. 297, 299, 311 N.E.2d 555 (1974).
>
> Our usual approach to due process challenges to government action affecting economic activity is to inquire whether the challenged measure bears a rational relation to any permissible public object which the legislative body "may plausibly be said to have been pursuing." Blue Hills Cemetery, Inc. v. Board of Registration in Embalming and Funeral Direcing, 379 Mass. 368, 398 N.E.2d 471 (1979). Under this standard, any possible permissible legislative goal which may ration-

> ally be furthered by the regulation will support a measure's constitutionality. Consistent with this rationale, in cases involving challenges to zoning by-laws, a town has been restricted neither to the reasons expressed by its planning board in its statutorily required recommendations to the town meeting (G.L. c.40A, s.5), nor to arguments which were advanced on the town meeting floor. See Noonan v. Moulton, 348 Mass. 633, 639, 204 N.E.2d 897 (1965); Caires v. Building Comm'r of Hingham, 323 Mass. 589, 595, 83 N.E.2d 550 (1949); Simon v. Needham, 311 Mass. 560, 566, 42 N.E.2d 516 (1942).
>
> Although there is a presumption of the constitutionality of a zoning enactment, and any rational connection between a zoning regulation and legitimate State interest will sustain the regulation, as a practical matter we have never dealt with a zoning regulation in a vaccuum. The circumstances existing in a municipality have always been considered in the process of passing on the constitutionality of a zoning provision. We have expected the municipality to bring forward some indication that the zoning provision has some reasonable prospect of a tangible benefit to the community. 122 Main St. Corp. v. Brockton, 323 Mass. 646, 651, 84 N.E.2d 13 (1949). A showing must be made, on the record, that there was a reasonable basis for the enactment. See Turnpike Realty Co. v. Dedham, 362 Mass. 221, 234, 284 N.E.2d 891 (1972) cert. denied, 409 U.S. 1108, 93 S.Ct. 908, 34 L.Ed.2d 689 (1973); Wilson v. Sherborn, 3 Mass.App. 237, 240, 326 N.E.2d 922 (1975).

The downzoning portion of our proposal comes under the normal powers of a community to change its zoning ordinance. General Laws, c. 40A, s.5. Within the Sturges analysis, extremely severe downzonings have been found legal. Note in particular, the analysis in Turnpike Realty, Inc., cited in Sturges. This zoning case concerned wetlands regulations which, for the good of the community, denied certain properties almost all their speculative value. The regulations were found legal. The property owner attempted, but was unable, to obtain United States Supreme Court review. Our proposal is much more moderate than the Turnpike Realty zoning. Other major downzonings are also cited in that case.

While we propose to allow a reasonable amount of development as of right, we also propose a special permit process to exceed that base up to the present very generous maximums. This special permit process is proposed in accordance with General Laws, chapter 40A, section 9, which reads in relevant part:

> Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissable density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide . . . housing for persons of low or moderate income . . .

The reason why we propose this combination of changes is straight-forward. Cambridge is the fourth most densely populated city in the country. In 1980 we had more jobs than the average community our size. In the past three years we have increased our office space by 32%. We are making tremendous increases in jobs for upper income people in our community. The side-effects are seen in extreme demands upon our housing stock.

High paid office employees are displacing low and moderate income people from their homes. New market-rate housing is completely unavailable for low and moderate income people. We are rapidly becoming an upper income community.

In order that we obey state policy concerning housing opportunities for all income groups we must take action. We can no longer afford such massive development if it only exacerbates a bad situation. We propose that such development continue to be allowed at a reasonable level as-of-right. We require that larger development take action to offset its negative impact on our community's housing stock. Separate requirements are made for housing construction and for non-housing developments, reflecting practical differences in regulatory needs. Fully exempt from these zoning changes are uses which normally provide meaningful job opportunities for low and moderate income people.

Enclosed is a summary of the cases cited by the City Solicitor. The reasonable interpretation of these cases is that the Massachusetts Supreme Judicial Court would tell us to obey chapter 40A and Sturges. We have done so.

One case cited by the solicitor is of particular importance in the present discussion. That is S.C.I.T., Inc. v. Planning Board of Braintree, 19 Mass.App. 101, 472 N.E.2d 269, decided December 21, 1984. We have reviewed this decision closely, and have modified our proposal to ensure that it fulfills the criteria established by the Appeals Court.

The Braintree ordinance allowed no uses in its business district except by special permit. Special permit criteria were inadequate so uses allowed were not uniform from property to property. Provisions were internally contradictory because they lacked cross-references.

Our proposal always has had a meaningful base zone. We are modifying it to increase as-of-right development on larger lots, subject to F.A.R. and intensity of use limits. We are adding cross-references elsewhere in the ordinance as appropriate. All changes are less restrictive than what was advertised or are neutral. All possible questions raised by S.C.I.T. Inc. have been resolved.

Respectfully submitted,

Robert J. La Tremouille
Attorney at Law

APPENDIX

Summary Analysis of City Solicitor's Cited Cases

Pages 3 and 8: Middlesex & Boston Street Railway Company v. Board of Aldermen of Newton, 371 Mass. 849, 359 N.E.2d 1279 (1977). Attempt by the special permit granting authority to require housing for persons of low or moderate income when there was no legislative authorization either in the City Zoning Ordinance or in the prior language of chapter 40A. Clearly illegal action.

Pages 3, 5, 6: S.C.I.T., Inc. v. Planning Board of Braintree, discussed in main letter.

Page 4: CHR General, Inc. v. City of Newton, 387 Mass. 351, 439 N.E.2d 788 (1982). Attempt to regulate condo conversion under the zoning power. Not authorized under chapter 40A.

Page 5: Cameron v. Zoning Agent of Bellingham, 357 Mass. 757, 260 N.E.2d 143 (1979). Public housing may be allowed as of right at higher density than other residential uses. Not mandatory.

Page 7, 8: Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A.2d 1192 (1977). Court is attempting to correct zoning which has the same effect as the present Cambridge zoning: creation of a solely upper income community. The court's emphasis is how to require this goal within the zoning power while retaining flexibility. Case does not direct one mandatory method.

Page 8: Board of Supervisors v. DeGroff Enterprises, 214 Va. 235, 198 S.E.2d 600 (1973). Attempt to rezone to provide low and moderate income housing as a condition for increase in building size. Rejected because not allowed by state statute or by the Virginia constitution. A far more conservative court, and legislature.

Page 9: Commonwealth v. Galvin, 388 Mass. 326, 446 N.E.2d 391 (1983). Criminal matter providing valid instructions in the interpretation of criminal statutes.

Page 9: County of Middlesex v. City of Newton, 13 Mass.App. 538, 434 N.E.2d 1297 (1982). Taxation case with legal statements which are fully valid on taxation matters. Please note our extended quotation from Sturges for the state of the law in zoning matters.

Comm. from Robert J. LaTremouille, Esq., transmitting a legal analysis of the petition of William S. Noble, et al, dated November 5, 1984 concerning inclusionary zoning and linkage.

In City Council,

February 25, 1985

2/25/85
Referred to the
Petition-



Centro Presente
99 Bishop Allen Drive
Cambridge, MA 02139
Tel. (617) 497-9080

RECEIVED BY
OFFICE OF CITY CLERK
FEB 25 11 18 AM '85
CAMBRIDGE, MASS.

February 25, 1985

Members of the Cambridge City Council
c/o City Clerk
City Hall
Cambridge, Ma. 02139

Dear Members of the Council:

I am writing to urge you to consider seriously and to vote for the linkage plan before the Cambridge City Council. I believe this is a very serious and important plan for further housing development in the city of Cambridge.

In my seven years of working in Cambridge, I have seen a city government very interested in its people. More than once, I have seen council members take courageous stands on very key issues.

Now I ask that you take yet another courageous stand with this linkage plan for housing. I am sure you are very aware that housing for low income residents in the city of Cambridge is very poor. This constitutes a very grave problem, especially since the low income population in Cambridge is very large. Many people have been on housing lists since the 1970's. Emergency housing is non-existent.

Your choosing to stand with this population in their struggle for survival and adequate housing would be a very brave way to represent all of the city's constituents and insure just living conditions for all.

I strongly urge you to vote for this plan.

Sincerely,

Sister Rose Marie Cummins

Sister Rose Marie Cummins
Co-Director

Comm. from Sr. Rose Marie Cummins, Co-Director, Centro Presnete, urging the City Council to vote for the linkage plan currently pending before the membership.

In City Council,

February 25, 1985

Referred to the
- Petition -

Stephen H. Baird
P.O. Box 570
Cambridge, MA 02238
617/864-2970
February 11, 1985

RECEIVED IN OFFICE OF CITY CLERK
FEB 13 2 22 PM '85
CAMBRIDGE, MASS.

Councillor David Sullivan
City Council Offices
City Hall
Cambridge, MA 02139

Dear Councillor David Sullivan:

I have enclosed a proposed draft of a new revised Regulation of Street Performances. I hope this can be enacted before the sunny and warmer weather appears this spring.

The following are reasons I feel this new revised regulation should be enacted:

1. Street performers have become an important asset to the City of Cambridge since the original regulations were enacted.

2. The Eastern Federal District Court in Goldstein v. Nantucket, 477 F. Supp., 606, (1979), has ruled that street performances are a protected First Amendment right.

3. The Fourth Circuit US Court of Appeals has ruled limitation of street performances to designated areas as an unconstitutionally overbroad criteria (Davenport v. Alexandria, 710 F.2d, 148, (1983); CA #81-709-A; #83222).

4. The new revised regulation is more in line with regulations passed in Chicago, and those presently under consideration in Hartford, Connecticut.

5. The many new construction projects in Cambridge have greatly increased the number of appropriate areas for street performers.

6. The Cambridge Arts Council has worked extensively with street performers, including a street performers' festival as part of the River Festival.

7. Street performers in Cambridge have been featured numerous times on WBZ, WGBH, WCVB, The Boston Herald, The Boston Globe, TAB newspapers, The Cambridge Chronicle, and many other media outlets, increasing visibility and attracting tourists for the City of Cambridge.

In conclusion, I feel the new revised Street Performers Regulation will enhance both the City of Cambridge and the street performers' best interests in making the city's streets some of the most creative, safe, colorful, and exciting streets in the country. I hope the new regulations will be swiftly enacted.

Sincerely,

Stephen H. Baird

DRAFT

Regulation of Street Performances

Sec. 1 Definitions

The following terms are defined for the purpose of this regulation as follows:

(a) "Perform" includes, but is not limited to, the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing and reciting.

(b) "Performer" means an individual who owns a permit issued pursuant to the provisions of this Regulation.

(c) "Public Areas" includes sidewalks, parks, playgrounds, and all other public ways located in the City of Cambridge.

Sec. 2 Prohibition

(a) No person may perform in a public area without having obtained a permit issued under Section 3 of this Regulation.

(b) Any person who performs in a public area without a permit issued under Section 3 of this Regulation shall be fined not more than $25. The proceeds of any such fine shall be directed to the Cambridge Arts Council and used in its administration of this Regulation. Any person paying such a fine in excess of $5 may obtain a permit under Section 3 of this Regulation without paying a fee therefor if application for such permit is made within 30 days of such payment.

Sec. 3 Permit

(a) A permit shall be issued by the Cambridge Arts council to each applicant therefor in exchange for a completed application and a fee of $5, subject to the provisions of Section 8 of this Regulation.

(b) A completed application for a permit shall contain the applicant's name, address, and telephone number and shall be signed by the applicant.

(c) A permit shall be valid from the date on which it is issued through December 31 of the year in which it is issued; provided, however, that a permit issued in 1984 shall be valid through December 31, 1985.

(d) A permit shall contain the name and permit number of the applicant plus the year in which the permit is valid and any special allowance made by the Cambridge Arts Council pertaining to the permit.

(e) A permit shall be non-transferable.

(f) Upon issuing a permit, the Cambridge Arts Council shall also issue the performer a printed copy of this Regulation.

Sec. 4 Display of Permit

A performer shall carry a permit on his or her person while performing and shall show it to any police officer of the City of Cambridge upon request.

Sec. 5 Permitted Performances

(a) Performances may take place in the following

locations:

in public areas, except those excluded by the City Council or the Chief of Police pursuant to Section 7 of this Regulation;

on private property, if the performer has obtained the written permission of the owner of such property or other person with authority to grant such permission with respect to such property; and

in a public area where an authorized fair or public festival is being conducted, if the performer has obtained the written permission of the sponsor of such fair or festival.

(b) Performances may take place between 10:00 a.m. and 11:00 p.m. unless otherwise allowed by the Cambridge Arts Council.

(c) A performer may not use electric or electronic amplification except as otherwise allowed by the Cambridge Arts Council.

(d)A performer may not block the passage of the public through a public area except as permitted by the sponsor of an event under paragraph (a) of this Section or otherwise allowed by the Director of Traffic and Parking. If a sufficient crowd gathers to see or hear a performer such that the passage of the public through a public area is blocked, a police officer may

disperse the portion of the crowd that is blocking the passage of the public, but said police officer shall not cause the performer to leave the location.

(e) No performer or group of performers shall perform at a distance of less than 50 feet from another performer or group of performers that already is performing.

Sec. 6 Legal Conduct

(a) A performer may accept contributions of money or property at a performance, provided that no sign requesting contributions shall exceed 12" by 18" in size. Contributions may be received in any receptacle.

(b) A performer who performs and accepts contributions under the provisions of this Regulation shall not be committing disorderly conduct by virtue of those acts.

(c) A performer who performs under the provisions of this Regulation shall be presumed not to constitute a disturbance of the peace or quiet.

Sec. 7 Exclusion of Public Areas

(a) Upon the written recommendation of the Chief of Police or the Director of Traffic and Parking, the City Council or any committee thereof to which responsibility is delegated may conduct a public hearing to determine whether a designated public area shall be excluded from further performances.

(b) No public area shall be excluded from performances except;

by majority decision of City Council or its designated committee pursuant to paragraph (a) hereof; or

by decision of the Chief of Police in the case of an emergency; provided that no public area may be excluded from performances by the Chief of Police under this subparagraph for more than 7 days.

(c) No exclusion of public areas, except as decided by the Chief of Police in an emergency, shall be effective until seven days after written notice of said exclusion has been mailed by the Cambridge Arts Council to each performer.

(d) Upon issuing a permit, the Cambridge Arts Council shall also issue to the performer a current and complete list of all public areas in the City of Cambridge that have been excluded from performances.

Sec. 8 Revocation of Permit

(a) The Cambridge Arts Council may suspend a permit for not more than 30 days if any information contained in the application therefor is found to be false.

(b) The Cambridge Arts Council may suspend a permit for not more than 60 days or revoke a permit if a performer violates any of the provisions of this Regulation.

(c) After revocation of a permit, the former performer may not obtain a new permit until such date as the Cambridge Arts Council may determine, provided that such date shall not be more than one year after the date of revocation.

(d) No permit may be suspended or revoked unless the Cambridge Arts Council holds a public hearing concerning that suspension or revocation, written notice of which has been given to the performer not less than 7 days prior to said public hearing. Such notice shall set forth the facts constituting the basis for the proposed suspension or revocation.

The Cambridge Arts Council

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9033

July 1, 1984

Mr. Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02138

Dear Steve,

I am very pleased to have the opportunity to support your newly drafted ordinance for the regulation of street performers.

The Cambridge Arts Council welcomes the possibility of becoming the department responsible for licensing street performers. We have worked with a wide variety of street perfomers since the beginning of the Council in 1974 -- in the River Festival, other public celebrations and, most recently in the very successful Street Perfomers' Festival on Cambridge Commons. We know the artists and have built up a good rapport with them over the years. We are currently engaged in negotiations to bring street performers to Central Square (at the pressing request of the local merchants) and to improve performing conditions in Harvard Square, at the request of the performers.

Your proposed ordinance does, indeed, sensibly regulate -- as opposed to discourage -- street performing.

The street performers are a valuable asset to this city -- as witnessed by the enthusiasm in Central Squre for such performers -- and a well drafted ordinance is very welcome in order to regulate in the public and performers' interest.

After ten years' experience in working with the street performers, with the public, with the city departments responsible for public safety and convenience, and with the businesses of Cambridge the Cambridge Arts Council is in an ideal position to become the licensing department. We hope that such authority will be established by the passage of this ordinance.

Sincerely,

Christine K. Connaire
Executive Director

CKC:es

Peter Preston Lee, Chairman/ Judith Contrucci, Mark Favermann, Mark Murphy, Vice Chairmen/ Herbert Agoos/ Roswell Angier/ Martha Cain/ Eliza Collins/ John Constable M.D./ Jack Dyer/ Ronald Lee Fleming/ Willie Hills/ Faith Moore/ Michael Padnos, Esq./ Eduard Franz Sekler/ David J. Steinberg/ David Vickery/ Chris Connaire, Executive Director

corcoran's
615 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139 • (617) 864-3000

July 13, 1984

Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02238

Dear Mr. Baird:

I have recently received a copy of the proposed regulation governing street performers in the City of Cambridge. I have read it and, as a Cambridge businessman, I fully support this proposal. I wish you and the Cambridge Arts Council success in having this proposal enacted into law.

Sincerely,

Paul Corcoran

Paul R. Corcoran, Jr.
President

dations had possession of the raw data requested, and the 13 recipients of research grants that did were not themselves an "agency," no "agency record" existed for purposes of FOIA. *Id.* 190 U.S.App.D.C. at 238–239, 587 F.2d at 1135–36.

The decision in *Forsham* does not disturb this Court's prior holding. The Circuit Court's primary line of reasoning, concerning the degree of federal involvement necessary to transform data into "agency records," need not be reached if the possessor and producer of the data is itself an agency. NCMF undisputedly possesses and controls the production of all relevant documents here; moreover, it satisfies the test for agency status previously promulgated by this Circuit and endorsed in *Forsham*. To qualify as an agency under FOIA, 5 U.S.C. § 552(e), an organization must exercise substantial independent authority in performing its particular functions, *Washington Research Project, Inc. v. Department of HEW*, 164 U.S.App.D.C. 169, 179, 504 F.2d 238, 248 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963, 95 S.Ct. 1951, 44 L.Ed.2d 450 (1975); *Soucie v. David*, 145 U.S.App.D.C. 144, 152, 448 F.2d 1067, 1075 (D.C. Cir. 1971), and it must be sufficiently controlled by government to justify attributing governmental character to its operations. *Rocap v. Indiek*, 176 U.S. App.D.C. 172, 175, 539 F.2d 174, 177 (D.C. Cir. 1976). *See* H.R.Rep.No.876, 93d Cong., 2d Sess. 8 (1974), *reprinted in* [1974] U.S. Code Cong. & Admin.News, pp. 6267, 6274; S.Rep.No.1200, 93d Cong., 2d Sess. 9 (1974) (Conf.Report), *reprinted in* [1974] U.S.Code Cong. & Admin.News, pp. 6285, 6293.

The holding in *Forsham* that private medical centers receiving pure research grants lack the independent decisional authority to qualify as an agency is clearly distinguishable from the facts of this case. As noted above, NCMF has statutory authority to make final, binding decisions, and it exercises such authority on a regular basis just as Congress intended. The conclusion that the 13 medical centers in *Forsham* are not sufficiently subject to day-to-day federal control must also be distinguished here. The PSRO statute established pervasive procedural requirements for virtually every phase of PSRO activities, and organizational requirements governing selection of the PSRO entity and its members. These statutory obligations are supplemented extensively by HEW regulations and by the PSRO Transmittals and Program Manual which are binding on each PSRO. *See* NCMF Contract, Art. XIV, (July 1, 1977), attached to defendants' Affidavit of Michael Goran. In short, PSROs such as NCMF perform a characteristically governmental function and are subject to detailed government control in their program planning and implementation.

Defendants have failed to establish the applicability of any exemptions claimed. Accordingly, plaintiff's motion for summary judgment is hereby granted and defendants' motion for reconsideration or summary judgment is hereby denied. The Court in entering its earlier decision that NCMF is an "agency," felt that an immediate appeal would not materially advance the ultimate termination of the litigation. It denied NCMF's request for an interlocutory appeal, but assured defendants that a stay would be entered upon resolution of the entire controversy. All further proceedings in this action are now stayed for 30 days, to allow defendants to seek a stay pending appeal in the United States Court of Appeals for the District of Columbia Circuit.

SO ORDERED.



Robert GOLDSTEIN

v.

TOWN OF NANTUCKET et al.

Civ. A. No. 79–1455–Z.

United States District Court,
D. Massachusetts.

Sept. 25, 1979.

Professional musician brought action for declaratory and injunctive relief, alleg-

ing that enforcement by town of its transient vendor bylaw deprived him of rights secured by the First Amendment. The District Court, Zobel, J., held that transient vendor bylaw, as applied to troubadour, was constitutionally deficient.

Judgment to be entered.

1. Constitutional Law ⇐90(1)

By its terms, the First Amendment forbids infringement of right of free speech and this constitutional protection of free speech, moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇐90.1(6)

Troubador's public performance of Nantucket's traditional folk music was clearly within scope of protected First Amendment expression. U.S.C.A.Const. Amend. 1.

3. Constitutional Law ⇐90(3)

Constitutional guarantee of the First Amendment does not confer absolute protection from government regulation of public expression; states may impose reasonable and impartial regulations upon the time, place and manner of public expression. U.S.C.A.Const. Amend. 1.

4. Constitutional Law ⇐90.1(4)

Nantucket's bylaws setting standards for licensing of entertainers, including plaintiff troubador, and which included broad licensing criteria of financial responsibility of applicant, effect on neighboring properties, and opinion of town merchants, did not pass constitutional muster as applied to plaintiff troubador, whose contemplated activity of performing in tradition of balladeers, on the street, enjoyed First Amendment protection. U.S.C.A.Const. Amend. 1.

5. Constitutional Law ⇐90.1(4)

Fact that plaintiff troubador accepted contributions of passersby during his public performances would not dilute his protection under the First Amendment and would not broaden town's narrow mandate to exercise impartial regulation upon use of sidewalks for public expression. U.S.C.A.Const. Amend. 1.

John Reinstein, Mass. Civil Liberties Union Foundation, Boston, Mass., for Robert Goldstein.

Charles A. Goglia, Jr., King, Goglia, Kellogg & Gardner, Wellesley, Mass., for the Town of Nantucket.

MEMORANDUM OF DECISION

ZOBEL, District Judge.

Plaintiff is a professional musician who is known as the "Troubadour of Nantucket". He brought this action for declaratory and injunctive relief, alleging that enforcement by the Town of Nantucket of its Transient Vendor Bylaw deprives him of rights secured by the First Amendment. The bylaw, as applied to plaintiff, is constitutionally deficient.

The relevant facts are not in dispute. Plaintiff has for many years studied and performed the traditional music of Nantucket and is an acknowledged authority on the music and folklore of the island. He plays a number of instruments from the hammer dulcimer to the fife and banjo and he sings. He has performed the music of Nantucket at numerous festivals and in concert but prefers to perform in the tradition of balladeers, on the street. When he performs in Nantucket, he customarily plays the hammer dulcimer and sings, and positions his open dulcimer case so that passersby may contribute donations, and some do. On a number of occasions during the past four years plaintiff attempted to play his music in the streets of Nantucket but was prevented by town officials from doing so. In 1975, he applied to the town for permission to perform, and his petition was denied. In 1978 he again applied and was granted a "conditional permit" for a period of two weeks. The permit specified locations and times at which plaintiff could perform. At the end of the two-week period the Police Chief reported to the Board of

Selectmen that there had been "no problems". The Board then advised plaintiff that the new Transient Vendor Bylaw did apply to him and that he would have to obtain a permit before he would "be allowed to proceed further with the playing of . . . [his] . . . music." The bylaw defines "Transient Vendors" to include "any person who engages in a transient or temporary business . . . selling . . . offering for sale or accepting contributions for the offering . . . or providing . . . entertainment." It sets forth the standards for deciding whether a permit may issue. Plaintiff attacks these standards and argues that in light of the First Amendment they include impermissible criteria for regulation of free expression.

[1, 2] By its terms, the First Amendment forbids infringement of the right of free "speech." The Constitutional protection of free speech,[1] moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. *Miller v. California*, 413 U.S. 15, 22–3, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), *rehearing denied* 414 U.S. 881, 94 S.Ct. 26, 38 L.Ed.2d 128 (1973). See also, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557–8, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (the musical "Hair"), *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503, 72 S.Ct. 777, 96 L.Ed. 1098 (1952) (the motion picture "The Miracle"). The substance and not merely a method of expression is protected by the First Amendment:

> [While] Each medium of expression, of course, must be assessed for First Amendment purposes by standards suited to it, . . . 'the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule.' *Southeastern Promotions, Ltd. v. Conrad, supra*, 420 U.S. at 557–8, 95 S.Ct. at 1246, quoting *Joseph Burstyn, Inc. v. Wilson, supra*, 343 U.S. at 503, 72 S.Ct. 777.

Accordingly, plaintiff's public performance of Nantucket's traditional folk music is clearly within the scope of protected First Amendment expression.

[3] The Constitutional guarantee, however, does not confer absolute protection from government regulation of public expression. States may impose reasonable and impartial regulations upon the time, place and manner of public expression. *Schneider v. State of New Jersey*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939). But "streets, sidewalks, parks, and other similar public places are . . . historically associated with the exercise of First Amendment rights . . ." *Amal. Food Emp. U. Loc. 590 v. Logan Val. Plaza*, 391 U.S. 308, 315, 88 S.Ct. 1601, 1607, 20 L.Ed.2d 603 (1968), and "[the Supreme Court] ha[s] consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153, 89 S.Ct. 935, 940, 22 L.Ed.2d 162 (1969) (citations omitted). In *Shuttlesworth v. City of Birmingham*, the court recalled thirty years of prior First Amendment decisions and concluded "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Id.*, 394 U.S. at 150–1, 89 S.Ct. at 938. (citations omitted)

[4] Nantucket's bylaw subjects entertainers, including plaintiff, to the same licensing requirements as apply to transient merchants and vendors. A permit may not issue without a finding by the Board of Selectmen that issuance "would be beneficial to the best interests of the Town of Nantucket and its inhabitants." In making its determination, the Board of Selectmen are, by the terms of the bylaw, required to

1. First Amendment protection applies to state action as well as Congressional action. See *Schneider v. State of New Jersey*, 308 U.S. 147, 150, 60 S.Ct. 146, 84 L.Ed. 155 (1939). See especially *id.*, at 150, n. 8, 60 S.Ct. 146.

consider the "financial responsibility" of the entertainer, the "effect of the [entertainment] on the neighborhood properties", and the interests of public order and safety. As a matter of practice, they also take into consideration the wishes of the merchants in the shopping area. Because three of the licensing criteria—financial responsibility of the applicant, effect on neighboring properties, and the opinion of town merchants—are neither narrow, objective nor definite standards, and because those criteria exceed in their scope constitutionally permissible grounds for regulating free expression, the bylaw does not pass constitutional muster. As applied to plaintiff, whose contemplated activity enjoys First Amendment protection, it is unconstitutional.

Defendant contends, however, that plaintiff's activity is commercial speech and thus does not enjoy First Amendment protection. It further argues that even if the performance is protected activity, the enforcement of the bylaw conforms with the guaranteed right of free expression and permits only impartial restriction of the time, place and manner of plaintiff's activity. Neither of these contentions is availing.

[5] The United States Supreme Court recently observed that "the notion of unprotected 'commercial speech' [has] all but passed from the scene." *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council*, 425 U.S. 748, 759, 96 S.Ct. 1817, 1824, 48 L.Ed.2d 346 (1976), citing *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975). Indeed, "[s]peech . . . is protected even though it is carried in a form that is 'sold' for profit (citations omitted), and even though it may involve a solicitation to purchase or otherwise pay or contribute money." (citations omitted) *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council, supra*, 425 U.S. at 761, 96 S.Ct. at 1825. See also *Bates v. State Bar of Arizona*, 433 U.S. 350, 363, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). The fact that plaintiff accepts contributions of passersby during his public performances, thus, does not dilute plaintiff's protection of the First Amendment. It plainly does not broaden defendant's limited mandate to exercise impartial regulations upon the use of the sidewalks for public expression.

Defendant's second argument is contradicted by the very terms of the bylaw which chart a course of Town inquiry that ranges far beyond the narrow parameters set by the First Amendment. Neither the language of the bylaw nor defendant's testimony suggests that any authoritative construction so narrows the bylaw as to comply with the command of the First Amendment. *Cf. Cox v. State of New Hampshire*, 312 U.S. 569, 576, 61 S.Ct. 762, 85 L.Ed. 1049 (1941). See also *Shuttlesworth v. City of Birmingham, supra*, 394 U.S. 147, 153, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969).

The bylaw directs the selectmen to consider, among other factors, the "financial responsibility" of the applicant and the effect of the proposed expression "on the neighborhood properties." The existence of such broad evaluative criteria in addition to specific criteria for the protection of public safety belies defendant's claim that determination of what is "beneficial to the best interests of the Town . . ." contemplates only the interest of public safety. Indeed, the Chairman of the Board of Selectmen testified that one primary consideration in weighing applications is the opinion of neighboring merchants, and on the face of plaintiff's 1978 application to the town there appears a handwritten notation that one of the selectmen is "investigating with merchants."

The requirement of merchants' approval is irreconcilable with freedom of expression. It is unqualified censorship and it is just what the First Amendment forbids. The prayers for declaratory and injunctive relief are granted. Pursuant to authority granted by 28 U.S.C. § 2201, the Court determines and declares that the Transient Vendor Bylaw (Effective August 24, 1978) of the Town of Nantucket, Massachusetts is unconstitutional as applied to plaintiff.

Plaintiff shall prepare and submit to defendant for approval as to form a judgment in accordance with this opinion.

CITY OF CAMBRIDGE

INTEROFFICE CORRESPONDENCE

To : Mr. Robert W. Healy
City Manager

Date : February 11, 1985

From : Joan Lastovica JL.
City Engineer

Reference

Subject : Calculations of Land for Inclusionary Zoning

Based on further refinement, verification and updating of land areas calculated for inclusionary zoning, and land owned by registered objectors, (see memo dated February 1, 1985) the following re-calculated areas are presented for consideration.

These re-calculated areas do not significally change the areas identified in memo of 2/1/85. The land owned by registered objectors tallied to date (777.56 acres), exceed twenty percent (20%) of land area subject to inclusionary zoning (2617.96 acres).

These re-calculated areas resulted as we were unable to verify the MDC Land Area of 322.59 acres, from either documents of records or the Commonwealth of Massachusetts. Therefore, using a conservative approach we scaled the MDC Land Areas off of plans on file, and determined these areas to be 186± acres. These areas are: MDC Rights-of-Ways, bank of the Charles River, and MDC Park lands. This figure does not include the Alewife Reservation. The Alewife Reservation is counted under Zoned Open Space.

Additionally, we added the Old Burying Ground Cemetery to the list, and updated the Public Ways area. These additions represent a 4.5 percent increase in the land area subject to inclusionary zoning, and a corresponding 4.5 percent increase in the twenty percent figure from 497.92 acres to 523.59 acres. See Table One A.

The land area owned by registered objectors reached 777.56 acres as of 12:00 PM, February 11, 1985 with 47 more petitioners to count. See Table Two.

Conclusions

1) Re-calculated land area subject to inclusionary zoning equals 2617.96 acres

2) Twnety percent of this figures equals 523.59 acres

3) As of 12:00 PM, February 11, 1985, the land owned by registered objectors equals 777.56 acres

4) Land area owned by registered objectors exceeds 20 percent of land area subject to inclusionary zoning.

TABLE ONE A

CALCULATION OF LAND SUBJECT TO INCLUSIONARY ZONING (in acres)

Total area of the City		4486.40
Water Area		
Charles River	305.57	
Fresh Pond	166.47	
Lechmere Canal	2.07	
Total Water Area		474.11
Zoned Open Space		
Fresh Pond Land Area	158.32	
Alewife Reservation	50.±	
City Dump	74.81	
Russell Field	11.±	
Maple Avenue	0.13	
Total Zoned Open Space		294.26
Cemeteries		
Cambridge	64.25	
Mt. Auburn	11.65	
Old Burying Ground	1.97	
Total Cemeteries		77.87
Public Ways	681.67	
MDC Land Area	186.±	
City Parks & Playgrounds	154.53	
TOTAL AREA EXEMPT FROM INCLUSIONARY ZONING		1868.44
LAND AREA SUBJECT TO INCLUSIONARY ZONING		2617.96
TWENTY PERCENT (20%)		523.59

TABLE TWO

CALCULATIONS OF LAND OWNED BY REGISTERED OBJECTORS (in acres)

(PARTIAL LIST)

OBJECTOR	ACRES
Harvard University	199.20
MIT	199.14
Radcliffe	20.86
Commonwealth Gas Co.	3.75
Cambridge Electric Light Co.	33.83
Petitions dated 12/4/85 & 1/4/85	66.95
Petitions dated 12/17/84, 1/14/85 & 1/21/85, 1/19/85	253.83
Petitions dated 2/4/85 not included	
Total	777.56

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 25, 1985

To the Honorable, the City Council:

In accordance with the request of City Council, I transmit herewith a copy of the revised calculations of land for inclusionary Zoning, as prepared by the City Engineer.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item No. 2

Re: copy of revised calculations of land for inclusionary zoning, as prepared by Joan Lastovica, City Engineer.

In City Council,

February 25, 1985

Referred to the Petition

1151 Mass Ave
Cambridge 02138

February 3, 1985

RECEIVED BY
OFFICE OF CITY CLERK
FEB 4 9 05 AM '85
CAMBRIDGE, MASS.

CRCC
Cambridge Rent Control Coalition

576-1006

Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, Mass. 02139

To the Honorable; the City Council:

The Cambridge Rent Control Coalition has had the opportunity to review in brief the communication from the City Engineer to the City Manager and City Council regarding "calculations of land for inclusionary zoning." We would like to commend Ms. Lastovica and all the other city officials involved for their time and effort in making all the calculations required, and hope they will complete their review of all objections filed as soon as possible. We wish, however, to bring a few points to the attention of the Council.

1. Where under PUD rules water areas may be used in FAR calculations, we believe such areas should not be exempt (as in the case of the Broad Canal).

2. The standard method for defining the boundary of a zoning district is to proceed down the middle of the street. Streets falling within the district are not excluded from the district. Therefore, public ways should be included in the area subject to inclusionary zoning. We must assume, without specific indication to the contrary, that public ways do not include "unaccepted streets and ways".

Within recent years several public ways have been incorporated into development sites: parts of Kirkland Street, Cambridge Street, and Oxford Street were closed to make way for the expansion of Harvard University; part of Mellen Street was discontinued to allow for the expansion of Lesley College. Nutting Road has disappeared altogether: Harvard's projects at University Place and University Green have completely absorbed the former public way. In Cambridgeport, plans put forward by the Massachusetts Institute of Technology include the closing of Pilgrim Street and parts of Blanche Street and Auburn Street.

3. Unless the MDC land area is exempt by statute, we believe it should be exempt only where it is zoned as open space.

Cambridge Rent Control Coalition
February 3, 1985

4. Where cemeteries are not zoned as open space, they should be included in the area subject to inclusionary zoning. Cambridge Cemetery, for example, is zoned as "Residence A-2" and should not be exempted.

5. Parks and playgrounds should be exempted only if they are zoned as open space rather than for residential or institutional use. It should be noted that Cambridge Common is zoned as "Residence A-2" and ought to be included in the area subject to inclusionary zoning.

6. On the basis of a cursory examination, we believe it is possible that a number of sites excluded from the calculation of land subject to inclusionary zoning may have been double-counted. Alewife Reservation, which is exempted as open space, is land owned by the MDC. Moreover, unless the figure for the total area of city parks and playgrounds includes at least some of the sites listed as open spaces, the size of that figure (roughly 154 acres) seems to us to be too large. We note that the report by the City Engineer indicates that back-up materials are available. We request that these materials be brought forward in order to determine if any double-counting may have inadvertently occurred.

Because of the significance of the calculation of twenty percent of the affected area, we hope that the Council will require responses to the points we have raised at the earliest possible date.

Respectfully submitted,

William S. Noble
Michael H. Turk

(for) CAMBRIDGE RENT CONTROL COALITION
(William S. Noble)
(Michael H. Turk)

Mr. Paul Healy

YOUVILLE HOSPITAL
1575 CAMBRIDGE STREET, CAMBRIDGE, MASSACHUSETTS 02238 • (617) 876-4344

RECEIVED BY
OFFICE OF CITY CLERK
FEB 4 3 00 PM '85
CAMBRIDGE, MASS.

February 4, 1985

The Honorable Leonard Russell
Mayor of the City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Mayor Russell:

I am writing with regard to the so-called "linkage" proposal presently under consideration for new construction projects in the City of Cambridge. As you know, for over four years now Youville Hospital has been engaged in planning to replace certain of its patient facilities and we have recently received State approval for final construction and related costs associated with this project.

There are several specific reasons why we believe Youville Hospital should be exempted from any commitment to the linkage concept which the City might adopt:

1. The Youville project has been under development for many years; retroactive application of new requirements with distinct financial implications at this late date in the project's development would be detrimental given that construction is almost ready to finally begin.

2. The present Determination of Need limitation on capital expenditures for this project cannot be increased; the state Public Health Council was adamant in its insistence that no additional increases in capital costs for this project be allowed.

3. This means that, even if private funds were available, they could not be spent above and beyond the limit set by the State; this limit pertains regardless of the source of the funds.

4. Our fundraising experience thus far indicates that we will be fortunate to raise the relatively modest amounts of private charitable contributions necessary merely to cover our present project costs. It is highly unlikely we could generate yet additional private contributions for added expenses and, as noted above, even if we could, the State's limitation would not allow such additional funds to be spent on capital expenses associated with this project.

5. Our project has already incurred substantial delays in its execution (our original Determination of Need approval was almost 2½ years ago); much of this delay is attributable to the long negotiations between the Hospital and its residential neighbors, culminating in an unprecedented and legally binding contractual Agreement which greatly exceeds any requirements of law or ethics imposed upon the Hospital. We believe the many concessions made by the Hospital in this Agreement, while not required of the Hospital, are consistent with the intent of the "linkage" proposal in that they greatly reduce any potentially negative impact of the Hospital project on the surrounding neighborhood. Indeed, they very clearly and explicitly improve the quality of the residential neighborhood by eliminating Hospital facilities that presently impact on our residential neighbors' lives (e.g., the present boiler plant and laundry facilities will be incorporated into the new Hospital facilities, enabling demolition of present such facilities and replacement with landscaped open space, greatly increasing the "buffer" between institutional and residential uses).

These improvements have added to the project's increased capital costs, meaning that our project has already incorporated substantial compliance with the "linkage" intent without the pressure of law or regulation to do so.

6. Finally, Youville Hospital is a non-profit organization heavily dependent upon Medicare and Medicaid reimbursement. The state's capital cost limitation precludes additional increases in reimbursement rates to these third-party payors; any additional project costs, therefore, would be at the expense of our patients who have already suffered unconscionable delays in receiving the upgraded facilities and living environment which their conditions demand.

We hope you will concur that these represent - individually and collectively - compelling reasons for Youville Hospital to be exempted, at least for its present construction project, from any additional requirements, be they related to "linkage" or otherwise. Should you have any questions regarding any of the above, or of our project in general, please do not hesitate to call.

Sincerely,

S. A. Caron

Sister Annette Caron, S.G.M.
President/CEO

SAC:bml

cc: Members, Cambridge City Council
Mr. Robert W. Healy, City Manager
Mr. Paul Healy, City Clerk
Mr. Paul O'Friel

CITY OF CAMBRIDGE

INTEROFFICE CORRESPONDENCE

To Robert W. Healy, City Manager **Date** February 1, 1985

From Joan Lastovica, City Engineer **Reference**

Subject Calculations of land for Inclusionary Zoning.

Pursuant to your request for calculations of land subject to Inclusionary Zoning and land owned by registered objectors, the following analysis and tables are presented for your consideration.

Conclusions are:

1. The land subject to Inclusionary Zoning equals 2489.61 acres.

2. Twenty percent (20%) of the land subject to Inclusionary Zoning therefore equals 497.92 acres.

3. As of 12.00 p. m. January 30, 1985, the land owned by registered objectors equals 566.22 acres.

Thus the land owned by registered objectors exceeds twenty percent (20%) of the land subject to Inclusionary Zoning.

The land area subject to Inclusionary Zoning was calculated by subtracting out water areas, zoned open space, cemeteries, public ways, MDC land area, and city parks and playgrounds. (See Table 1). These areas were excluded from the total acerage of the City as the areas are not developable at present, or without acts of the legislature. This may be a partial list of areas to be excluded from the analysis.

The land and water areas used in this analysis were determined by:

1. documents of record from the Engineering Department.

2. measured or scaled areas from plans on file, indicated by a plus/minus sign (±), and

3. historic information contained in other city records. The figures represent our best available estimates of these areas at present.

The land areas of registered objectors (see Table 2), were obtained by:

1. petitions filed by registered objectors at the City Clerk's Office.

2. matching registered objectors with block and lot numbers provided by the Assessors Office, and

3. tallying areas of land owned by registered objectors from the Assessors plats and City block/lot listings.

Due to time constraints it was necessary to first count those registered objectors with the largest land holdings in the City. Other registered objectors were counted until twelve o'clock (12) Noon Wednesday, January 30, 1985, at which time the twenty percent figure had been exceeded. Additional lists of registered objectors exist which have not yet been tallied.

Support documentation for the information provided in this report are available at your request.

TABLE ONE

CALCULATION OF LAND SUBJECT TO INCLUSIONARY ZONING (in acres)

Total area of the City		4486.40
Water Area		
Charles River	305.57	
Fresh Pond	166.47	
Lechmere Canal	2.07	
Total Water Area		474.11
Zoned Open Space		
Fresh Pond Land Area	158.32	
Alewife Reservation	50.±	
City Dump	74.81	
Russell Field	11.±	
Maple Avenue	0.13	
Total Zoned Open Space		294.26
Cemeteries		
Cambridge	64.25	
Mt. Auburn	11.65	
Total Cemeteries		75.90
Public Ways		675.40

* *

MDC Land Area	322.59
City Parks & Playgrounds	154.53
TOTAL AREA EXEMPT FROM INCLUSIONARY ZONING	1996.79
LAND AREA SUBJECT TO INCLUSIONARY ZONING	2489.61
TWENTY PERCENT (20%)	497.92

TABLE TWO

CALCULATIONS OF LAND OWNED BY REGISTERED OBJECTORS (in acres)

(PARTIAL LIST)

OBJECTOR	ACRES
Harvard University	210.02
MIT	199.14
Radcliffe	19.91
Commonwealth Gas Co.	3.75
Cambridge Electric Light Co.	33.83
Petitions dated 12/4/84 & 1/4/85	66.95
Petitions dated 12/17/84, 1/14/85 & 1/21/85 (partial list)	32.62
Total	566.22

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 4, 1985

To the Honorable, the City Council:

Enclosed please find copy of a report from Joan Lastovica, City Engineer, with calculations of land for Inclusionary Zoning and land owned by registered objectors.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

David E. Sullivan
City Councillor

October 29, 1984

To the Honorable, the City Council:

The Working Group on Inclusionary Zoning and Linkage, established by your Resolution No. 13 of March 12, 1984, submits its final report for your consideration.

The problem: a continuing housing crisis

That Cambridge continues to face a serious housing problem is well known. The basic reason is that many more people want to live in Cambridge than there are homes for them to live in. The City Council has voted several times to declare a "housing emergency," requiring the adoption of strict legislative controls on rents, evictions, and removals from the rental market.

The magnitude of the problem is documented clearly in Attachments 1 and 2, recent reports by the city Community Development Department (CDD) on housing needs in Cambridge. They show that 8,762 lower income Cambridge households, almost one of every four households in the city, require some housing assistance. Over 800 Cambridge families have been waiting more than four years for public housing units, and new applications have not even been received since that time because no units are available. The Cambridge Housing Authority has a waiting list of 1294 applicants for its leased housing, 60 percent of them current Cambridge residents, but only 87 could be placed last year. Over 250 are waiting, some for

more than ten years, for housing developed by non-profit neighborhood corporations.

Overwhelmingly, the families who face this housing crisis are those with low and moderate incomes, because those with higher incomes are purchasing or renting the available housing and driving the prices completely out of their range. The data indicate that the average sale price of a 1-4 unit Cambridge house virtually doubled, from $43,674 in 1971-1977, to $80,450 in 1978-1982. Despite rent control, the median Cambridge rent (including utilities) doubled from $134 in 1970 to $257 in 1980. As of 1980, 45 percent of all Cambridge tenants paid more than the generally accepted 25 percent of their incomes for rent, and 28 percent paid at least 35 percent of income.

All indications are that the demand for Cambridge housing will markedly increase in the near future, and that the market cannot possibly produce enough housing to keep pace. Attachment 3 shows that new commercial, especially office, development will generate 23,186 new jobs over the next fifteen years. Assuming that the current ratio of 25 percent of these new employees seek housing in Cambridge, demand will increase by 4,637 units (assuming 1.25 employees per household). At the same time, the market will produce a net increase of about 1,000 new housing units, based on recent performance. Obviously, this is less than one fourth of what is necessary, and can only make the present housing crisis much worse.

Meanwhile, the federal government, at the instance of the Reagan Administration, has essentially abandoned any role in producing new housing. Ironically, in view of the recent predominance of "supply side" economics, the Administration's principal national housing innovation - "housing vouchers" - will serve chiefly to increase demand. While some increase in state housing financing has occurred, it is clear that the duty of closing the "housing gap" identified above will fall inevitably on this city government.

The city cannot possibly finance this housing production from tax revenues. State law allows the city to levy only a property tax, and Proposition 2½ effectively prevents any increase in funds from this source for a new housing program. The current development boom, however, not only constitutes a chief cause of the city's housing problem, but also suggests a potential alternative source of housing production. The City Council created this Working Group with this potential in mind.

Working toward a solution

On November 8, 1983, voters in the Cambridge city election approved by a 58-42 percent margin the anti-displacement housing program, placed on the ballot as advisory question 3 by the Cambridge Rent Control Coalition. In part, this program calls on the City Council to "require any new commercial and residential development to provide housing units for low- and moderate-income people."

In response, the City Council adopted its Resolution No. 13 of March 12, 1984 (Attachment 4). The resolution "declare(d) that the City of Cambridge will pursue a policy of inclusionary zoning, or 'linkage'," to carry out the goal of the advisory question. The resolution also established this Working Group "to draft an appropriate zoning petition for presentation to the City Council." The Chairman of the Council's Committee on Ordinances was authorized to assemble the Working Group.

All city councillors, various city agencies, housing advocates, tenant organizations, developers, businesspeople, and others were invited to join the Working Group. Many did so, resulting in a membership list which demonstrates unique breadth and expertise (Attachment 5). Most group members were volunteers, and all gave generously of their time and energy.

The Working Group held eleven meetings, on the following dates: March 28, April 11, April 25, May 9, May 23, June 13, June 27, July 11, July 17, August 21, and September 11. Each lasted from one to two-and-a-half hours, and attendance usually ranged from ten to twenty. The Chamber of Commerce, while represented at each meeting, made clear at the outset its opposition in principle to the Group's goal, and observed rather than participated. Detailed minutes were kept of each meeting, and these are publicly available, together with the various memoranda and other submissions, in the City Council office.

The Group gratefully acknowledges the invaluable technical support provided by the CDD staff, especially Housing Director Michael Rosenberg, Economic Development Director Joseph Kellogg, and Land Use and Zoning Director Les Barber. They attended many meetings and provided helpful advice and data; however, the policy recommendations of this report are those of the Working Group and do not necessarily reflect the views of the CDD.

The Group was also very fortunate to have the "pro bono" legal services of Stephen A. Hantman, Esq. of Brown, Rudnick, Freed & Gesmer, who was assisted during the summer by Cathy M. Judd, a summer associate with that firm. They provided useful advice at several meetings and the legal ~~opinion~~ analysis which appears as Attachment 8.

The Working Group was also able to build on the experience of other communities. San Francisco for several years has implemented a policy of requiring linkage payments from developers, as part of compliance with a state comprehensive-planning mandate. Last year, Boston adopted the first stage of a "linkage fee" requirement for new downtown office buildings needing zoning relief. Finally, of course, Cambridge itself considered last year a proposal somewhat similar to the present one, drafted by the CDD at the City Council's request. Details of this other legislation are available in the Group's files.

Although the Group attempted to proceed by consensus, its members disagreed on some issues, and some votes were therefore necessary. It is likely that no member is satisfied with every aspect of the recommended draft, but all felt that it was important to submit a proposal to the City Council so that the legislative process could begin. Representatives of the Council on Aging, the Cambridge Committee of Elders, Cambridge Economic Opportunity Committee (CEOC), and the Cambridge Housing Authority (CHA) have specifically endorsed this report and its recommendations.

The Working Group realized that legal constraints in the zoning change procedure would allow its proposal to become only less, not more, restrictive during the legislative process. Consequently, at several points, the Group decided to adopt the more restrictive alternative, allowing for compromise to occur later if the City Council so decided.

A proposed remedy: inclusionary zoning and linkage

Thw Working Group recommends for adoption by the City Council the attached draft inclusionary zoning and linkage ordinance (Attachment 9). The draft proposes to generate new housing development by applying separate requirements to new housing and commercial development. A Planning Board special permit would be required for such developments, and the permit could be issued only if the developer agreed to provide the required housing.

The Group first proposes to require that most new housing developments make 25 percent of their units available to low and moderate-income families. The first seven new housing units in a development would be exempt from this requirement. The purpose of this part of the proposal, known as "inclusionary zoning," is to ensure that at least a fraction of the new housing being built in Cambridge serves the needs of those who cannot afford market prices.

Second, the Working Group submits that most new office, institutional, and retail developments should supply low- and moderate-income housing to respond to

the increased demand by their new employees who will live in Cambridge. The Group calculates this "linkage" proposal as requiring one such unit for every 10,000 square feet of gross floor area, with the first 10,000 square feet exempt.

The draft would allow maximum flexibility to developers in meeting these requirements; they could construct the unit themselves, make a cash payment to the city of equivalent value, or donate land to the city of the same value. The proposal eleborates in detail provisions limiting the units for use by low- and moderate-income families, with preference given to Cambridge residents. The first two ~~thirds of the~~ of every three units provided would be for "low" income families, the ~~last~~ third for "moderate" incomes.* It also provides for administration of the program by a Cambridge Housing Development Trust, with a board appointed by the City Manager from specified categories and to be staffed by the CDD.

Since the 25 percent "inclusionary zoning" requirement would apply to at most 100 market rate housing units per year for the forseeable future, most of the new low- and moderate-income housing to be generated by this proposal will derive from the "linkage" aspect applying to new commercial development. Attachment 6 estimates that 7.354 million square feet of expected development over the next fifteen years will produce 696 new low- and moderate-income housing units (or their cash equivalent) over that time. Of course, this assumes that other obstacles to the construction of such units - including location of sites, neighborhood opposition, and bureaucratic inertia - can all be overcome. While even this constitutes merely a fraction of the predicted need, it represents the beginning of a solution.

---

*The proposal defines low income as a current maximum income of $16,150 for a family of four, $12,900 for two, $11,300 for one. The Moderate income maximum is $25,850 for four, $20,700 for two, $18,100 for one.

The Working Group believes that its proposal will not significantly interfere with Cambridge's robust development boom. Attachment 7, prepared with reference to the somewhat different formula in last year's CDD proposal, indicates that the impact on commercial rents will be a small fraction of a cent per square foot if financed over time. Especially in view of Cambridge's wide desirability as a commercial address, this will have only slight impact on the market, and will probably be passed through for the most part to landowners, commercial tenants, and consumers.

The Group considered at an early stage the possibility of offering incentives, at least in part, to developers in return for their housing production, but found this unworkable. The two principal incentives suggested were tax and zoning benefits. The city lacks power under state law to reduce a developer's taxes in return for housing, and in any event could not afford to do so because of the fiscal constraints outlined earlier. As for zoning, many Cambridge neighborhoods have worked for years to obtain the dimensional and use limitations on development reflected in the present zoning ordinance. The Group did not believe that new low- and moderate-income housing required sacrificing neighborhood preservation, and was particularly concerned that such a proposal might provoke opposition to such housing development among neighborhood organizations.

Based on the analysis by its attorney (Attachment 8) and others, the Group is convinced that its proposal has a good chance of withstanding attack in the courts. Nothing can be certain in so untested an area, and the Group believes that only passage of the proposal can definitely resolve the legal issues. It felt strongly that the delays required to obtain explicit authority from the state Legislature, even if it were eventually forthcoming, would prevent the construction of some much needed housing. Consequently, the Group chose to proceed under the existing authority of the Zoning Act and the Home Rule Amendment.

The Working Group understands that changes in this proposal during the legislative process may well be necessary or desirable. The Group urges the City Council and the Planning Board to consider its draft with that constructive approach, and pledges to work with them in the spirit of compromise for an effective and realistic final result.

No doubt some, particularly developers, will find this proposal objectionable. Of course, they have a right to state their views, but the political process is such that their opposition will be heard loud and long. The thousands of present and future Cambridge residents who will benefit from this measure will not be testifying at the public hearings, because their immediate financial interest in it is perhaps not so obvious. We urge the City Council and Planning Board to hear their cries for help and their insistence on social justice nonetheless, and to exercise the responsibility and leadership to plan carefully for the future of all our citizens.

Respectfully submitted,
For the Working Group

David E. Sullivan
City Councillor

DES/mh

C. C. 108

AMENDED NOTICE
PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to amend the Zoning Ordinances of the City of Cambridge by adding the following new Section 11.90 to Article 11.000, Special Regulations. Said new section to be entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

The purpose of this section is intended to require the provision of housing for low and moderate income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the City Council will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

FIRST PUBLICATION NO. 2266.

City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Five

AN ORDINANCE

In amendment to an ordinance entitled "The Zoning Ordinances of the City of Cambridge".

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

The Zone Map accompanying ordinance passed to be ordained September 26, 1979 entitled "The Zoning Ordinances of the City of Cambridge" is hereby amended by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provisions of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 43, Section 23, Tercentenary Edition, being a part of the City Charter, the ordinance as aforesaid, which exceeds in length eight octavo pages of ordinary book print may be examined at the office of the City Clerk in the form of a printed pamphlet during office hours on or after January 22, 1985.

Attest:- Paul E. Healy, City Clerk.

Passed to a second reading at the City Council meeting held on January 21, 1985 and on or after February 4, 1985 the question comes on passing to be ordained.

C. C. 106

City of Cambridge

PUBLIC NOTICE

The City Council of the City of Cambridge will conduct a public hearing on February 4, 1985 in the City Council Chamber, City Hall, Cambridge at 6:00 p. m. for the purpose of discussing a petition of the City Council entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development" and a second petition submitted by William S. Noble on behalf of the Cambridge Rent Control Coalition entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

All interested persons are invited to attend and be heard at this time.

By order of the City Council,

Paul E. Healy, City Clerk.

5.25 Floor Area Ratio

1/17

a. The maximum ratio of floor area to lot area indicated in Section 5.30 - District Dimensional Regulations shall be permitted only upon compliance with the provisions of Sections 11.100, 1.200, 11.300 of this Ordinance. Maximum Floor Area Ratios permitted without reference to the provisions of Sections 11.100 - 11.200 shall be 80% of those indicated in Section 5.30. for lots of five (5) acres or less, and 50% for lots greater than five (5) acres, as illustrated by the following schedule.

Maximum FAR in Table 5.30	80% of FAR in Table 5.30	50% of FAR in Table 5.30
.5	.4	.25
.75	.6	.375
1.00	.8	.50
1.25	1.00	.625
1.50	1.20	.75
1.75	1.40	.875
2.00	1.60	1.00
2.50	2.00	1.25
3.0	2.40	1.50
4.0	3.20	2.0

b. FAR Exceptions. A parking garage, or that portion of a structure devoted to parking automobiles, shall be exempt from the requirements as to floor area ratio but shall conform to all other dimensional requirements of the district in which it is located.

Create a new Section 11.100

11.100 Low and Moderate Income Household Inclusionary Housing Requirements for Residential Development.

11. Purpose

This Section 11. is intended to require the provision of low and/or moderate income family housing as a component of many new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. Applicability

11. The provision of this Section 11.100 shall apply to any residential development containing any one or combination of the following uses:

(a) Detached dwelling for one family (4.31 a)
(b) Two family dwelling (4.31 b)
(c) Townhouse development (4.31 d)
(d) Multifamily dwellings (4.31 g)
(e) Existing dwelling converted for more than two families (4.31 h)
(f) Elderly oriented congregate housing (4.31e)
(g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

11. The uses listed in the above Section 11. shall comply with the provisions of this Section 11. when they are created by (a) new construction or (b) conversion of a non-residential structure to residential use. For the purpose of this Subsection 11 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provision of this Section 11. regarding substantial rehabilitation shall modify any requirements for a removal permit for housing units subject to rent control. However, substantial rehabilitation of dwellings subject to Cambridge's rent control ordinance and approved by the Cambridge Rent Control Board shall not be subject to the provisions of this Section 11.100

11. Quantity Requirements

11. Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11. Any residential development containing uses subject to this Section 11. as determined by Section 11. above shall make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 10% percent of the total number of residential units authorized, The requirements of this Section 11. shall apply to the total development authorized on the subject lot (as defined in Section 11.) only after application of both of the following threshold and exemption provisions:

Threshold

(a) Total gross floor area of all development on the lot (residential and other uses) is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, or 50% for lots greater than five (5) acres. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district which are permitted or required as-of-right, as detailed in Section 5.30.

Exemption

(b) More than nine (9) dwelling units have been constructed after the effective date of this Section 11.100. The ten (10%) percent requirements of this Section 11. shall however be applied only to dwelling units constructed in excess of the nine units described in this paragraph (b).

Where the application of the 10% requirement results in a fractional number one additional inclusionary unit shall be provided.

11. All requirements of Section 11.300 shall be met.

11.200 Low and Moderate Income Linkage Housing Requirements for Office, Institutional and Retail Development.

11. Purpose

This Section 11.200 is intended to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. Applicability

11. The provision of this Section 11. shall apply to any office, institutional and retail development containing any one or combination of the following uses:

(h) Hotel or Motel (4.31 i(2))
(i) Radio and television studio (4.32f)
(j) Office and laboratory use (4.34)
(k) Retail business and consumer service establishments (4.35)
(l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1,2; e 1-7)

11. (a) The uses listed in the above Section 11. shall comply with the provisions of this Section 11.200 when they are created by (a) new construction or (b) conversion from any use not listed in 11. above. For the purpose of this Subsection 11. new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure.

(b) Except for non-residential structures converted to residential use which shall be suject to Section 11.100 no structure once subject to the provisions of this Section 11.200 shall be additionally subject to this Section if converted to another use listed in Subsection 11.

11. Quantity Requirements

11. Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial and other non-residential development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11. Any office, institutional or retail development subject to this Section 11. as determined by Section 11. above shall make provision for residential dwelling units suitable for, affordable by and available to low and moderate income households (required units) in an amount equal to one required unit for each 12,000 square feet of gross floor area authorized on the subject lot as defined in Section 11. after application of both of the following threshold and exemption provisions.

a. Exemption

The first 30,000 square feet of gross floor area constructed after the effective date of this Section 11. shall be exempt from requirements of this Section 11. Where the gross floor area constructed is as a result of substantial rehabilitation of an already existing structure, 50,000 square feet shall be exempt.

b. Threshold

The total gross floor area of all development on the subject lot, as defined by Section 11. , is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, and 50% for lots greater than five (5) acres. Nevertheless, with the exception of the gross floor area identified in paragraph (a) above all gross floor area constructed after the effective date of this Section 11. shall be subject to the linkage requirements of this Section 11. once the 80% or 50% thresholds have been exceeded. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district that are permitted/required as-of-right, as detailed in Section 5.30.

11. All requirements of Section 11.300 shall be met.

11.300 STANDARDS, CRITERIA, PROCEDURES,AND ADMINISTRATION FOR INCLUSIONARY AND LINKAGE HOUSING REQUIREMENTS.

11. Special Permit

All residential, office, retail and institutional development subject to Sections 11.100 and 11.200 shall be permitted only after issuance of a special permit from the Planning Board of the City of Cambridge. In issuing a special permit the Board shall find that the provisions of Section 10.40 have been met as well as the purposes, standards and criteria established in these Sections 11.100, 11.200 and 11.300.

11. All deeds, agreements, site plans, and other documents necessary to demonstrate compliance with the provisions of Sections 11.100 - 11.300 shall be submitted to the Planning Board as part of the special permit application.

Should a special permit be issued all agreements necessary to ensure the construction of units or equivalent payment to the City shall be executed before the issuance of a building permit. No certificate of occupancy for any building in an authorized development shall be issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for compliance over an agreed upon length of time, not to exceed ten (10) years.

Any required payments or deferred compliance obligations shall constitute a lien on the property. The Planning Board shall require the execution of such surety as may be necessary to ensure compliance should it be made after the issuance of a certificate of occupancy.

11. Options for provision of required units

11. The low and moderate income units required in Sections 11. and 11. may be provided in any one or combination of the following ways:

(a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11. are met.

(b) Cash payment to the City of Cambridge to be administered in accordance with policies and standards developed by the Cambridge Inclusionary Housing and Linkage Advisory Committee herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with of this Section 11. Such cash payment may be made over ten years provided any deferred payments are made in constant dollars as determined by the Consumer Price Index.

(c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11. Determination of cash equivalency

The cash equivalent of the required units, as authorized in 11. (b) above, shall be $50,000 per required unit, adjusted annually by the Community Development Department using the consumer price index for the Boston Metropolitan Area as published by the United States Department of Labor or any successor agency.

11. Characteristics of Required Units

The following standards shall be applied to all required units built or financed in whole or in part through the provisions of Sections 11.100-11.200. The Advisory Committee may, as part of its responsibilities, develop such policies and standards as may be appropriate to advance the intent of the following regulations.

11. The required units shall be intended and designed for families and shall contain a minimum of two bedrooms. For the purpose of this Section 11. a family shall be three or more persons related by blood, marriage or operation of law, or as defined by any public subsidy program employed.

Where housing is to be devoted exclusively to elderly, handicapped, and other special needs households these restrictions as to unit and family size shall not apply.

11. For the purpose of these Sections 11. a low/moderate income household shall be one having an eligible income not exceeding 80% of the median family income for the Boston Metropolitan Area; the median family income shall be as determined by the federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

Units shall be offered so that eligible households shall pay no more than thirty (30) percent of their eligible maximum household income for the units provided (monthly rent or mortgage and taxes for purchased units).

11. The required units shall, to a reasonable extent, serve a diversity of incomes and family sizes and shall to the extent possible preferentially serve Cambridge residents. It is the intent of these Sections 11.100 - 11.300 that very low income as well as moderate income households be served.

The Advisory Committee shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market rate housing.

11. The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11. The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be available for a minimum of twenty years for those low and moderate income households.

11. Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board.

11. The provisions of this Section 11.300 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program.

11. The City of Cambridge encourages developers to exceed the inclusionary housing requirements of Section 11.100. It is the untention of these Sections 11.100-11.300 that such developments should receive priority access to available housing subsidies.

11. Property Subject to this Section

The provisions of the Section II shall apply to all new, substantially rehabilitated, or converted buildings constructed on a lot after November 5, 1984. For the purpose of this Section 11. a lot shall be defined as:

(a) a lot or adjacent lots in the same ownership in existence on November 15, 1984 regardless of any subsequent change in ownership or control or subdivision thereof; or

(b) a group of such Lots in different or the same ownership on November 15, 1984 which has been assembled in whole or in part for development purposes or which constitutes a development parcel.

The provisions of Sections 11.00 and 11.200 shall be applied to the cumulative number of units and/or gross floor area constructed on a lot after November 15, 1984 as determined by this Section 11.

11. Cambridge Inclusinary Housing and Linkage Advisory Committee

There shall be established a Cambridge Inclusionary Hosuing and Linkage Advisory Committee which shall be governed by a seven member board whose members shall be residents of Cambridge and appointed by the City Manager, as follows:

(a) a representative from the Cambridge Housing Authority

(b) a representative of a Cambridge based non-profit housing corporation, on a rotating basis.

(c) a Cambridge tenant

(d) a Cambridge homeowner

(e) a Cambridge based business person or real estate developer

(f) a Cambridge lender

(g) Cambridge City Manager or his designee

11. Powers, Duties and Responsibilities of the Advisory Committee

The Advisory Committee shall:

(a) Review the dispersal of all funds and land conveyed to the City of Cambridge under the provisions of this Section 11.

(b) Develop such policies production and standards as may be appropriate for the of housing required and/or financed under the provisions of this Section 11.

(c) Provide assistance to the Planning Board a in the administration of, this Section 11.

The Advisory Committee shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11. and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department.

11. All deeds, agreements, site plans, and other documents submitted to the Planning Board in application for a special permit under Sections 11.100, 11.200 and 11.300 shall be submitted to the Advisory Committee for review prior to the issuance of a special permit. Within sixty-five (65) days of such submittal to the Advisory Committee it shall make a report to the Planning Board as to whether all requirements of this Section 11. have been met. No special permit may

be granted until the Board has received such written report from the Advisory Committee, or 65 days have elapsed.

C. C. 106

AMENDED NOTICE
PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to amend the Zoning Ordinances of the City of Cambridge by adding the following new Section 11.90 to Article 11.000, Special Regulations. Said new section to be entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

The purpose of this section is intended to require the provision of housing for low and moderate income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the City Council will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

C. C. 106

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RELATIVE TO ZONING.

City of Cambridge

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Councillor David Sullivan
Chairman.

C.C. 108

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PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

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The purpose of this section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the Rent Control Coalition will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

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Let file end.

Cambridge Redevelopment Authority

336 Main Street
Cambridge, Massachusetts 02142
617 492 6800

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DEC 18 11 42 AM '84
CAMBRIDGE, MASS.

December 18, 1984

Charles C. Nowiszewski
Chairman

Thomas J. Murphy
Vice Chairman

Frank S. Maragioglio
Treasurer

Gustave M. Solomons
Assistant Treasurer

Jacqueline S. Sullivan
Member

Joseph F. Tulimieri
Executive Director
and Secretary

Mr. Arthur C. Parris
Chairman
Cambridge Planning Board
57 Inman Street
Cambridge, Massachusetts 02139

Re: Proposed Low-and Moderate-Income Inclusionary Housing Requirements Zoning Ordinance

Kendall Square Urban Renewal Area/Cambridge Center
Wellington-Harrington Urban Renewal Area

Dear Mr. Parris:

The Authority has received a copy of the final report, dated October 29, 1984, to the Cambridge City Council from Councillor David E. Sullivan for the Working Group on Inclusionary Zoning, and a linkage ordinance attached to the report.

Without commenting upon the Working Group's conclusions as to the City's housing needs or as to the specifics or validity of the proposed recommendation or the merits of the proposed ordinance, the Authority respectfully urges that you exempt from the requirements of any such ordinance any development which may take place within an urban renewal area subject to an urban renewal plan that is or may be approved under Massachusetts law.

As you know, Massachusetts law encourages the redevelopment of substandard and blighted areas when such areas are determined by appropriate public agencies to qualify as such and when specific urban renewal plans setting forth particular land use controls and requirements are publicly reviewed, approved and put into effect for the respective areas. The public agencies which participate in this process include the Redevelopment Authority, the Planning Board, the City Council and the Massachusetts Department of Community Affairs. The federal Department of Housing and Urban Development may also participate to the extent that federal financial assistance is furnished to aid the development. Public participation is also involved in the entire planning and approval process.

The urban renewal plan, which is the end-product of that process, is a clear statement to prospective redevelopers and to the public agencies which have financially assisted in making the areas available for redevelopment, on what the new development should be. These detailed expressions of public policy establish a balance of controls and incentives for development aimed at achieving public objectives tempered by market-sensitive flexibility and feasibility.

In Cambridge, urban renewal plans have to date been established -- among others -- for the Kendall Square and Wellington-Harrington areas. These plans now state the land use and other development requirements which the City, acting by and through its lawful processes, impose upon redevelopers in order to achieve the desired development of the respective areas in the public interest.

The imposition of a significant new burden on redevelopers within an approved urban renewal area by the adoption of the proposed new ordinance would be inconsistent with the programs contemplated by the comprehensive urban renewal planning process.

Moreover, making the requirements proposed by the draft ordinance applicable to the existing approved urban renewal areas would, to say the least, be unfair to the redevelopers who have already undertaken or agreed to undertake the planning and development of such areas. It would also be contrary to the municipality's interest in completing the existing projects as planned. In the Kendall Square Urban Renewal area, a redeveloper has entered into two development agreements with this Authority calling for the construction of approximately 2,500,000 square feet of gross floor area, including a mix of commercial, hotel, institutional, parking and residential uses.

In those agreements, the developer is obligated to construct buildings at a certain density and in accordance with a minimum timetable, and under specified, and costly, design and other environmental controls. If new restrictions -- such as those contained in the proposed ordinance -- are imposed, the developer would be within his contractual rights to demand renegotiation of these agreements. Such an occurrence could bring interminable delays in the development process, and the loss of the momentum achieved would be most unfortunate. More than 750,000 square feet have already been constructed, and plans for other buildings are now in various stages of completion. If the draft ordinance were to be made applicable to the Kendall Square area, and the redeveloper renegotiated its construction commitments to the Authority, this would impose a change in the remaining development which would clearly not be in the public interest, economic or otherwise. Not only

has substantial progress been made by the redeveloper in carrying out the approved project but major public improvements have been installed in reliance upon the continued effectiveness of the contemplated development, the existing urban renewal plan and the MXD zoning district which were publicly approved after thorough planning and review.

Similarly, in the Wellington-Harrington area, the Authority has made public disclosure of its intent to dispose of a 25,000 square foot parcel, consistent with the objectives of the present approved urban renewal plan for that area. This is a joint venture owner-occupied development. It is intended that a four-story, 28,000 square foot office/retail building be constructed on Cambridge Street. This development is an additional attempt to renew Cambridge Street in accordance with the approved urban renewal for that area. The Authority is presently negotiating a land disposition agreement which will contain many conditions. To superimpose the additional restrictions of the proposed ordinance would make this development economically infeasible. Accordingly, development of this site (the former Langley building) would not proceed and the continued up-grading of this portion of Cambridge Street postponed indefinitely.

Parenthetically, it should be noted that over the past decade the Authority was responsible for providing more than 1100 new and rehabilitated housing units in the Wellington-Harrington neighborhood. Fully 85 percent of these units are presently occupied by modest income Cambridge families.

We respectfully request your positive consideration that urban renewal areas be excluded from the operation of the proposed inclusionary zoning and linkage ordinance.

Sincerely yours,

Joseph F. Tulimieri

Joseph F. Tulimieri
Executive Director

JFT:aah

cc: Mr. Robert W. Healy
Ms. Kathy Spiegelman
Mr. Russell B. Higley
Mr. Joseph Cellucci
City Council Committee on Ordinances

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DEC 13 12 12 PM '84
CAMBRIDGE, MASS.

THE GILBERT COMPANIES INCORPORATED

December 12, 1984

Members of The Honorable Cambridge City Council
C/O Mr. Paul Healy, City Clerk
Cambridge City Hall
795 Massachusetts 02140
Cambridge, Massachusetts 02140

Members of The Honorable Cambridge City Council:

In response to a December 7, 1984 request of Mr. Paul E. Healy I am happy to submit the following views concerning recent proposals to impose an "Inclusionary Zoning" or "Linkage" tax on new developement.

While it's commonly accepted that the City of Cambridge continues to experience a "serious" shortage of affordable housing city officials must consider all of the reasons for this shortage before they establish misdirected solutions to that shortage. Since the goal of the Inclusionary Zoning tax is to provide affordable housing for low and moderate income and "poor" residents of Cambridge city officials must evaluate the causes of the shortage and weigh the relative impact of those causes before they design the solution to a problem that has existed for fifteen years.

Much of what we have heard as arguments for the proposal and as arguments against the proposal sound like the same arguments we have heard in the continuing debate over Rent Control. Notwithstanding these similarities I am compelled to point out that the most significant factor affecting the current supply of affordable housing is the artificially high demand for apartments in Cambridge which have controled rents substantially below the rent levels for identical apartments in surrounding communities. A survey of rent levels for comparable apartments in communities around Cambridge indicates a difference of between $200.00 and $500.00 per month. Of course the difference in rent levels will depend on the size of the apartment and on the landlord's persistence at obtaining rent adjustments. However, anyone who has shopped for an apartment recently has found that a typical three room - one bedroom apartment, which would be subject to rent control in Cambridge, is renting for

$ 500.00 per month (not including utilities) in Arlington, Somerville or Watertown. An identical apartment in Cambridge is limited to a maximum rent of $300.00 to $350.00 (including utilities). It is easy to see why non-residents of Cambridge are placing an artificially high level of demand on the City's housing stock.

The problems that this disparity in rents causes for Cambridge residents is particularly relevant to a discussion of Inclusionary Zoning since it is the perception of a housing shortage that gives rise to it's consideration. It should be clear to most objective observers that a proposal, such as "Inclusionary Zoning", which doesn't provide for adequate capital to build new housing, which cannot create new land on which to build new housing and which does not address the most significant factor affecting the supply of affordable housing will fail to provide any meaningful solutions and will only succeed in generating a false sense of hope for those who desperatly need housing assistance.

In one respect I would thank the proponents of these never-ending restrictions and regulations. If it weren't for the willingness of some Cambridge officials to continually "experiment" with new and unusual restrictions government officials in other cities and towns would not believe how far they can go and how damaging they are.

My sincere thanks for considering my views and for addressing the problem of affordable housing.

Very truly yours:

Douglas G. Thayer

Comm. from Douglas G. Thayer, The Gilbert Companies, Inc. Re: his views of the recent proposals concerning Inclusionary Zoning.

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DEC 13 12 12 PM '84
CAMBRIDGE, MASS.

In City Council,

December 17, 1984

12/17/84

Received & Petitions

Vincent Lawrence Dixon
287 Harvard Street Unit 64 Cambridge Massachusetts 02139 Telephone: 617-492-0954

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OFFICE OF CITY CLERK
DEC 12 4 09 PM '84
CAMBRIDGE, MASS.

December 12, 1984

TO: The Mayor of Cambridge, and
The Cambridge City Council

FROM: Mr. Vincent Lawrence Dixon

RE: Attached submission on Linkage and Inclusionary Zoning

Accompanying this memo, is a copy of the submission that I had planned to make at the Hearing on Tuesday, December 4, 1984, by the Committee on Ordinances. Unfortunately, I had to depart after several hours, before I was called to testify. The importance of these remarks, is however of sufficient significance that I have provided a copy to you. I will be pleased to answer questions, or receive comment, or discuss these viewpoints, if any of you so desire. I will appreciate, such close consideration of them as you may be able to give.

Thank you.

VLD

P.S. Also accompanying, is a copy of a letter to the Editor of the Cambridge Chronicle which summarizes my broad position.

COMMENTARY

ORIGINALLY PREPARED FOR

HEARING ON LINKAGE AND INCLUSIONARY ZONING

AT

CAMBRIDGE CITY COUNCIL - DECEMBER 4, 1984

By

Vincent Lawrence Dixon

I present these remarks and this analysis to you, as a concerned citizen, who has been active politically in Cambridge for nearly ten years, and in recent years, especially active and concerned about housing issues. I support Linkage as a broad concept, and the purpose of my remarks is to point out the deficiencies in the present proposals, and to urge significant and crucial redrafting.

I welcome the discussion of development, its design, and its purposes, which the issue of Linkage and Inclusionary Zoning, brings to the public arena. The issue in its most basic and broadest scope, is one of making development work for our neighborhoods, and our great community, our City of Cambridge, and yet trying to not add further substance to the view held by many, that Cambridge is not friendly to business. What is appropriate, if we can reach that point, is that the citizenry, our government, and business in Cambridge, become regularly cooperative partners in making better opportunities for all.

It saddens me that the Cambridge Chamber of Commerce has chosen, according to the report, to take a position in opposition to the very principle which this report, this proposed ordinance, and the accompanying hearings, are all about. Economic, social, and political realities rarely permit those in opposition, to constructively influence policies adopted over their opposition. Further, a constructive Linkage and Inclusionary Zoning Policy could enhance the economic attractiveness, and life of many developments. A policy with a range of negotiable incentives, rather than an inflexible list of detailed duties must be included.

Having thus prefaced my remarks, I would like to note also that as I have observed Housing and Development issues in the last several years, I have sought for ideas and concepts which might lead to solutions. In the near future, I will comment more extensively on some concepts, and programmatic ideas which I am sure will be useful in moving public debate towards solutions. In the meantime, Linkage and Inclusionary Zoning, presents an issue with great opportunities and dangers for the rest of this century in Cambridge.

There are two major aspects to Linkage and Inclusionary Zoning as an issue.

The first major aspect, is to consider what the comprehensive policies of the City of Cambridge are, and ought to be, regarding housing and development. We must begin to consider what I choose to call "Practical Moderate" solutions which permit all reasonable interests, be they community, tenant, business, homeowner, or any other group, to have some significant participation in decision-making, and in both gains and responsibilities. The exercise of mature responsibilities is a necessary ingredient of the exercise of freedom. Despite some policies, and much Ordinance-making, overall policies in Cambridge, have become more confused and less certain. New penalties and obligations are created, all too often

together with new loopholes, or unconsidered consequences. Then, new loophole closing band-aids are applied, and new litigation possibilities created.

The manner in which I read this report, and the proposed Zoning Code Section 11.90, comes across to me as being full of and long on duty, obligation, detail, bureaucracy, and opportunities for litigation. It is short on opportunity, incentive, flexibility, opportunity for negotiation, and consideration of the future. Clearly, development should provide benefits to the community, and in the marketplace, economic benefits occur through both direct and indirect processes. The broad concept of linkage as I see it, is that development should provide some direct and relatively immediate benefits to the community, in a manner agreeable to the community. This should in no way however, be done solely in a punitive and bureaucratic manner, lacking in flexibility, be it in design, or legal process. I am sorry to have to say that the proposed ordinance has punitive and inflexible characteristics. Without flexibility, and with punitive controls, such an ordinance goes one more step towards disrupting a reasonable business and development environment, and risking the expenditure of more thousands of dollars on litigation.

Development is a two-way business transaction. Both the City and the Developer are making a purchase.

The City pays out real dollars to construct and reconstruct infrastructure of roads, traffic patterns, sidewalks, sewer lines, and to provide planning assistance, by the nature of modern approval processes. In return, it receives property tax revenue, new jobs, new commercial enterprises, and enlarged customer market potential.

The Developer purchases land, spends money on planning, construction, and related services. In return, the Developer obtains the right to develop valuable property, the completion of a saleable and/or leasable product, a building property, and significant income.

Unlike many economic transactions, both sides actually do spend money, and buy some goods and services during the course of a project.

It is this two-way process which needs to be considered fully by all sides, and if this is done, I believe that the interests of all groups and citizens, can be more properly considered. There is a separate proposal for the proposed Section 11.90 by the Cambridge Rent Control Coalition, which in certain cases, I believe, has provisions worthy of note. Let me return to that later, and now focus my attention on Section 11.90 as drafted by the Working Group.

The report effectively conveys the scope of housing market pressures in Cambridge. There is a large "Housing Gap" between the need for and the availability of units. This proposal is for 696 new units over 15 years, or the financial payments necessary to construct that number of units. That's an average of 47 units a year. If we accept the projected new demand figures over that time span, of 4,637 units,

then the proposal would meet but 15% of the projected new needs. Nearly 700 new units is a significant number, but by itself, is not a cure. We must see this proposal on Linkage and Inclusionary Zoning as important, but not a major solution. We should consider this proposal. But we must consider other possibilities and other circumstances to come closer to a long-term solution in a coordinated and comprehensive approach.

Within the report itself, on the fifth page of Attachment 3, we can observe that there are 2,442 Housing units listed as vacant, a doubling of vacant units in the ten years from 1970 to 1980, of which 51% are noted as unavailable for occupancy; many no doubt due to decay and neglect. If the City and housing reformers are serious, the numbers of those units need to be reduced by making them habitable, or by seeking mechanisms to replace them. Other mechanisms to encourage the upgrading of, rather than the decline of property, need to also be considered. Those with future housing needs, must be considered, but the creation of major new quantities of housing for those presently awaiting it, is long overdue.

Developer Incentives/Housing Creation

Page Seven of the report notes that offering incentives at least in part, to developers in return for their housing production, was considered "but found... unworkable."

Zoning Benefits were found unacceptable because of neighborhood preservation issues. Such standards and values as neighborhood preservation, must be considered, but they should avoid turning into neighborhood fossilization. Neighborhood improvement should not be precluded. In some cases, perhaps standards can be developed which remove unsightly or inconsequential property, and replace it with new housing, of greater quantity and accessible to the same type of tenants and others like them. We need to begin to seek such solutions.

In regards to Tax Benefits, it is noted that the City "lacks power under state law to reduce a developer's taxes in return for housing, and in any event could not afford to do so..." To this I believe we need to say: "Whoa, wait a minute!" Under state law, there does exist power to reduce taxes as an incentive for commercial development. If the present hectic pace of development continues, it is conceivable that the City could at some future day, afford to offer at least a few tax benefits. In the context of a draft proposal which is novel and innovative, the opportunity to at least seek as a future option, such incentives, is a missed opportunity which is puzzling.

Major housing-problem solutions will occur from broad new ideas and options, not just the narrow application of new ideas. The Working Group is prepared, apparently, for the likelihood of lengthy court suit, and the expenditure of public funds involved, the amount of which is nowhere estimated. Given such determination, a parallel

effort to obtain state legislation with further options for the creation of housing, I believe ought to be considered. In fact, for too long, has the creation of commercial development been viewed by most concerned, as different than the creation of housing development. The creation of revenues and jobs from commercial development, should be accorded equal status with the creation of shelter from housing development. Both are essential to the efficient as well as the fair operation of a just and prosperous society. Social justice is and should be economic justice. If incentives can be provided to help create revenue and jobs, then they should be available to help create housing. I urge that the City Council consider the development of a broader and more flexible proposal, and the filing of it as legislation at the state level, along some of the lines and suggestions I note in this statement. If commercial development types of incentives can be used to begin the creation of housing units, possibly the type of engine of growth we see all around us, can be started up, created, and directed to the creation of larger quantities of housing units.

If a parallel effort is pursued by means of legislation, other communities, especially congested urban cities and towns, would I believe, be anxious to join. Such an effort might need to broaden the proposal, and that would be for the best. State legislation can take longer than the courts, but at least some times, the courts take a longer time. Further, if the courts decide against these proposals, on non-constitutional grounds, resort to legislation will still be an option which advocates of this proposal may need and desire. Also, if state legislation were passed, these and any associated options would be available state-wide, and most pending court suits, or likely court challenges, made moot.

PURPOSE AND TEXT OF PROPOSED SECTION 11.90

The Purpose Statement of Section 11.90 as far as it goes, is a laudable goal, but again is insufficient and incomplete.

I would like to suggest that the goal should be Mixed Use Development. If that is our chosen goal, the concept of Linkage and Inclusionary Zoning become part of an overall concept, thus less sensitive as an issue, and less disruptive as a single-issue band-aid. The economic sales points of mixed use development exist, and need to be further detailed.

These include:

- The provision of goods and services for commercial office building workers and the surrounding community, by needed retail development;
- The enhanced viability of retail stores by the creation of a residential component to a development;
- The increased security, especially in non-standard, non-business day

hours provided for all by the presence of a residential community and stores used by a variety of people;

- The expansion of just a day-time office complex such as Kendall Square, into a genuinely full-time round-the-clock community; rather than a tomb-like night-time empty complex;
- The provision of housing opportunities reducing housing pressures on the nearby community, quite possibly reducing local opposition to many projects.

Mixed Use Development can therby improve the sale or leasability of all property in projects, not just the retail, and could make easier the process of reasonable development, for both the developer, and the needs of the community. Mixed use development might also qualify for some tax incentives, on a partial basis, based on existing commercial property development incentives, which are clearly authorizable.

By taking the approach I suggest, housing can be seen as a vital and necessary part of a development, not just a city imposed requirement, and both community and developers can benefit.

Renovation and Rehabilitation

Section 11.922 (a) raises several problems, especially in regards to whether it will have a chilling effect on renovations and rehabilitations, and on tenant security. For instance, tenants who depart a residence on any basis, are not considered in this regard specifically by any provision to encourage their return. Could tenants be induced to leave and then not have a reasonable right of return; could moderate income persons be displaced for either upper or lower income persons? We want housing to be rehabilitated, not create further displacement, chill the desire of owners to rehabilitate by establishing a lengthy bureaucratic process, or create an encouragement for altering the present diversity of housing opportunities which property which should be rehabilitated, may provide at present.

Design Considerations

Section 11.974 needs rethought because it may severely limit design flexibility. It could be utilized to prevent dwelling areas from being adjacent in a way which would have many neighbors. By requiring dispersed dwelling units, the existence or development of neighborliness and community could be hindered. If housing units are clustered, do we really mind, as long as the housing units are available?

Vacancy Issues

Section 11.976 states restrictions so that units will be "permanently available for those low and moderate income households." This is again inflexible. What if in some future year, in order to meet this provision, the units must be kept vacant? We know that this City Council would penalize any owner of housing units kept deliberately vacant; what about renting these units? We've had a lot of rainy days in housing availability. Some year, we may have sunny days, and there may be an excess of housing units. If that occurs, it should be possible for higher income persons to rent vacant units, and the excess in rental, deposited for future use in the creation of housing units, when needed. This needs to be considered.

Family-Unit Bias

The creation of housing units for families is a major role of the proposed ordinance, and this is proper. However, there is a lack of provision for the creation of single-person housing units. Prevailing and increasing demographic trends are especially weighted toward a growing number of single elderly, and single younger persons. Senior citizens, it is true, do have elderly housing programs, but should they be excluded from more mixed housing, and packed off to segregated elderly homes? Should our communities be deprived of the presence of functioning Seniors within them? What of younger persons, single in status by circumstance, and also increasingly by choice, some of whom are single mothers? Do we choose to ignore them, or fit them into larger units they may not need? A better mix, or range of housing unit provision is definitely needed.

Government Exemption

Section 11.978 provides exemption to government agencies and funds. This strikes me as an unwise introduction of a kind of Sovereign Immunity for government. If we are going to restrict private and commercial entities, shouldn't government also be made to follow the law? This provision needs simply to be deleted.

Expansion of Board Membership

Section 11.991 proposes a concept for a diversified Board for the proposed Cambridge Housing Development Trust Fund, useful, but needing of expansion. In fairness, and as a means to provide further expertise, I suggest the addition of two other members: one to represent homeowners, and one to represent small landlords. These additional perspectives are part of the housing diversity and strengths of Cambridge, and any serious attempt to assist in a solution, should actively involve the input of these sectors of our population.

Ownership and Rental

This raises one final alteration which is vital to the core of the Working Group proposal, and that is rental versus ownership. Nothing in the Working Group proposal suggests the concept of ownership. Are we trying to create a class of renters, whose economic needs we can bureaucratically serve and monitor permanently, but thereby provide no option or hope of owning?

CAMBRIDGE RENT CONTROL COALITION (CRCC) PROPOSAL

Ownership

It is especially here that the Cambridge Rent Control Coalition proposal provides useful reference. Their paragraph 11.953 and 11.995 indicate that units may be rented or sold. Full housing freedom, especially for middle and lower income people, can come only when they do not have to answer to a landlord, but can be according to the fullest concept of our legal tradition, 'secure in possession of house, home, and property'. Updated, this concept is "A person's home is their mansion."

Also suggested by 11.953 (b), is fuller participation by non-profit housing community development corporations. Again, economic democracy, by means of business-like operations. Government may have to secure the public welfare, but should when possible, seek more efficient and more direct citizen control of those responsibilities.

Job Impact

Section 11.971 and 11.972 address a key matter in all development, what is the job opportunity or loss to the community?

Other

Section 11.967 provides a possibly more realistic design guideline than that of the Working Group.

Section 11.995 provides reference to financing and selection processes for tenants and owners, not adequately defined by the Working Group.

CONCLUSION

I appreciate the careful consideration of these views, though long and detailed. They are the result of extensive observation and consideration of such issues over a number of years. Cambridge must begin to solve the housing crisis that faces it, so that it may seriously address the other problems which face its future. If I can help in contributing ideas toward that solution, it will be my

pleasure. I welcome further comment on these issues, and invite letter or phone calls to further discuss these issues.

Sincerely,

Vincent Lawrence Dixon

Vincent Lawrence Dixon

8

Comm. from Vincent Lawrence Dixon, 267 Harvard St. transmitting a copy of remarks he was unable to deliver at the December 4, 1984 meeting of the Ordinance Committee Re: Inclusionary Zoning; due to being called away from the meeting prior to giving testimony before the Committee.

In City Council,

December 17, 1984

12/17/84

Referred to the

Petitions

Dear Chairman and Councillor Sullivan:

RECEIVED BY
OFFICE OF CITY CLERK
DEC 11 1 20 PM '84
CAMBRIDGE, MASS.

I applaud your efforts to explore the linkage concept as applied to Cambridge.

My support for such a concept is, at this point, mainly philosophical. It alarms me to think that it is possible that this city will consist of a wealthy residency and those in public housing, due to the prevailing market forces. I think that such a possibility is dangerous, not least for its polarizing effects.

Our city's appeal has been its diversity--both economic and racial. It is from many of us working across traditionally defined "class" or economic lines that Cambridge is as an attractive place to live as it is today. In diversity lies strength, and I think this is as true for a city as for a nation.

I also believe that people should have a free choice in where they wish to live, and it should be possible for them to exercise that choice.

The linkage concept is indeed a possibility. I hope that you, as Chairman, can facilitate the study and exploration and ultimately, incorporate linkage into future development.

Sincerely yours, Ann Stewart Ann Stewart 21 Essex St 5 Dec 84

~~23B Suffolk st~~
Cambridge MA 02139

(617)~~876-3368~~

Vincent Lawrence Dixon

287 Harvard Street Unit 64 Cambridge Massachusetts 02139 Telephone: 617-492-0954

December 10, 1984

Editor
Cambridge Chronicle
678 Massachusetts Avenue
Cambridge, Mass. 02139

Dear Editor:

The present debate on Linkage and Inclusionary Zoning is both a great opportunity and a great risk for the future of Cambridge through the close of this century. The issue in its most basic and broadest scope, is one of making development work for our community and our neighborhoods in the City of Cambridge, and yet trying to not add further substance to the view held by many, that Cambridge is not friendly to business.

The goal should be one of Mixed Use Development. The proper goal of Mixed Use Development, is the creation of not just one type of property, but of varied commercial and retail business, and diverse residential opportunities. A coordinated and balanced approach creates fewer problems, and helps create solutions to other problems. Linkage and Inclusionary Zoning are but part of the concept of Mixed Use Development.

A constructive Linkage and Inclusionary Zoning policy could enhance the economic attractiveness and life of many developments, provide genuine housing opportunities for Cambridge residents, and enhance retail and other service business development needed by neighborhood residents and commercial office workers alike.

Punitive and inflexible controls would go one more step towards disrupting a reasonable business and development environment, risk the expenditure of thousands of dollars on litigation, and create another false hope of additional housing for those who truly are need of shelter which is decent and safe.

The Working Group of the Cambridge City Council has created a Draft Zoning ordinance which is a useful start, and a report which bears serious consideration. Unfortunately, the consequences of the data and observations in its report have not been fully carried into their draft ordinance. Rather than creating a range of negotiable incentives for developers, which the City can utilize to gain overall objectives, it has created a narrow set of rules which reduce design flexibility and convey a punitive flavor. The general purposes of the proposed Zoning Ordinance, can be obtained, if there is appropriate redrafting.

In performing that redrafting, three aspects of the draft proposal by William S. Noble, on behalf of the Cambridge Rent Control Coalition (CRCC), deserve serious consideration. These are the introduction of the concept of possible ownership of units by residents, the more explicit recognition of a role for neighborhood development corporations, and recognition of concern for job impacts. Some details of the CRCC proposal also concern me, but the concepts are important.

No proposal which creates housing, should create a housing policy which by its nature excludes low and moderate income persons from the opportunity to own their own home, and instead offers them a permanently inferior opportunity to rent someone else's property, public or private. Housing creation for these people should also include the possible option of ownership creation. Economic self-sufficieny can also be created by encouraging local business including local neighborhood development corporations, and local job impact consideration. A diversity of business and employment opportunities helps all participants in the market place, consumers and sellers alike.

Finally, once a more adequate proposal is drafted, I strongly believe that a parallel effort should be made to obtain state legislation. The legal suits possible, justify obtaining permanent authority by means of specific state legislation enacted into statutory form. The cooperation possible from other urban communities would aid in its serious consideration, and would thereby offer them the availability of a constructive series of options whenever they should need it, now or in the future.

Sincerely,

Vincent Lawrence Dixon

Vincent Lawrence Dixon

C. C. 108

PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

See amended notice

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by Councillor David Sullivan to amend the Zoning Ordinances of the City of Cambridge by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor David Sullivan,
Chairman.

see amended notice
posted on bulletin board 11/16/84 dd

CAMBRIDGE, MASS.
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RECEIVED BY
OFFICE OF CITY CLERK

1st fla Cond.

[AMENDED NOTICE]

C. C. 106

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For the Committee,

Councillor David Sullivan,
Chairman.

CITY OF CAMBRIDGE
CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

November 16, 1984

To Whom It May Concern:

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5:30 p. m. Petition of the City Council to create a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development".

5:30 p. m. Petition of William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to add a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

Please note, that the time of these hearings have been changed so that both petitions will be heard together as they are concerned with the same subject matter.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Encs. (2)

CITY OF CAMBRIDGE
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PEH/dl

Encs. (2)

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

November 8, 1984

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Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Encs. (2)

CITY OF CAMBRIDGE
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Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Encs. (2)

CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

David E. Sullivan
City Councillor

October 29, 1984

To the Honorable, the City Council:

The Working Group on Inclusionary Zoning and Linkage, established by your Resolution No. 13 of March 12, 1984, submits its final report for your consideration.

The problem: a continuing housing crisis

That Cambridge continues to face a serious housing problem is well known. The basic reason is that many more people want to live in Cambridge than there are homes for them to live in. The City Council has voted several times to declare a "housing emergency," requiring the adoption of strict legislative controls on rents, evictions, and removals from the rental market.

The magnitude of the problem is documented clearly in Attachments 1 and 2, recent reports by the city Community Development Department (CDD) on housing needs in Cambridge. They show that 8,762 lower income Cambridge households, almost one of every four households in the city, require some housing assistance. Over 800 Cambridge families have been waiting more than four years for public housing units, and new applications have not even been received since that time because no units are available. The Cambridge Housing Authority has a waiting list of 1294 applicants for its leased housing, 60 percent of them current Cambridge residents, but only 87 could be placed last year. Over 250 are waiting, some for

more than ten years, for housing developed by non-profit neighborhood corporations.

Overwhelmingly, the families who face this housing crisis are those with low and moderate incomes, because those with higher incomes are purchasing or renting the available housing and driving the prices completely out of their range. The data indicate that the average sale price of a 1-4 unit Cambridge house virtually doubled, from $43,674 in 1971-1977, to $80,450 in 1978-1982. Despite rent control, the median Cambridge rent (including utilities) doubled from $134 in 1970 to $257 in 1980. As of 1980, 45 percent of all Cambridge tenants paid more than the generally accepted 25 percent of their incomes for rent, and 28 percent paid at least 35 percent of income.

All indications are that the demand for Cambridge housing will markedly increase in the near future, and that the market cannot possibly produce enough housing to keep pace. Attachment 3 shows that new commercial, especially office, development will generate 23,186 new jobs over the next fifteen years. Assuming that the current ratio of 25 percent of these new employees seek housing in Cambridge, demand will increase by 4,637 units (assuming 1.25 employees per household). At the same time, the market will produce a net increase of about 1,000 new housing units, based on recent performance. Obviously, this is less than one fourth of what is necessary, and can only make the present housing crisis much worse.

Meanwhile, the federal government, at the instance of the Reagan Administration, has essentially abandoned any role in producing new housing. Ironically, in view of the recent predominance of "supply side" economics, the Administration's principal national housing innovation - "housing vouchers" - will serve chiefly to increase demand. While some increase in state housing financing has occurred, it is clear that the duty of closing the "housing gap" identified above will fall inevitably on this city government.

The city cannot possibly finance this housing production from tax revenues. State law allows the city to levy only a property tax, and Proposition 2½ effectively prevents any increase in funds from this source for a new housing program. The current development boom, however, not only constitutes a chief cause of the city's housing problem, but also suggests a potential alternative source of housing production. The City Council created this Working Group with this potential in mind.

Working toward a solution

On November 8, 1983, voters in the Cambridge city election approved by a 58-42 percent margin the anti-displacement housing program, placed on the ballot as advisory question 3 by the Cambridge Rent Control Coalition. In part, this program calls on the City Council to "require any new commercial and residential development to provide housing units for low- and moderate-income people."

In response, the City Council adopted its Resolution No. 13 of March 12, 1984 (Attachment 4). The resolution "declare(d) that the City of Cambridge will pursue a policy of inclusionary zoning, or 'linkage'," to carry out the goal of the advisory question. The resolution also established this Working Group "to draft an appropriate zoning petition for presentation to the City Council." The Chairman of the Council's Committee on Ordinances was authorized to assemble the Working Group.

All city councillors, various city agencies, housing advocates, tenant organizations, developers, businesspeople, and others were invited to join the Working Group. Many did so, resulting in a membership list which demonstrates unique breadth and expertise (Attachment 5). Most group members were volunteers, and all gave generously of their time and energy.

The Working Group held eleven meetings, on the following dates: March 28, April 11, April 25, May 9, May 23, June 13, June 27, July 11, July 17, August 21, and September 11. Each lasted from one to two-and-a-half hours, and attendance usually ranged from ten to twenty. The Chamber of Commerce, while represented at each meeting, made clear at the outset its opposition in principle to the Group's goal, and observed rather than participated. Detailed minutes were kept of each meeting, and these are publicly available, together with the various memoranda and other submissions, in the City Council office.

The Group gratefully acknowledges the invaluable technical support provided by the CDD staff, especially Housing Director Michael Rosenberg, Economic Development Director Joseph Kellogg, and Land Use and Zoning Director Les Barber. They attended many meetings and provided helpful advice and data; however, the policy recommendations of this report are those of the Working Group and do not necessarily reflect the views of the CDD.

The Group was also very fortunate to have the "pro bono" legal services of Stephen A. Hantman, Esq. of Brown, Rudnick, Freed & Gesmer, who was assisted during the summer by Cathy M. Judd, a summer associate with that firm. They provided useful advice at several meetings and the legal analysis which appears as Attachment 8.

The Working Group was also able to build on the experience of other communities. San Francisco for several years has implemented a policy of requiring linkage payments from developers, as part of compliance with a state comprehensive-planning mandate. Last year, Boston adopted the first stage of a "linkage fee" requirement for new downtown office buildings needing zoning relief. Finally, of course, Cambridge itself considered last year a proposal somewhat similar to the present one, drafted by the CDD at the City Council's request. Details of this other legislation are available in the Group's files.

Although the Group attempted to proceed by consensus, its members disagreed on some issues, and some votes were therefore necessary. It is likely that no member is satisfied with every aspect of the recommended draft, but all felt that it was important to submit a proposal to the City Council so that the legislative process could begin. Representatives of the Council on Aging, the Cambridge Committee of Elders, the Cambridge Economic Opportunity Committee (CEOC), and the Cambridge Housing Authority (CHA) have specifically endorsed this report and its recommendations.

The Working Group realized that legal constraints in the zoning change procedure would allow its proposal to become only less, not more, restrictive during the legislative process. Consequently, at several points, the Group decided to adopt the more restrictive alternative, allowing for compromise to occur later if the City Council so decided.

A proposed remedy: inclusionary zoning and linkage

Thw Working Group recommends for adoption by the City Council the attached draft inclusionary zoning and linkage ordinance (Attachment 9). The draft proposes to generate new housing development by applying separate requirements to new housing and commercial development. A Planning Board special permit would be required for such developments, and the permit could be issued only if the developer agreed to provide the required housing.

The Group first proposes to require that most new housing developments make 25 percent of their units available to low and moderate-income families. The first seven new housing units in a development would be exempt from this requirement. The purpose of this part of the proposal, known as "inclusionary zoning," is to ensure that at least a fraction of the new housing being built in Cambridge serves the needs of those who cannot afford market prices.

Second, the Working Group submits that most new office, institutional, and retail developments should supply low- and moderate-income housing to respond to

the increased demand by their new employees who will live in Cambridge. The Group calculates this "linkage" proposal as requiring one such unit for every 10,000 square feet of gross floor area, with the first 10,000 square feet exempt.

The draft would allow maximum flexibility to developers in meeting these requirements; they could construct the unit themselves, make a cash payment to the city of equivalent value, or donate land to the city of the same value. The proposal eleborates in detail provisions limiting the units for use by low- and moderate-income families, with preference given to Cambridge residents. The first two of every three units provided would be for "low" income families, the third for "moderate" incomes.* It also provides for administration of the program by a Cambridge Housing Development Trust, with a board appointed by the City Manager from specified categories and to be staffed by the CDD.

Since the 25 percent "inclusionary zoning" requirement would apply to at most 100 market rate housing units per year for the forseeable future, most of the new low- and moderate-income housing to be generated by this proposal will derive from the "linkage" aspect applying to new commercial development. Attachment 6 estimates that 7.354 million square feet of expected development over the next fifteen years will produce 696 new low- and moderate-income housing units (or their cash equivalent) over that time. Of course, this assumes that other obstacles to the construction of such units - including location of sites, neighborhood opposition, and bureaucratic inertia - can all be overcome. While even this constitutes merely a fraction of the predicted need, it represents the beginning of a solution.

---

*The proposal defines low income as a current maximum income of $16,150 for a family of four, $12,900 for two, $11,300 for one. The Moderate income maximum is $25,850 for four, $20,700 for two, $18,100 for one.

The Working Group believes that its proposal will not significantly interfere with Cambridge's robust development boom. Attachment 7, prepared with reference to the somewhat different formula in last year's CDD proposal, indicates that the impact on commercial rents will be a small fraction of a cent per square foot if financed over time. Especially in view of Cambridge's wide desirability as a commercial address, this will have only slight impact on the market, and will probably be passed through for the most part to landowners, commercial tenants, and consumers.

The Group considered at an early stage the possibility of offering incentives, at least in part, to developers in return for their housing production, but found this unworkable. The two principal incentives suggested were tax and zoning benefits. The city lacks power under state law to reduce a developer's taxes in return for housing, and in any event could not afford to do so because of the fiscal constraints outlined earlier. As for zoning, many Cambridge neighborhoods have worked for years to obtain the dimensional and use limitations on development reflected in the present zoning ordinance. The Group did not believe that new low- and moderate-income housing required sacrificing neighborhood preservation, and was particularly concerned that such a proposal might provoke opposition to such housing development among neighborhood organizations.

Based on the analysis by its attorney (Attachment 8) and others, the Group is convinced that its proposal has a good chance of withstanding attack in the courts. Nothing can be certain in so untested an area, and the Group believes that only passage of the proposal can definitely resolve the legal issues. It felt strongly that the delays required to obtain explicit authority from the state Legislature, even if it were eventually forthcoming, would prevent the construction of some much needed housing. Consequently, the Group chose to proceed under the existing authority of the Zoning Act and the Home Rule Amendment.

The Working Group understands that changes in this proposal during the legislative process may well be necessary or desirable. The Group urges the City Council and the Planning Board to consider its draft with that constructive approach, and pledges to work with them in the spirit of compromise for an effective and realistic final result.

No doubt some, particularly developers, will find this proposal objectionable. Of course, they have a right to state their views, but the political process is such that their opposition will be heard loud and long. The thousands of present and future Cambridge residents who will benefit from this measure will not be testifying at the public hearings, because their immediate financial interest in it is perhaps not so obvious. We urge the City Council and Planning Board to hear their cries for help and their insistence on social justice nonetheless, and to exercise the responsibility and leadership to plan carefully for the future of all our citizens.

Respectfully submitted,
For the Working Group,

David E. Sullivan
City Councillor

DES/mh

Lower Income Households Needing Assistance[1]

	Elderly[2]	Small Family[2]	Large Family[2]	Total
Very Low Income Households[3]	1391	4407	282	6080
Lower Income Households[4]	370	2267	45	2682
Total	1761	6674	327	8762

[1] Source: Cambridge Housing Assistance Plan, 1982-85 which is based on 1980 U. S. Census, Data from the Cambridge Department of Community Development, and on HUD formulas which include households living in substandard units and paying more than 30% of income for rent.

[2] Elderly: One or two person households containing at least one person 62 or older.

Small Family: Households of four or fewer persons, including unrelated non-elderly individuals.

Large Family: Households of five or more persons including a handicapped person.

[3] A household whose income does not exceed the Section 8 very low income limits by household size (generally 50% of the Boston SMSA Median Family Income for a four person household).

[4] A household whose income does not exceed the Section 8 lower income limits by household size (generally 80% of the Boston SMSA Median Family Income for a four person household).

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

Attachment 1

To Councillor David Sullivan,
Committee on Ordinances

From Michael Rosenberg, Housing Director **Date** April 25, 1984

Subject Housing Needs in Cambridge

The best indicators of housing need in Cambridge currently available are the City's Housing Assistance Plan (HAP) based on 1980 Census data, and prepared in accordance with procedures developed by HUD, and the waiting lists for assisted housing programs.

1. The 'HAP' shows that 8762 lower income Cambridge households are in need of housing assistance of some kind; (see attached table).

2. The Cambridge Housing Authority waiting list for public housing indicates that over 800 Cambridge families have been waiting for public housing units at least since 1980. The waiting period for a family applicant is 4½-6 years. New applications have not been accepted since 1980.

   For leased housing, the CHA has a waiting list of 1294 applicants, 60% of whom are currently Cambridge residents. Last year only 87 applicants were actually placed, due to inability to locate suitable units and limited landlord participation.

3. The City sponsors several programs administered by nonprofit neighborhood coporations that provide homeownership opportunities for lower-income Cambridge families by rehabbing dilapidated structures and building new homes. The waiting list for homes is in excess of 250 families, some of whom have been listed for more than 10 years.

attachment

ATTACHMENTS

1. April 25, 1984 memorandum from Michael Rosenberg, Housing Director, Cambridge Community Development Department (CDD), concerning housing needs in Cambridge.

2. May 31, 1984 memorandum from Kathy Speigelman, Assistant City Manager for Community Development, concerning housing needs in Cambridge.

3. April 25, 1984 memorandum from Michael Rosenberg, concerning projected impact of real estate development on housing demand in Cambridge.

4. March 12, 1984 City Council resolution no. 13.

5. Working Group membership.

6. October 1984 memorandum from Joseph Kellogg, Economic Development Director, CDD, concerning projection of housing units and cash equivalents to be produced by commercial development under proposal.

7. April 25, 1984 memorandum from Michael Rosenberg, concerning impact of linkage fees on commercial rents.

8. Legal analysis of Stephen A. Hantman, Esq., of Brown, Rudnick, Freed & Gesmer.

9. Draft zoning ordinance.

Housing Costs

	1970	1980
Median Monthly Gross Rent (includes utilities)	$134	$257

Rental Housing Units by gross rent as a percentage of income	1970	1980
Less than 25% of income	14,898 (52.9%)	15,796 (54.8%)
25 - 34%	4,449 (15.8%)	5,007 (17.4%)
35% and over	8,822 (31.3%)	8,018 (27.8%)
Total	28,169 (100%)	28,821 (100%)

Average Sales Prices (1-4 unit structures)*

1961 - 1965	$23,912
1966 - 1970	$34,501
1971 - 1977	$43,674
1978 - 1982	$80,450

Income (1980)

	Cambridge	SMSA
Median Household Income	$14,211	$18,265
Median Family Income	$18,434	$22,580
Percent Families below poverty level	11%	8%

*Source: Banker and Tradesman

Source: U. S. Census, 1970 and 1980: Cambridge Community Development Department files.

Attachment 2

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

To Robert Healy, City Manager

From Kathy Spiegelman, Assistant City Manager for Community Development

Date May 31, 1984

Subject Housing Needs in Cambridge

In response to the City Council Request of May 21, 1984, we have summarized below the best indicators currently available on the need for lower-income housing in Cambridge. These data appear in The City's Housing Assistance Plan (HAP), which is based on the 1980 U.S. Census, estimates from the Community Development Department, and on the waiting lists for assisted housing programs. We have also attached a list of the percentage of subsidized units in 11 Massachusetts cities and towns. We understand that the State's Executive Office of Community and Development will be issuing a Housing Needs Study within a few weeks. The results of the forthcoming study are not yet available.

1. The Cambridge Housing Assistance Plan reports that over 8,700 lower-income households are in need of housing assistance. These households are paying 30% or more of their income for rent and/or are living in substandard conditions. The 8,700 figure reflects a need for economic relief (i.e. rental assistance) as well as a need for building new low-income housing units. However, it is important to note that it is not possible to determine from available data, the number of households in this category that would actually qualify for federal or state housing assistance since program eligibility depends on factors other than income alone.

2. Perhaps the most concrete indicators of housing need available are the actual waiting lists for assisted housing. The Cambridge Housing Authority list for its public housing units show that over 800 Cambridge families have been waiting for these units at least since 1980. The waiting period for a family applicant is generally 4½-6 years. New applications have not been accepted since 1980.

   For leased housing, the CHA has a waiting list of 1294 applicants, 60% of whom are currently Cambridge residents. Last year only 87 applicants were actually placed, due to the inability to locate suitable units and limited landlord participation.

3. The City sponsors several programs administered by nonprofit neighborhood corporations that provide homeownership opportunities for lower-income Cambridge families by rehabilitating dilapidated structures and building new homes on scattered sites. The waiting list for homes is in excess of 250 families, some of whom have been listed for more than 10 years.

Attachment

Percentage of Subsidized Housing Units in 11 Massachusetts Cities and Towns

Town	Percentage
Boston	15.8
Brookline	6.4
Cambridge	10.8
Fall River	11.8
Lynn	11.1
New Bedford	12.6
Quincy	9.4
Pittsfield	7.5
Somerville	8.4
Springfield	13.5
Worcester	11.3

Source: Massachusetts Executive Office of Communities and Development and The Cambridge Community Development Department. March - August, 1983

Attachment 3

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

To Councillor David Sullivan, Committee on Ordinances

From Michael Rosenberg, Housing Director **Date** April 25, 1984

Subject Projected Impact of Real Estate Development on Housing Demand in Cambridge

A host of trends--local as well as regional and national--will influence overall demand for housing in Cambridge in the next 15 years. For the purposes of considering inclusionary zoning/linkage, however, we are intentionally focussing on the impacts of projected real estate development.

According to C.D.D. calculations, new real estate development, largely offices and R & D space, should generate on the order of 23,000 new jobs between the years 1985 and 2000. This translates into an increased demand for approximately 4600 housing units, as follows:

Projected new development (sq.ft.)	6,956,000
Number of Additional Employees (Avg. 1 employee/300 sq.ft.)	23,186
Number of Employees who will seek housing in Cambridge (based on current ratio of resident Cambridge employees to total employees)	5,796 (25%)
Demand for Additional Units (assuming 1.25 employees/household)	4,637

New Residential Construction

Residential construction in Cambridge since 1969 can be divided into two fairly distinct periods: 1969-1973, during which there was an annual production rate of 940 units; and 1974-1983, the past decade, during which the volume of residential construction dropped dramatically to fewer than 100 units per year. Since 1974 the largest number of units that were built in a single year was 215 in 1978. It should be noted that the residential units constructed in the 1969-1983 period were fairly evenly divided between market rate and public/subsidized. Between 1970-1980, the City's inventory of assisted low and moderate income housing doubled.

Losses due to demolition from 1969-1983 were about 700 units, with the greatest number taking place during the peek residential construction period.

If the rate of residential construction in the previous decade is an indicator of future activity, Cambridge may expect fewer than 1500 new units and a net increase probably closer to 1000 units in the 1985-2000 period. This level of activity will likely result in the continued trend (see chart attached) toward a slowly declining population and a modestly increasing number of households. If the projected economic growth does, in fact, occur, the strong demand pressure on the City's housing stock will no doubt intensify.

Attachments

Changes in Population - 1950-1980

	1950		1960		1970		1980	
	No.	%	No.	%	No.	%	No.	%
Total Population	120,740	100.0	107,716	100.0	100,361	100.0	95,322	100.0
Population in Households	107,676	89.2	95,778	88.9	88,502	88.2	82,888	87.0
Population in Group Quarters	13,064	10.8	11,938	11.1	11,859	11.8	12,434	13.0
% Change in total population			-10.8		-6.8		-5.0	

Changes in Household Composition - 1950-1980

	1950		1960		1970		1980	
	No.	%	No.	%	No.	%	No.	%
Total households	32,921	100.0	34,253	100.0	36,411	100.0	38,836	100.0
Family households	28,640	87.0	24,187	70.6	20,850	57.2	17,415	44.9
Non-family households (2 or more persons)	337	1.0	1,688	4.9	3,776	10.4	5,092	13.1
Single person households	3,944	12.0	8,378	24.5	11,785	32.4	16,329	42.0
% change in households			+ 4%		+ 6.3%		+6.7%	
% change in family households			-15.5%		-13.8%		-16.5%	
Persons/household	3.3		2.8		2.4		2.1	
Persons/family households	3.5		3.4		3.2		3.1	

Source: U. S. Census, 1950-1980

Changes in Population - 1950-1980

	1950		1960		1970		1980	
	No.	%	No.	%	No.	%	No.	%
Total Population	120,740	100.0	107,716	100.0	100,361	100.0	95,322	100.0
Population in Households	107,676	89.2	95,778	88.9	88,502	88.2	82,888	87.0
Population in Group Quarters	13,064	10.8	11,938	11.1	11,859	11.8	12,434	13.0
% Change in total population			-10.8		-6.8		-5.0	

Changes in Household Composition - 1950-1980

	1950		1960		1970		1980	
	No.	%	No.	%	No.	%	No.	%
Total households	32,921	100.0	34,253	100.0	36,411	100.0	38,836	100.0
Family households	28,640	87.0	24,187	70.6	20,850	57.2	17,415	44.9
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Single person households	3,944	12.0	8,378	24.5	11,785	32.4	16,329	42.0
% change in households			+ 4%		+ 6.3%		+6.7%	
% change in family households			-15.5%		-13.8%		-16.5%	
Persons/household	3.3		2.8		2.4		2.1	
Persons/family households	3.5		3.4		3.2		3.1	

Source: U. S. Census, 1950-1980

Housing Units

	1970		1980	
	No.	%	No.	%
Total Housing Units	37,668	100.0	41,300	100.0
Occupied	36,411	96.6	38,836	94.0
Vacant	1,237	3.3[x]	2,442	5.9[x]
Seasonal	20	.1	22	.1
Subsidized Units (including public housing)	2,211	5.9	4,657	11.3
% change total units	9.6%			
% change subsidized units	110.6%			
Condominium Units	3972 (January 1, 1982)			

Tenure

	1970		1980	
	No.	%	No.	%
Total occupied units	36,411	100.0	38,836	100.0
Owner-occupied units	6,990	19.2	8,889	22.9
Renter-occupied units	29,421	80.8	29,947	77.1
% change owner-occupied units	27.2%			
% change renter-occupied units	1.8%			

[x]In 1980, 51% of all vacant units were unavailable for occupancy compared to 34% in 1970.

Source: U. S. Census 1970 and 1980, Cambridge Community Development files.

CCM-101

Attachment 4

City of Cambridge

13.

COUNCILLOR D. SULLIVAN

IN CITY COUNCIL
March 12, 1984

WHEREAS: Cambridge voters at the November 8, 1983 city election overwhelmingly approved Question 3, the anti-displacement housing program, which would in part "require any new commercial and residential development to provide housing units for low- and moderate-income people;", and

WHEREAS: The current unprecedented development boom in Cambridge involving construction well in excess of one billion dollars, will create increased demand for housing by new employees, but will by itself provide no new additional housing for low- and moderate-income people; and

WHEREAS: Faced with similar problems, the city of Boston last year created an Advisory Group to recommend zoning changes, which have since been adopted and are now in force in that city; therefore be it

RESOLVED: That the Cambridge City Council declares that the City of Cambridge will pursue a policy of inclusionary zoning, or "linkage," to require major new commercial and residential developments to provide housing units for low- and moderate-income people; and be it further

RESOLVED: That, in order to carry out this policy, the Chairman of the Committee on Ordinances is authorized to assemble a working group, including representatives of the Community Development Department, the Cambridge Rent Control Coalition (sponsor of Question 3), and all other interested persons and organizations, to draft an appropriate zoning petition for presentation to the City Council.

In City Council March 12, 1984.
Adopted by the affirmative vote of 6 members.
Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:- Paul E. Healy

Paul E. Healy, City Clerk.

David E. Sullivan, City Councillor

Mr. Charles Ash, Cambridge Committee of Elders

Mrs. Geneva Malenfant

Mr. Michael G. McCarthy, Arthur D. Little, Inc.

Mr. David Hughes, Cambridge Chamber of Commerce

Mr. Joseph A. Kellogg, Cambridge Community Development Dept.

Alice K. Wolf, City Councillor

Mr. Frederick Levy

Mr. James F. Mingey, Schochet Associates

Ms. Helen R. Sidman, Schochet Associates

Donna Brescia

Ms. Terry Lurie, Cambridge Housing Authority

Ross Zerchykov

Mr. Ron Saduko, M.I.T.

Mr. Jeremy Moskow

Mr. Jim Canavan

Mr. Miles Cares

Mr. Henry Joseph

Mr. Richard Griffin, Council on Aging

Mr. Michael Turk, Cambridge Rent Control Coalition

Mr. William Noble, Cambridge Rent Control Coalition

Mr. Mike Rosenberg, Cambridge Community Development Dept.

Ms. Marie Spaulding, American Science & Engineering

Mr. Drew Leff, Project Developer, Forest City Rental

Mr. Stephen Gary, CEOC

Mr. Bob Kuehn, Housing Economics

Ms. Nancy Phillips, GBCD

Mr. Peter Berry, Cambridge Housing Authority

Mr. Edmond Ayres, Council on Aging

Mr. James Caragianes

Mr. Walter Milne, M.I.T.

Jan A. Brodie, Graham Gund Associates

Ms. Mary Babic

Ms. Lisa Sloane, ECHO

Mr. Gerry Boyle, Executive Assistant to Mayor Leonard J. Russell

Attachment 6

Projection of Housing Units and Cash Equivalents To Be Produced By Commercial Development Under Cambridge Inclusionary Zoning Proposal

East Cambridge

Project	Square Feet	Units	Cash Equivalent	Per S.F
1985				
Project 1	100,000	9	$ 675,000.	$ 6.75
Project 2	190,000	18	1,350,000.	$ 7.11
Subtotal	290,000	27	$ 2,025,000.	
1986				
Project 1	140,000	13	$ 975,000.	$ 6.97
Project 2	250,000	24	1,800,000.	$ 7.20
Subtotal	390,000	37	$ 2,775,000.	
1987				
Project 1	180,000	17	$ 1,275,000.	$ 7.08
Project 2	300,000	29	2,175,000.	$ 7.25
Subtotal	480,000	46	$ 3,450,000.	
1988-2000				
Project 1	500,000	49	$ 3,675,000.	$ 7.35
Subtotal	500,000	49	$ 3,675,000.	
TOTALS	1,660,000	159	$11,925,000.	$ 7.10 (averag

Cambridgeport

Project	Square Feet	Units	Cash Equivalent	Per S.F
1988-2000				
Project 1	200,000	19	$ 1,425,000.	$ 7.13
Project 2	200,000	19	1,425,000.	$ 7.13
Project 3	200,000	19	1,425,000.	$ 7.13
Project 4	200,000	19	1,425,000.	$ 7.13
Project 5	200,000	19	1,425,000.	$ 7.13
Project 6	200,000	19	1,425,000.	$ 7.13
Project 7	200,000	19	1,425,000.	$ 7.13
Project 8	200,000	19	1,425,000.	$ 7.13
Project 9	200,000	19	1,425,000.	$ 7.13
Project 10	200,000	19	1,425,000.	$ 7.13
TOTALS	2,000,000	190	$14,250,000.	$ 7.13 (avera

Alewife

Project	Square Feet	Units	Cash Equivalent	Per S.F.
1985				
Project 1	88,000	8	$ 600,000.	$ 6.82
Subtotal	88,000	8	$ 600,000.	
1986				
Project 1	200,000	19	$ 1,425,000.	$ 7.13
Project 2	210,000	20	1,500,000.	$ 7.14
Subtotal	410,000	39	$ 2,925,000.	
1987				
Project 1	100,000	9	$ 675,000.	$ 6.75
Project 2	277,000	27	2,025,000.	$ 7.31
Subtotal	377,000	36	$ 2,700,000.	
1988-2000				
Project 1	200,000	19	$ 1,425,000.	$ 7.13
Project 2	200,000	19	1,425,000.	$ 7.13
Project 3	200,000	19	1,425,000.	$ 7.13
Project 4	100,000	9	675,000.	$ 6.75
Project 5	200,000	19	1,425,000.	$ 7.13
Project 6	300,000	29	2,175,000.	$ 7.25
Subtotal	1,200,000	114	$ 8,550,000.	
TOTALS	2,075,000	197	$14,775,000.	$ 7.06 (average)

Kendall Square

1988-2000				
Project 1	200,000	19	$ 1,425,000.	$ 7.13
Project 2	200,000	19	1,425,000.	$ 7.13
Project 3	60,000	5	375,000.	$ 6.25
Project 4	200,000	19	1,425,000.	$ 7.13
Project 5	60,000	5	375,000.	$ 6.25
Project 6	200,000	19	1,425,000.	$ 7.13
Project 7	60,000	5	375,000.	$ 6.25
Project 8	200,000	19	1,425,000.	$ 7.13
Project 9	60,000	5	375,000.	$ 6.25
TOTALS	1,240,000	115	$ 8,625,000.	$ 6.74 (average)

Mass. Ave. Corridor

Project	Square Feet	Units	Cash Equivalent	Per S.F.
		1985		
Project 1	102,000	10	$ 750,000.	$ 7.35
Project 2	27,000	2	150,000.	$ 5.56
Subtotal	129,000	12	$ 900,000.	
		1986		
Project 1	150,000	14	$1,050,000.	$ 7.00
Subtotal	150,000	14	$1,050,000.	
		1988-2000		
Project 1	100,000	9	$ 675,000.	$ 6.75
Subtotal	100,000	9	$ 675,000.	
TOTALS	379,000	35	$2,625,000.	$ 6.67 (average)

RECAP

Development Area	Square Feet	Units	Cash Equivalent
	1985		
East Cambridge	290,000	27	$ 2,025,000.
Cambridgeport	-	-	-
Alewife	88,000	8	600,000.
Kendall Square	-	-	-
Mass. Ave. Corridor	129,000	12	900,000.
Subtotal	507,000	47	$ 3,525,000.
	1986		
East Cambridge	390,000	37	$ 2,775,000.
Cambridgeport	-	-	-
Alewife	410,000	39	2,925,000.
Kendall Square	-	-	-
Mass. Ave. Corridor	150,000	14	1,050,000.
Subtotal	950,000	90	$ 6,750,000.
	1987		
East Cambridge	480,000	46	$ 3,450,000.
Cambridgeport	-	-	-
Alewife	377,000	36	2,700,000.
Kendall Square	-	-	-
Mass. Ave. Corridor	-	-	-
Subtotal	857,000	82	$ 6,150,000.
	1988-2000		
East Cambridge	500,000	49	$ 3,675,000.
Cambridgeport	2,000,000	190	14,250,000.
Alewife	1,200,000	114	8,550,000.
Kendall Square	1,240,000	115	8,625,000.
Mass. Ave. Corridor	100,000	9	675,000.
Subtotal	5,040,000	477	$ 35,775,000.
GRAND TOTALS	7,354,000	696	$ 52,200,000.

Notes:

1. The figures for housing units to be produced are based on one unit for every 10,000 square feet of floor space after an exemption of 10,000 square feet per project was applied. Fractions of units were rounded up to one full unit.

2. The cash equivalents were determined by multiplying the numbers of units by $75,000. This figure represents an estimated construction cost of $75. per square foot applied to an average unit size of 1,000 square feet.

3. The figures for 1985 and 1986 development are fairly accurate; projections beyond those years are best estimates.

4. The figures also assume that the inclusionary zoning requirements will have no impact on the amount of development currently projected and that all currently planned projects will proceed on the expected schedules.

5. The number of housing units would change depending on the size of various projects as they come on line. Due to the exemption provided in the proposal, these numbers will likely change. The project sizes beyond the year 1986 were estimated and were considered to be a "ballpark" average size.

Prepared by Cambridge Community Development Department
October, 1984

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

Attachment 7

To Councillor David Sullivan,
Committee on Ordinance

From Michael Rosenberg, Housing Director **Date** April 25, 1984

Subject Impact of Linkage Fee on Commercial Rents.

Size of Development (square feet)	Cambridge Formula (financed at 12%, 10 years)		Boston Formula ($5 per square foot, paid over 12 years)	
	Annual ($) cost	Cost per square foot	Annual ($) cost)	Cost per square foot
100,000	25,107	.25	-	-
150,000	43,041	.29	20,833	.14
200,000	60,975	.32	41,666	.21
250.000	78,909	.36	62,500	.25

Attachment 8

BROWN, RUDNICK, FREED & GESMER

MATTHEW BROWN
ALFORD P. RUDNICK
HIRSH FREED
HENRY GESMER
MARVIN N. GELLER
JACK H. CALECHMAN
DONALD E. PAULSON
KENNETH A. KORB
PETER D. GENS
LAWRENCE M. LEVY
STEPHEN WOLFBERG
PHILIP C. SCHNEIDER
M. FREDERICK PRITZKER
JOEL M. RECK
ANDRÉ C. JASSE, JR.
JEFFREY M. FREEDMAN
CARL E. AXELROD
GERALD P. TISHLER
SHELDON M. DRUCKER

PETER B. FARROW
DANIEL D. SULLIVAN
DAVID G. STERN
M. ROBERT DUSHMAN
ROBERT E. BROOKS
JAMES E. McGUIRE
JOSEPH F. RYAN
ELIZABETH A. RITVO
FORREST DAVID MILDER
MARC D. CUMSKY
NEAL B. GLICK
DAVID H. MURPHREE
JOHN ACHATZ
HOWARD L. LEVIN
JOY BARRON RACHLIN
STEPHEN A. HANTMAN
BARBARA A. LENK
LOUIS C. MILLER
MARILYN D. STEMPLER

SHARON GODDARD WHITE
NANCY R. WILSKER
HOWARD G. ZAHAROFF
RICHARD A. DOPPELT
PRESTON W. HALPERIN
JEFFERY L. KEFFER
JONATHAN KLEIN
STEVEN B. LEVINE
JOHN A. WORTMANN, JR.
WARREN D. HUTCHISON
KATHRYN WALSH
GORDON R. PENMAN
THOMAS J. RAUBACH
DENISE N. YURKOFSKY
KATHLEEN A. LAROCQUE
WILLIAM R. BALDIGA
MICHAEL S. BENJAMIN
RONALD M. FELLMAN
JEFFREY W. SACKS

COUNSELLORS AT LAW

ONE FEDERAL STREET, BOSTON, MASS. 02110

TELECOPIER: 542-3004 • CABLE: "LAWFIRM" BOSTON

TELEPHONE (617) 542-3000

COUNSEL
EDWARD SCHNEIDER
AARON J. BRONSTEIN

OF COUNSEL
JOHN F. COLLINS, P.C.
ROY N. FREED

October 19, 1984

ANALYSIS OF CAMBRIDGE INCLUSIONARY ZONING PROPOSAL

This memorandum is written at the request of David Sullivan, Chairman of the Working Group On Inclusionary Zoning, City of Cambridge, as a legal analysis of certain key features of a proposed Amendment to the City of Cambridge Zoning Ordinance (September 19, 1984 Draft) creating a new Section 11.9 (the "Proposal"). The author of this memorandum is a resident of Cambridge and an associate at Brown, Rudnick, Freed and Gesmer, Boston. The analysis is solely the author's and not that of his law firm; it should not be viewed as an endorsement of the Proposal by either. The purpose of the memorandum is to comment only on the legal implications of certain major features of the Proposal. In particular, the following aspects of the Proposal are discussed below.

(1) Whether the Quantity Requirements contained in Sections 11.93 and 11.94 of the Proposal are within the proper scope of the zoning power granted by the Commonwealth to the City; and

(2) Whether there are constitutional impediments under state or federal law to the imposition of these Quantity Requirements.

The Proposal:

Section 11.93 of of the Proposal sets forth certain Quantity Requirements for Residential Use by providing that at least 25% of the total residential units (excluding the first seven units) of new construction (including substantial rehabilitation and conversion from non-residential to residential use) must be donated to the City or otherwise be made available by contractual arrangement for low and moderate income housing. The Cambridge Housing Development Trust Fund Board (the "Board") is established as an agency of the City to administer such housing. Section 11.94 of the Proposal provides that one unit of low or moderate income housing must be so donated or otherwise made available for every 10,000 square feet of office, institutional or retail development (excluding the first 10,000 square feet). Where units are not built, the funded cash equivalent is determined by the Board, which will calculate annually an amount representing the current total construction cost of low or moderate income units of the various types required, and the developer may choose to pay cash in lieu of the donation or contract. Finally, as a third alternative, an equivalent value of land may be donated to the City to be used by the Board for the purposes of the Proposal.

Analysis:

(1) Are The Quantity Requirements Within The Proper Scope Of The Zoning Power Granted By The Commonwealth To The City Of Cambridge.

The City's power to enact an ordinance such as Proposal derives from two independent although related sources. The Home Rule Amendment (Article 89, Amend. Art. II ¶¶ 1 and 6 of the State Constitution) gives municipalities broad powers to adopt ordinances for the public health, safety and general welfare limited only by the State and Federal Constitution, and more specifically limited by (i) the prohibition against levying, assessing and collecting taxes (Amend. Art. II, §7(2), and (ii) general or special laws enacted by the legislature of the Commonwealth (Art. II, §8) to the extent such general or special laws are inconsistent*. Because Cambridge's Proposal is enacted

*Another qualification contained in Amend. Art. II, §7(5) forbidding local governments from enacting "private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power" is arguably an additional constitutional limitation, but according to the teaching of a leading modern zoning case, Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 359 (1973), the effect of zoning ordinances on civil relationships is typically construed as incidental to the exercise of a municipality's public welfare power and hence falls within the exception of "incident to an exercise of an independent municipal power." Compare Marshal House, Inc. v. Rent Review and Grievance Board of Brookline, 357 Mass. 709 (1970), where the Supreme Judicial Court held a Brookline rent control by-law invalid because it remade landlord-tenant contracts which are a form of civil law.

as an amendment to the Zoning Ordinance and pursuant to the State zoning law [Mass. Gen. Laws c.40A (St. 1975, c.808, §3) (the "Zoning Act")], the Proposal must also fall within the scope of the zoning power as set forth in the Zoning Act.

The Zoning Act was specifically intended to encourage communities to adopt modern zoning laws and to exert greater control over the use and development of land, building and structures (St. 1975, c.808, §2A) to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants, subject only to the Constitution, to any other limitations specifically stated in the Zoning Act or contained in other state legislation. Sturges v. Town of Chilmark, Mass. Adv.Sh. 815, 822 (1980). Among the relevant permissible areas of the zoning power mentioned in the Zoning Act are: "...to encourage housing for persons of all income levels..." and "to encourage the most appropriate use of land throughout the city or town including consideration of the recommendations of the master plan, if any, adopted by the planning board" of the city or town. (St. 1975, c. 808 §2A).

The Newton Inclusionary Zoning Case. In the one modern inclusionary zoning case decided by the Supreme Judicial Court, Middlesex & Boston Street Ry. Co. v. Bd of Alderman of Newton 371 Mass. 849 (1977), it was held that the Board of Alderman of the

City of Newton, acting as a special permit granting authority, did not have the power under a precedessor state zoning law to compel a developer to provide on-site low income housing as a condition to permitting the construction of a multi-unit apartment complex. Proponents of the Cambridge Proposal could plausibly argue that the proposed amendment to the Cambridge ordinance is significantly different from the special permit mechanism employed in Newton since in the Cambridge Proposal, the City Council acting as a legislative body has laid out clear guidelines in advance, whereas in Newton, the low-income guidelines were created ad hoc by an administrative and not a legislative body. The Proposal's advocates could also cite language in the Middlesex opinion that compulsory provision for low income housing is within the valid scope of zoning; "Massachusetts case law interprets G.L. c40A as an affirmative measure to alleviate housing shortages for low income and elderly persons." Middlesex at 1234. Finally they could point out that, to the extent inclusionary zoning was disapproved by the Court, this disapproval was based on an earlier state zoning law which was significantly broadened by the 1975 amendments.

Opponents of the Cambridge Proposal could argue that the assumed recognition by the Middlesex court, that inclusionary zoning is authorized by state zoning law, was not a part of, or necessary to, the holding in the case, and they could emphasize

instead that the Newton Ordinance, the only inclusionary zoning ordinance that has ever been reviewed by this state's highest court, was ruled invalid. They could also argue that the court assumed that the type of inclusionary zoning ordinance enacted by Newton occupied an area exclusively preempted by the Commonwealth and hence could only be enacted pursuant to special state enabling legislation. To support this argument, they could cite language in the opinion explicitly recognizing that municipalities may spend public funds to provide housing for low income and elderly people, but impliedly assuming that municipalities may not do so by exacting or compelling a contribution from private developers.
Middlesex at 1234.

Arguments For And Against Validity. If the Cambridge Proposal were enacted and challenged judicially, a court could rule that the Proposal, although novel, is within the scope of zoning and therefore permissible under the Zoning Act, interpreted in accordance with the legislative intent in amending c.40A in 1975. In so ruling, it might look to other recent State legislation recognizing the critical shortage of lower and middle income rental housing in the state, for example, c. 40B §§20-23 (the so-called "Anti-Snob Zoning Law"), 121B (the Housing and Urban Renewal Law) and c. 527 of the Acts of 1983 (the State Condominium Conversion Law), and particularly in Cambridge, c.36 of the Acts of 1976 (the Cambridge Rent Control Enabling Law).

Construing these laws together with the Zoning Act, as amended, it could conclude that there is an affirmative state policy favoring conservation and construction of low and moderate income housing which the City of Cambridge is seeking to implement through a permitted use of the broad zoning power given by the people of the Commonwealth and the State legislature to the City. A court should also be bound to interpret the previously quoted language of Section 2A of the Zoning Act as a legislative mandate that towns consider the recommendations of planning boards in drafting zoning ordinances; in this regard, the Cambridge Comprehensive Plan establishes as one goal the alleviation of the critical shortage of low income housing in the City. [Cambridge Comprehensive Plan (Housing Element) 1976, p. 39.]. Finally, a court would be guided by a long series of Massachusetts and federal precedents to the effect that a properly enacted local ordinance has the presumption of validity and reasonableness, Fogelman v. Town of Chatham, 15 Mass. App. Ct. 585, 588 (1983); Monaghan v. Town of North Reading, 7 Mass. App. Ct. 486 (1979); Jenckes v. Building Commissioner of Brookline, 341 Mass. 162 (1960) ("Every presumption is to be made in favor of the validity of a zoning by-law, and great weight is to be given to a town's determination that necessity exists for its adoption or amendment."); Euclid v. Ambler, 272 U.S. 365 (1926).

On the other hand, a conservative court could deem the Proposal to be an unauthorized usurpation by the City of Cambridge of the traditional zoning power of municipalities which typically addresses matters such as congestion in streets, safety from fire hazards, adequate light and air, prevention of overcrowding of land and undue concentrations of population. By narrowly interpreting the Middlesex case previously cited as precedent against inclusionary zoning, a Massachusetts court might also look to one of the few out-of-state precedents, a 1973 Virginia Supreme Court decision which held that an ordinance very similar to that of the Cambridge Proposal was invalid as an unauthorized, unconstitutional usurpation of local zoning power. In that case, Board of Supervisors v. DeGroff Enterprises, Inc., 198 S.E.2d 660 (Va. 1973), the Virginia Supreme Court held that a local zoning ordinance requiring a developer of fifty or more units to build at least 15% low and moderate income units exceeded the locality's zoning power as unauthorized socioeconomic zoning. Finally, there is a line of cases in Massachusetts where courts have applied a more rigorous test in construing the validity of local zoning ordinances under the state zoning law. This test, which at first glance appears to be similar to constitutional "due process" test of "reasonable relation " discused below, is instead a canon of statutory construction of zoning laws. It requires that the local zoning enactment bear a "substantial relation" to the general objectives of state zoning law. Fogelman

at 588. Sinn v. Selectmen of Acton, 357 Mass. 606, 609 (1970). Under a substantial relation test, it would arguably be more difficult to convince a court that the Quantity Requirements are substantially related to the low-income housing objective of the Zoning Act.

Because the Proposal is novel, there is little judicial precedent to enable one to make a confident prediction as to whether it would be upheld as a proper exercise of the City's zoning power. Only in Boston is there a somewhat similar inclusionary zoning ordinance. However, Boston's law has been so recently enacted that there has not yet been time to determine if it will be challenged in the courts, and if challenged, if it will be upheld. But even if the Boston ordinance were upheld, there are enough differences in form and substance from the Cambridge Proposal and enough that is unique owing to the special state legislative authorization for Boston's zoning laws, so that a judicial determination of the validity of Boston's inclusionary zoning law would probably not be dispositive with respect to the Cambridge Proposal.

(2) Are There Constitutional Impediments Under State Or Federal Law To The Imposition Of The Quantity Requirements Contained In Sections 11.93 and 11.94?

There are state and federal constitutional prohibitions against local legislation which violates due process, equal pro-

tection or constitutes a taking without just compensation.

(a) Due Process. The constitutional standard for legislation in the field of social and economic relations is that the law must bear a "rational relation" to a "legitimate state interest." The Cambridge Proposal whose purpose is "to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities... and mitigate the escalation of the cost of housing in Cambridge..." is clearly within the scope of "the general welfare" power which is recognized to be a "legitimate state interest." Euclid v. Ambler, 272 U.S. 365, 395 (1926), Barman v. Parker, 348 U.S. 26, 34 (1954),. As to the "rational relation" test, Cambridge would have to show that the Quantity Requirements of the Proposal are "reasonably related" to the goal of meeting the "legitimate state interest" of providing adequate housing for all citizens, particularly those of low income. In judging legislation under the "due process" clause in the field of housing, there is a standard of judicial deference to legislative judgments so long as there appears to be "some indication that the zoning provision has some reasonable prospect of tangible benefit to the community..." and "that there was a reasonable basis for the enactment." Sturges

at 826. The Cambridge Proposal most likely would pass the "due process" test since its means are rationally related to a legitimate state interest and there appears to be a "reasonable basis" for the enactment with "some reasonable prospect of tangible benefit to the community."

(b) Equal Protection. The equal protection standard is closely related to due process and again requires judicial deference to legislative enactments, so long as there is a reasonable rationale for the legislation and so long as legislative classifications are not arbitrary.

In the context of the Proposal, two potential claims of arbitrary classification could be made. First, real estate developers could argue violation of equal protection because unregulated construction is surely only one of many causes of the lack of adequate low and moderate income housing in the City. To this argument courts typically assert that the Constitution does not require that legislatures enact remedies which burden equally every category of citizens who might be able to effect a cure for the problem legislatively addressed. Courts will strike down laws on equal protection grounds only if a class is singled out on some "invidious" basis such as race or sex. Second, because the Proposal contains an exemption for development of seven or fewer residential units and for commercial development of 10,000 square feet or less, it could be contended that larger developers are

unfairly treated. The judicial response to this argument would likely be that: (a) the exemption is not arbitrary but is a matter of permissable administrative convenience, and (b) all developers, large and small, benefit equally from the exemption since the first seven units or the first 10,000 square feet of a large development are equally exempt from the Quantity Requirements.

(c) Taking Without Just Compensation. In determining when land use regulations, which often diminish the value of a particular parcel of land to a landowner, become "takings" for which compensation by the state must be paid, courts have adopted a balancing test, weighing the regulation's impact on the landowner against the nature and purpose of the governmental action and the reasonable necessity of the restriction. Penn. Central Transportation Co. v. New York City, 438 U.S. 104 (1978). In a leading Massachusetts case, the Town of Dedham enacted a flood plain zoning by-law which the landowner alleged diminished the value of his land by 88%. The Supreme Judicial Court acknowledged the difficulty of drawing a precise line where regulation ends and confiscation begins, but held that the zoning law did not effect a taking in light of the nature and significance of public policy advanced, Turnpike Realty Co. v. Town of Dedham, 362 Mass. 221 (1972). See also Nectow v. City of Cambridge, 277 U.S. 183 (1928). More recently, the Cambridge Rent Control Ordinance removal permit provisions have been upheld by the courts

against a constitutional claim of taking. It is likely therefore that this Proposal, whose effect would not reach nearly the level of an 88% diminution in value as in Dedham, would be upheld against a claim of taking if existing precedents are followed.

Levying of Taxes by Municipalities. One final constitutional claim to be considered, peculiar to Massachusetts, arises from Section 7(2) of Amend. Art. II of the Massachusetts Constitution, which limits the broad scope of Home Rule by forbidding localities to levy, assess or collect taxes. Taxing power can be exercised by local governments only where the state legislature has specifically granted such power. Duffy v. Treasurer and Receiver General, 234 Mass. 42, 47 (1919). Although municipalities are allowed to levy and collect fees, as opposed to taxes, a recent Supreme Judicial Court case, Emerson College v. City of Boston, 391 Mass. 45 (1984), strongly suggests that an obligation such as the Quantity Requirement would not fall within the definition of a "fee". But whether the Quantity Requirements would be held to be a tax, rather than a zoning matter, is open to doubt. In the Emerson College case, it was held that the Boston Augmented Fire Services Availability Exaction was a tax, partly because revenue obtained from the Exaction was "destined...for a broader range of services or for a general fund." Emerson at 427. The Quantity Requirement is distinguishable from the Boston Fire Services Exaction in three respects: first, it would be enacted pursuant to and as an amendment to the City's zoning ordinance; second, it

is specifically targeted, rather than intended for a "broader range of services or for a general fund"; and third, the primary obligation imposed by the Quantity Requirements is not the payment of money but rather the construction of rental housing or the dedication of housing to a particular use. The issue still remains whether one or more of these distinctions, taken separately or together, would be enough to shift the court's interpretation of the obligations created by the Proposal so that they are not judged to be a tax.

Summary of Analysis:

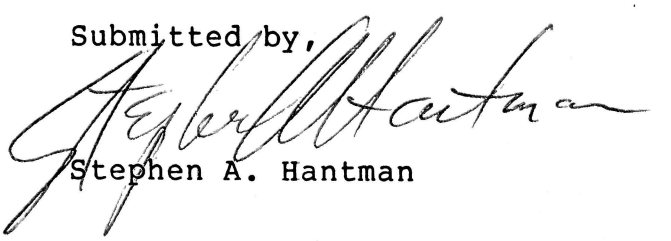
The Proposal, in general, and particularly the Quantity Requirements which constitute the basic feature of the Proposal, are novel in scope and breadth. They are innovative and largely without precedent, even in the field of inclusionary zoning, because the Proposal does not rely on incentives and a special permit mechanism. While this may be of little legal consequence, practically it becomes more likely that such a law, if enacted, would be challenged. Yet because of the Proposal's novelty, any legal analysis which is based on the study of precedents from court interpretations of similar or analogous laws can give less confident guidance.

The two major thrusts of challenge are statutory and constitutional. On statutory grounds, the Proposal might be upheld if a court were willing to extend existing case law; respectable and

persuasive arguments could be made and adopted by a court, but there is some precedent leading in the opposite direction.

On constitutional grounds, it would be highly unlikely that the Proposal would be held invalid under modern state or federal doctrines of "equal protection", "due process," or "taking." Whether the Proposal would be struck down as an unauthorized tax on developers by the City is more debatable. Here again there are persuasive, but not necessarily compelling, reasons to distinguish the Quantity Requirements from other local laws previously held invalid as taxes, and thus to judge that the Proposal would be constitutionally permitted.

Submitted by,



Stephen A. Hantman

10/22

Joe—

As I mentioned, I need to have this report re-typed for the 10/29 Council meeting. I'd like to proof it, say around Thursday. Then, I'd like it to appear on the 10/29 communications list, and have about 20 extra copies made for press and public. (The attachments just need to be copied, except for the membership list, which needs retyping. No. 9, the actual ordinance, is being re-done by the CDD, and they'll get it to you.)

Many thanks!

David

CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

David E. Sullivan
City Councillor

October 29, 1984

To the Honorable, the City Council:

The Working Group on Inclusionary Zoning and Linkage, established by your Resolution No. 13 of March 12, 1984, submits its final report for your consideration.

The problem: a continuing housing crisis

That Cambridge continues to face a serious housing problem is well known. The basic reason is that many more people want to live in Cambridge than there are homes for them to live in. The City Council has voted several times to declare a "housing emergency," requiring the adoption of strict legislative controls on rents, evictions, and removals from the rental market.

The magnitude of the problem is documented clearly in Attachments 1 and 2, recent reports by the city Community Development Department (CDD) on housing needs in Cambridge. They show that 8,762 lower income Cambridge households, almost one of every four households in the city, require some housing assistance. Over 800 Cambridge families have been waiting more than four years for public housing units, and new applications have not even been received since that time because no units are available. The Cambridge Housing Authority has a waiting list of 1294 applicants for its leased housing, 60 percent of them current Cambridge residents, but only 87 could be placed last year. Over 250 families are awaiting some for

more than ten years, for housing developed by non-profit neighborhood corporations.

Overwhelmingly, the families who face this housing crisis are those with low and moderate incomes, because those with higher incomes are purchasing or renting the available housing and driving the prices completely out of their range. The data indicate that the average sale price of a 1-4 unit Cambridge house virtually doubled from $43,674 in 1971-1977, to $80,450 in 1978-1982. Despite rent control, the median Cambridge rent (including utilities) doubled from $134 in 1970 to $257 in 1980. As of 1980, 45 percent of all Cambridge tenants paid more than the generally accepted 25 percent of their incomes for rent, and 28 percent paid at least 35 percent of income.

All indications are that the demand for Cambridge housing will markedly increase in the near future, and that the market cannot possibly produce enough housing to keep pace. Attachment 3 shows that new commercial, especially office, development will generate 23,186 new jobs over the next fifteen years. Assuming that the current ratio of 25 percent of these new employees seek housing in Cambridge, demand will increase by 4,637 units (assuming 1.25 employees per household). At the same time, the market will produce a net increase of about 1,000 new housing units, based on recent performance. Obviously, this is less than one fourth of what is necessary, and can only make the present housing crisis much worse.

Meanwhile, the federal government, at the instance of the Reagan Administration, has essentially abandoned any role in producing new housing. Ironically, in view of the recent predominance of "supply side" economics, the Administration's principal national housing innovation - "housing vouchers" - will serve chiefly to increase demand. While some increase in state housing financing has occurred, it is clear that the duty of closing the "housing gap" identified above will fall inevitably on this city government.

- The city cannot possibly finance this housing production from tax revenues. State law allows the city to levy only a property tax, and Proposition 2 1/2 effectively prevents any increase in funds from this source for a new housing program. The current development boom, however, not only constitutes a chief cause of the city's housing problem, but also suggests a potential alternative source of housing production. The City Council created this Working Group with this potential in mind.

Working toward a solution

On November 8, 1983, voters in the Cambridge city election approved by a 58-42 percent margin the anti-displacement housing program, placed on the ballot as advisory question 3 by the Cambridge Rent Control Coalition. In part, this program calls on the City Council to "require any new commercial and residential development to provide housing units for low- and moderate-income people."

In response, the City Council adopted its Resolution No. 13 of March 12, 1984 (Attachment 4). The resolution "declare(d) that the City of Cambridge will pursue a policy of inclusionary zoning, or 'linkage'," to carry out the goal of the advisory question. The resolution also established this Working Group "to draft an appropriate zoning petition for presentation to the City Council." The Chairman of the Council's Committee on Ordinances was authorized to assemble the Working Group.

All city councillors, various city agencies, housing advocates, tenant organizations, developers, businesspeople, and others were invited to join the Working Group. Many did so, resulting in a membership list which demonstrates unique breadth and expertise (Attachment 5). Most Group members were volunteers, and all gave generously of their time and energy.

The Working Group held eleven meetings, on the following dates: March 28, April 11, April 25, May 9, May 23, June 13, June 27, July 11, July 17, August 21, and September 11. Each lasted from one to two-and-a-half hours, and attendance usually ranged from ten to twenty. The Chamber of Commerce, while represented at each meeting, made clear at the outset its opposition in principle to the Group's goal, and observed rather than participated. Detailed minutes were kept of each meeting, and these are publicly available, together with the various memoranda and other submissions, in the City Council office.

The Group gratefully acknowledges the invaluable technical support provided by the CDD staff, especially Housing Director Michael Rosenberg, Economic Development Director Joseph Kellogg, and Land Use and Zoning Director Les Barber. They attended many meetings and provided helpful advice and data; however, the policy recommendations of this report are those of the Working Group and do not necessarily reflect the views of the CDD.

The Group was also very fortunate to have the "pro bono" legal services of Stephen A. Hantman, Esq. of Brown, Rudnick, Freed & Gesmer, who was assisted during the summer by Cathy M. Judd, a summer associate with that firm. They provided useful advice at several meetings and the legal opinion which appears as Attachment 8.

The Working Group was also able to build in the experience of other communities. San Francisco for several years has implemented a policy of requiring linkage payments from developers, as part of compliance with a state comprehensive-planning mandate. Last year, Boston adopted the first stage of a "linkage fee" requirement for new downtown office buildings needing zoning relief. Finally, of course, Cambridge itself considered last year a proposal somewhat similar to the present one, drafted by the CDD at the City Council's request. Details of this other legislation are available in the Group's files.

Although the Group attempted to proceed by consensus, its members disagreed on some issues, and some votes were therefore necessary. It is likely that no member is satisfied with every aspect of the recommended draft, but all felt it was important to submit a proposal to the City Council so that the legislative process could begin. Representatives of the Council on Aging, the Cambridge Economic Opportunity Committee (CEOC), and the Cambridge Housing Authority (CHA) have specifically endorsed this report and its recommendations.

The Working Group realized that legal constraints in the zoning change procedure would allow its proposal to become only less, not more, restrictive during the legislative process. Consequently, at several points, the Group decided to adopt the more restrictive alternative, allowing for compromise to occur later if the City Council so decided.

A proposed remedy: inclusionary zoning and linkage

The Working Group recommends for adoption by the City Council the attached draft inclusionary zoning and linkage ordinance (Attachment 9). The draft proposes to generate new housing development by applying separate requirements to new housing and commercial development. ~~These~~ A Planning Board special permit ~~could be~~ would be required for such developments, and the permit could be issued only if the developer agreed to provide the required housing.

The Group first proposes to require that most new housing developments make 25 percent of their units available to low and moderate-income families. The first seven new housing units in a development would be exempt from this requirement. The purpose of this part of the proposal, known as "inclusionary zoning," is to ensure that at least a fraction of the new housing being built in Cambridge serves the needs of those who cannot afford market prices.

Second, the Working Group submits that most new office, institutional, and retail developments should supply low- and moderate-income housing ~~for~~ to respond to the increased demand by their new employees who will live in Cambridge. The Group calculates this "linkage" proposal as requiring one such unit for every 10,000 square feet of gross floor area, with the first 10,000 square feet exempt.

The draft would allow maximum flexibility to developers in meeting these requirements; they could construct the unit themselves, make a cash payment to

or donate land to the city of the same value.

the city of equivalent value. The proposal elaborates in detail provisions limiting the units for use by low- and moderate-income families, with preference given to Cambridge residents. The first two-thirds of the units provided would be for "low" income families, the last third for "moderate" incomes.* It also provides for administation of the program by a Cambridge Housing Development Trust, with a board appointed by the City Manager from specified categories and to be staffed by the CDD.

Since the 25 percent "inclusionary zoning" requirement would apply to at most 100 market rate housing units per year for the foreseeable future, most of the new low- and moderate-income housing to be generated by this proposal will derive from the "linkage" aspect applying to new commercial development. Attachment 6 estimates that 7.354 million square feet of expected development over the next fifteen years will produce 696 new low- and moderate-income housing units (or their cash equivalent) over that time. Of course, this assumes that other obstacles to the construction of such units — including location of sites, neighborhood opposition, and bureaucratic inertia — can all be overcome. While even this constitutes merely a fraction of the predicted need, it represents the beginning of a solution.

The Working Group believes that its proposal will not significantly interfere with Cambridge's robust development boom. Attachment 7, prepared with reference to the ~~comparable~~ somewhat different formula in last year's CDD proposal, indicates that the impact on commercial rents will be a small fraction of a cent per square foot if financed over time. Especially in view of Cambridge's wide desirability as a commercial address, this will have only slight impact on the market, and will probably be passed through for the most part to landowners, commercial tenants, and consumers.

The Group considered at an early stage the possibility of offering incentives, at least in part, to developers in return for their housing production, but found this unworkable. The two principal incentives suggested were tax and zoning benefits. The city lacks power under state law to reduce a developer's taxes in return for housing, and in any event could not afford to do so because of the fiscal constraints

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* The proposal defines low income as a current maximum income of $16,150 for a family of four, $12,900 for two, $11,300 for one. The moderate income maximum is $25,850 for four, $20,700 for two, $18,100 for one.

outlined earlier. As for zoning, many Cambridge neighborhoods have worked for years to obtain the dimensional and use limitations on development reflected in the present zoning ordinance. The Group did not believe that new low- and moderate-income housing required sacrificing neighborhood preservation, and was particularly concerned that such a proposal might provoke opposition to such housing development among neighborhood organizations.

Based on the ~~opinion of~~ analysis by its attorney (Attachment 8) and others, the Group is convinced that its proposal has a good chance of withstanding attack in the courts. Nothing can be certain in so untested an area, and the Group believes that only passage of the proposal can definitely resolve the legal issues. It felt strongly that the delays required to obtain explicit authority from the state Legislature, even if it were eventually forthcoming, would prevent the construction of some much needed housing. Consequently, the Group chose to proceed under the existing authority of the Zoning Act and the Home Rule Amendment.

The Working Group understands that changes in this proposal during the legislative process may well be necessary or desirable. The Group urges the City Council and the Planning Board to consider its draft with that constructive approach, and pledges to work with them in the spirit of compromise for an effective and realistic final result.

No doubt some, particularly developers, will find this proposal objectionable. Of course, they have a right to state their views, but the political process is such that their opposition will be heard loud and long. The thousands of present and future Cambridge residents who will benefit from this measure will not be testifying at the public hearings, because their immediate financial interest in it is perhaps not so obvious. We urge the City Council and Planning Board to hear their cries for help and their insistence on social justice nonetheless,

and to exercise the responsibility and leadership to plan carefully for the future of all our citizens.

Respectfully submitted,

David E. Sullivan

David E. Sullivan
City Councillor

DES/smc

ATTACHMENTS

1. April 25, 1984 memorandum from Michael Rosenberg, Housing Director, Cambridge Community Development Department (CDD), concerning housing needs in Cambridge.

2. May 31, 1984 memorandum from Kathy Spiegelman, Assistant City Manager for Community Development, concerning housing needs in Cambridge.

3. April 25, 1984 memorandum from Michael Rosenberg, concerning projected impact of real estate development on housing demand in Cambridge.

4. March 12, 1984 City Council resolution no. 13.

5. Working Group membership.

6. October 1984 memorandum from Joseph Kellogg, Economic Development Director, CDD, concerning projection of housing units and cash equivalents to be produced by commercial development under proposal.

7. April 25, 1984 memorandum from Michael Rosenberg, concerning impact of linkage fees on commercial rents.

8. Legal ~~opinion~~ *analysis* of Stephen A. Hantman, Esq., of Brown, Rudnick, Freed & Gesmer.

9. Draft zoning ordinance.

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

To: The Planning Board January 7, 1985

From: Kathy A. Spiegelman
Assistant City Manager for Community Development

The Planning Board and Community Development Department have been discussing inclusionary zoning and linkage over a period of years. It is now important to respond to the City Council's petition. At the Council hearing on the two inclusionary zoning/linkage petitions now filed, members of the Council expressed an interest in hearing suggestions for modifying the current proposals.We have recommendations from our previous proposals as well as some additional suggestions based on what we have learned since then.

While the current petitions have some of the elements necessary for successful inclusionary and linkage programs, they do not have many others. The Community Development Department maintains that neither petition in its current form will create a successful program for either inclusionary zoning or linkage. At the hearings we outlined eight points for making such programs successful. The elements we outlined are based on an analysis of our own work and research about other programs. They are based on the assumption that to be successful, an inclusionary zoning program must pool all potential resources to maximize housing opportunities for those who cannot otherwise afford them and that a successful linkage program must embody the basic concept of promoting the economic feasibility of private development.This requires flexibility, cooperation and timeliness on the part of the public sector.

Following is a re-listing of the eight elements for a successful inclusionary zoning and linkage program with proposed changes to the filed petitions. The requirement for the inclusion of low and moderate income units in housing developments and that for linking commercial developments to contributions for low and moderate income housing are two related but distinct programs. It is recommended that the ordinance separate the requirements for each within the zoning code.

1. The private real estate development community joins the public sector in the provision of expanded opportunities for decent, affordable housing.

   - Most of the changes recommended in this memo are intended to make the inclusionary and linkage programs recognize a balance between what the City wants and what developers can provide, this being the only way to see housing actually produced with new private sector participation.

2. Developer contributions are combined with other housing programs to achieve optimal results through leveraging.

   - Cash equivalency is set at level of $40,000 (1/2 the cost of a unit) which implies that the private developer is being asked to share the cost of creating inclusionary units. Requiring the private developer to pay 100% of the cost is a burden which would make many projects infeasible.

   - Require units to be kept available to targeted population for 20 years. As currently phrased, the "permanent" requirement will make it difficult to combine linkage payments with public subsidy programs and still meet this requirement.

3. City makes an affirmative municipal contribution rather than attempting to "regulate new housing into existence.

   A) Offer a quid pro quo through zoning bonuses, expedited processing or other incentive for stepped up developer contributions.

      - Allow up to 80% of permitted FAR before housing requirement is triggered. (See #8) This provides legal strength to the ordinance's provisions. The trade-off for the City is either less intensive development or housing assistance.

      - Add a provision that sites of five acres or more trigger the linkage requirement at 50% of allowable FAR rather than at 80%. This means City does not lose the opportunity to create linkage in large scale projects where such linkage is feasible but the size of land area controlled might provide a loophole.

- Require that any project which requests relief from dimensional regulations automatically triggers the linkage requirements regardless of %-age of allowable FAR used.

- Ordinance should state the City's support for private housing developers to exceed the minimum inclusionary requirements by offering priority access to subsidies to those projects which will provide more than the minimum requirement.This should not, however, become a way to encourage actual zoning violations in inclusionary projects.

B) Assist the private developer to produce the housing. Cannot expect a developer to bear the total burden with no positive City action.

- By requiring a cash equivalency of $40,000 per unit, the City is agreeing to share with the developer the cost and responsibility for producing low cost housing.

4. Flexibility is allowed to negotiate site specific components - e.g. unit sizes, locations, low vs. moderate income mix. These components should not be reduced to a "cookbook" of detailed regulations that may be inappropriate or impossible to achieve.

- Remove from the ordinance the specificity of unit sizes and number of bedrooms. Allow the Advisory Committee to establish standards and for the City to be flexible in negotiating the best combination of details for a project. This would greatly enhance the likelihood of producing housing through this program. It also prevents the creation of detail requirements which prevent the combined use of subsidy programs which have their own specific requirements.

5. Developer contributions are set at reasonable levels.

A) Mandatory contributions should not result in economic infeasibility of development.

- Exempt substantial rehabilitation of buildings which are already regulated by Rent Control and which will continue to be so regulated

when completed. City should not multiply regulatory requirements for particular projects to the extent that such projects become totally infeasible, especially when such over-regulation would serve to discourage preservation of older housing in need of reinvestment, thereby aggravating the shortage of affordable housing.

- Change housing exemption from 7 to 9 units in order to enhance feasibility of small scale or infill housing developments.

- Change commercial development exemption to 30,000 square feet. This lessens possibility that this requirement will prevent a project from going forward. (Incentive for rehab by increasing exemption to 50,000 square feet, see 5D).(In theory it should be possible to pro-rate contributions for all projects rather than provide for exemptions. However, it must be recognized that the Statutory and administrative responsibilities for such a comprehensive program would be much more extensive and might have strong negative impacts on the operation of the program.)

- Allowing payments over time. This dramatically reduces the impact of such a requirement on the feasibility of a development.

- Reduce financial impact by setting cash equivalent at $40,000 per required unit.

B) Contributions should be viewed as part of overall package contributed by developer, including jobs, open space amenities, etc.

- By setting the housing requirements at a feasible level and by using the special permit process, the City will be able to broadly evaluate development impacts and put the housing piece in consideration with other sought-after amenities.

C) Contributions should be flexible - units, dollars or sites.

- The program will work well if the objective of providing expanded housing opportunities is achieved through cooperation and flexibility so that contributors are encouraged to propose mutually beneficial solutions.

D) Contributions should be related to impact of a development project.

- Allow a commercial exemption of 30,000 square feet to tie requirement to projected impacts of developments and reduce impact on local small business expansion.

- Provide for linkage in large scale projects and in projects requesting relief from other aspects of the zoning ordinance (see 3A).

- To encourage rehabilitation of existing buildings, set the exemption for new construction at 30,000 square feet and for rehabilitation at 50,000 square feet.

E) Contributions should be allowed over time.

- Allow linkage payments to be made up front or over ten years: $40,000/unit up front or $40,000/unit indexed to inflation over ten years.

6. Administration of program is manageable - timely processing of applications, clear responsibilities and requirements, representative compositions on Board, adequate staff support and budget.

- An Advisory Committee for Linkage and Inclusionary Housing should be established, to shape policy in the use of funds and implementation of projects generated by the requirements of the ordinance. Rather than a Trust with responsibility to hold funds and administer operations of a program, this group would use the City's current means of administering housing programs which is handled by the Housing Division of the Community Development Department, in conjunction with the Housing Authority, the non-profit housing rehabilitation agencies and the housing subcommittee of the City Council.

- Composition of the Advisory Committee should be representative of the groups who make housing programs work: City officials, residents (both tenant and homeowner), local business interests and local lenders.

7. Targeted population is given access to units over an extended period of time through resale agreements or rent regulatory provisions.

   - Ideal notion of putting a permanent requirement into the ordinance is at variance with most public subsidy programs with which this program should be combined. Standard requirement is 20 years, This is linked to money borrowed for such purposes.

8. Public purpose under zoning is clearly stated making the requirement legally defensible. must not be a "tax." Must not be a "taking."

   - Allow development as-of-right up to 80% of permitted FAR's; more than 80% requires compliance with inclusionary/linkage provisions of the ordinance. This addresses the legal issue of using incentives to encourage housing contributions without denying development rights currently existing nor creating height, bulk, and density limits beyond already ample provisions.

   - To meet the legal requirements of Chapter 40A, it is recommended that the special permit process be used in conjunction with the housing requirements.

cc: Robert W. Healy, City Manager
City Council

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

SEVERLIN B. SINGLETON, III
BIRGE ALBRIGHT
SUSAN HICKS SPURLOCK
LEGAL COUNSEL

January 31, 1985

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, Mass.

Re: Petitions to create new § 11.90 of Cambridge Zoning Ordinance

Dear Mr. Healy:

By Order of December 3, 1984, the City Council has requested my opinion as to the validity of two petitions to create a new § 11.90 of the Cambridge Zoning Ordinance, one submitted by the City Council and the other by William S. Noble on behalf of the Cambridge Rent Control Coalition.

CONCLUSION

In my opinion, these two Petitions are not authorized by the Zoning Act, G.L.c.40A.

THE PETITIONS

The Petitions are essentially the same, with a few minor differences. I will summarize the Council Petition, and then note some of the differences between it and the Noble Petition.

The Council Petition is entitled: "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development." § 11.90. Section 11.93 provides that at least 25% of the total residential units (excluding the first seven units) of new construction (including substantial rehabilitation and conversion from non-residential to residential use) must be donated to the City or otherwise made available for low and

moderate income housing. Section 11.94 provides that one unit of low or moderate income housing must be donated or made available for every 10,000 square feet of office, institutional or retail development (excluding the first 10,000 square feet).

The Cambridge Housing Development Trust Fund Board is established as an agency of the City to administer low and moderate income housing. § 11.91. Instead of constructing new units, the developer may elect to make a cash payment or convey vacant land to the City. § 11.951. The amount of the payment or value of the land would be determined by the Board. § 11.96.

The Noble Petition differs from the Council Petition in the following respects, among others:

1. The threshold for residential developments is four units, rather than seven. § 11.932.

2. There is no provision for making a cash payment to the City in lieu of constructing the units. § 11.951.

3. The developer can deed housing units to the City, or retain ownership of the units and rent them under regulations promulgated by the Cambridge Housing Development Trust. § 11.953.

Both petitions were passed to a second reading by the City Council on January 21, 1985.

QUESTION

These Petitions present the following legal question:

1. Are the Petitions within the power granted by the Home Rule Amendment to the Massachusetts Constitution (Article 89, Amend., Art. II)?

2. Are the Petitions within the zoning power granted by G.L.c.40A?

3. Do the Petitions withstand due process analysis?

4. Would the Petitions result in a "taking" of private property requiring the City to pay just compensation?

DISCUSSION

1. Home Rule Amendment

The Home Rule Amendment to the Massachusetts Constitution (Article 89, Amend., Art. II) provides in § 6:

> Any city...may, by the adoption, amendment or repeal of local ordinances..., exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the Constitution or laws enacted by the general court....

This means that the City of Cambridge can amend its zoning ordinance, as long as the amendment is consistent with the Constitution, the general laws and special laws applicable to Cambridge.

The law pertaining to zoning in the Commonwealth is set forth in the Zoning Act (G.L.c.40A, St. 1975, c. 808), formerly known as the Zoning Enabling Act. In a case decided under the Zoning Enabling Act, Middlesex + Boston Street Railway Co. v. Bd. of Aldermen of Newton, 371 Mass. 849, 359 NE 2d 1279 (1977), the Court stated that the General Court "occupied the field of zoning by its enactment of the Zoning Enabling Act, G.L.c.40A...." 371 Mass. at 856.

> ...From the wide scope of the purposes of The Zoning Act, it is apparent that the Legislature intended to permit cities and towns to adopt any and all zoning provisions which are constitutionally permissible, subject, however, to limitations expressly stated in that act (see, e.g., G.L.c.40A § 3) or in other controling legislation.

See also SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 106 (1984), where the Court, without mentioning the Home Rule Amendment, states: "The Zoning Act, G.L.c.40A, has, with precision, set out limits on the exercise of zoning power by the municipality."

In short, I conclude that, with regard to zoning ordinances, the Home Rule Amendment does not confer any additional power on the City over and above its traditional zoning power as limited by the Zoning Act. Now, therefore, we must turn our attention to that Act and to the Cambridge Zoning Ordinance.

2. The Cambridge Zoning Ordinace

The Cambridge Zoning Ordinance is, in general, based on a traditional Euclidean classification scheme. Section 3.11 of the Ordinance divides the City into 27 use districts ranging in restrictiveness from Open Space to Heavy Industry. Section 4.30 (Table of Use Regulations) spells out the uses permitted as of right in each district, and provides, in some districts, for conditionally permitted uses. Such uses are allowed only if a special permit is issued by the Board of Zoning Appeal or the Planning Board. "Special permits shall be issued in accordance with the provisions of Section 10.40 and may be subject to such restrictions as the special permit granting authority (BZA or Planning Board) may establish." Sec. 4.12.

3. The Zoning Act

In discussing the Zoning Act, I recognize that St. 1975, c. 808, which inserted the present Zoning Act, suggested, in § 2A, "objectives for which zoning might be established....", one of which is "to encourage housing for persons of all income levels." This purpose is stated in the Zoning Ordinance, § 1.30.

(a) Use of Land

A "fundamental principle of zoning (is that) it deals basically with the use, without regard to the owernship, of the property involved or who may be the operator of the use." 1 Rathkopf. The Law of Zoning and Planning, § 1.04, p. 1-21 (4th ed., 1984).

The principle was applied recently in CHR General, Ins. v. City of Newton, 387 Mass. 351, 439 NE 2d 788 (1982), which held that a Newton ordinance regulating the conversion of rental units to condominiums could not be upheld as a zoning ordinance because it regulated the ownership, rather than the use, of the units.

The Court stated:

> ...The City concedes, as it must, that "a building composed of condominium units does not 'use' the land it sits upon any differently than an identical building containing rental units."

439 NE 2d at 791.

However, in Cameron v. Zoning Agent of Bellingham, 357 Mass. 757 (1979), the zoning ordinance exempted "public housing" from applicable site development restrictions and allowed it as a permitted use in any zoning district other than industrial. "Public housing" was defined as "housing operated by a public body created pursuant to...(G.L.c.121 § 26K)..." Id. at 758. The Court upheld the ordinance, noting that this housing was publicly owned and regulated. I note that the Petitions here contain no definition of low and moderate income housing.

It can be argued that a building composed of low and moderate income units does not use the land it sits on any differently than a building containing high income units. For this reason, I think a court would look askance at the use of the Zoning Ordinance to mandate low and moderate income housing, unless this is done in accordance with G.L.c.40A, § 9 (see below).

(b) Uniformity

General Laws, c. 40A, § 4 provides that "(a)ny zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." This section was recently construed in SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101 (1984), which held that a provision in the Braintree zoning by-law conditioning all uses in a business district on the grant of a special permit by the Planning Board was invalid as conflicting with the uniformity requirement of § 4.

In so holding, the Court stated:

> ...The uniformity requirement is based upon prinicples of equal treatment: all land in similar circumstances should be treated alike, so that "if anyone can go ahead with a certain

> development (in a district), then so can everybody else." 1 Williams, American Land Planning Law § 16.06 (1974).

Id. at 107.

Here again, I feel that a court might hold that the proposed sections 11.90 violate the principle of uniformity.

(c) Special Permits

The Zoning Act, G.L., c. 40A, § 9 states: "Zoning ordinances...shall provide for specific types of uses which shall only be permitted in specified districts upon the issuances of a special permit." Special permits "have long been used to bring flexibility to the fairly rigid use classifications of Euclidean zoning schemes...by providing for specific uses which are deemed necessary or desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the district." SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 109 (1984).

Uses not commonly subjected to special permit requirements are those regarded as troublesome, but often needed somewhere in the city, e.g. automobile service stations, garages and parking lots (see Cambridge Zoning Ordinance, §§ 4.32b, 4.36g, 4.37h); "and uses often considered desirable but which would be incompatible in a particular district unless conditioned in a manner which makes them suitable to a given location (for example, an apartment house in a single family residential district)" SCIT, Inc. at 109.

Section 9 of Chapter 40A preserves the traditional outlines of the special permit power and also provides for the use of special permits in certain new ways. Thus, paragraph 2 of § 9 states:

> Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income,

> traffic or pedestrian improvements, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Neither the Cambridge Zoning Ordinance as presently written nor the proposed sections 11.90 provide for these "density bonuses".

The recognition of "density bonuses" is a new concept which was added to the Zoning Act when it was rewritten in 1975. See Bok and White, The New Zoning Act, 20 Boston Bar J., no. 2, 11, 15 (Feb., 1976). The density bonus is intended to avoid the taking problem which would arise if a city required developers to provide low and moderate income housing or other public amenities without a compensating density increase. See Mandelker, Land and Use Law, §§ 5.46, 7.22 (1982). The use of density bonuses has been approved by a number of authorities, including the New Jersey Supreme Court. See Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A 2d 1192 (1977).

As noted above, these Petitions do not provide for density bonuses as authorized by § 9 of the Zoning Act. Instead, for developments over a minimum size, the Petitions simply require the developer to provide a specified amount of low and moderate income housing or make an in lieu cash payment to the city. Ordinances of this type are known as "mandatory inclusionary ordinances", and they present "a number of legal problems." Mandelker, § 7.23.

As Professor Mandelker states:

> Developers subject to these ordinances may make a taking objection if they suffer a loss in the sale or rental of the lower-income dwellings. They may also claim that the mandatory ordinance denies them equal protection, violates substantive due process, and is not within the authority conferred by the state zoning legislation.

Id., § 7.23, p. 216.

The first inclusionary ordinance to be subjected to litigation was invalidated by the Virginia Supreme Court in Board of Supervisors v. DeGroff Enterprises, 214 V c.235, 198 SE 2d 600 (1973). The Court found that the intention of the state's zoning enabling act "was to permit localities to enact only traditional zoning ordinances directed to physical characteristics and having the purpose neither to include nor exclude any particular socio-economic group." 214 V.c. at 238. It concluded that the ordinance exceeded the bounds of the enabling legislation by seeking to "control the compensation for the use of land" and also that it amounted to a taking without compensation.

Id.

In Oakwood at Madison, Inc. v. Township of Madison, 72 N. J. 481, 371 A 2d 1192 (1977), the New Jersey Supreme Court reserved decision on the constitutionality of mandatory inclusionary ordinances, but indicated some doubts about their legality. The Court stated: ..."We discern serious problems with the exercise of local zoning power in such a manner without express legislative authorization." 371 A2d at 1210.

In Middlesex + Boston St. Railway Co. v. Bd. of Aldermen Newton, 371 Mass. 849, 359 NE 2d 1279(1977), the Board of Aldermen of Newton, acting in its capacity as the special permit authority under the Newton zoning ordinance, granted a special permit to the plaintiff to erect 54 dwelling units in a garden apartment development. The Board attached a condition to the permit requiring the plaintiff to lease 5 of the units to the Newton Housing Authority at lower-than-market rentals. The plaintiff appealed to the Superior Court under G.L. c. 40A.§ 21 (the old Zoning Enabling Act). The Superior Court dismissed the appeal.

The Supreme Judicial Court reversed, holding that the Board lacked the power to impose the condition. The Court stated:

> Our conclusion that the board had no power to impose (the) condition is based on our reading and application of the zoning enabling statute, G.L. c. 40A, and the Newton zoning ordinance.

359 NE 2d at 1284.

The Court did not reach the question whether the condition "would be constitutionally permissible if it were...authorized by the General Court as part of the Zoning Enabling Act..." Here we are faced with the question of whether these Petitions are authorized by The Zoning Act.

Are these Petitions authorized by The Zoning Act? The Act does not specifically authorize mandatory inclusionary ordinances, nor does it forbid them. What was the intention of the Legislature when it enacted the Act in 1975? In ascertaining the legislative intent in enacting a statute, we must consider "all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished...." Commonwealth v. Galvin, 388 Mass. 326, 446 NE 2d 391, 393 (1983).

In my opinion, it is appropriate here to follow the maximum that "a statutory expression of one thing is an implied exclusion of other things omitted from the statute" - "Expressio unius est exclusio alterius." See County of Middlesex v. City of Newton, 13 Mass. App. Ct. 538, 542 (1982); 2A Sands, Sutherland Statutory Construction, §§ 47.23 - 47.25 (4th ed., 1984. Rev.). Where "a form of conduct, the manner of its performance and operation and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions", 2A Sands, supra, § 47.23.

"When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted." Id. I believe that this maxim applies to these Petitions, and indicates that they are not authorized by The Zoning Act, G.L.c.40A. My reasons are as follows:

The concept of providing for low and moderate income housing through a zoning ordinance is "creative", innovative and of recent origin. As noted above, the idea of giving density bonuses in return for the construction of such housing was introduced for the first time in Massachusetts when The Zoning Act was adopted in 1975. G.L.c.40A, § 9. Mandatory inclusionary ordinances, of which these Petitions are an example, are subject to serious constitutional objections. See Mandelker, Land Use Law, § 7.23.

Considering this background, it is my opinion that the Legislature intended that, if a city wanted to "encourage housing for persons of all income levels" (St. 1975, c. 808, § 2A) it must do so through the use of density bonuses as authorized in G.L. c.40A, § 9.

Since it is my opinion that these Petitions are not authorized by The Zoning Act, I do not reach the due process and taking questions.

Very truly yours,

Russell B. Higley

Russell B. Higley
City Solicitor

RBH:mm

6.

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 4, 1985

To the Honorable, the City Council:

Enclosed please find copy of the opinion of the City Solicitor relative to the two petitions before the City Council on Inclusionary Zoning.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

FIRST PUBLICATION NO. 2266.

City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Five

AN ORDINANCE

In amendment to an ordinance entitled "The Zoning Ordinances of the City of Cambridge".

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

The Zone Map accompanying ordinance passed to be ordained September 26, 1979 entitled "The Zoning Ordinances of the City of Cambridge" is hereby amended by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provisions of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 43, Section 23, Tercentenary Edition, being a part of the City Charter, the ordinance as aforesaid, which exceeds in length eight octavo pages of ordinary book print may be examined at the office of the City Clerk in the form of a printed pamphlet during office hours on or after January 22, 1985.

Attest:- Paul E. Healy, City Clerk.

Passed to a second reading at the City Council meeting held on January 21, 1985 and on or after February 4, 1985 the question comes on passing to be ordained.

DRAFT 9/19/84

Create a new Section 11.90

11.90 Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

11.91 Purpose

This Section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11.92 Applicability

11.921 The provisions of this Section 11.90 shall apply to any residential, office, institutional and retail development containing any one or combination of the following uses:

Housing Uses

(a) Detached dwelling for one family (4.31 a)
(b) Two family dwelling (4.31 b)
(c) Townhouse development (4.31 d)
(d) Multifamily dwellings (4.31 g)
(e) Existing dwelling converted for more than two families (4.31 h)
(f) Elderly oriented congregate housing (4.31e)
(g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

Office, Retail and Institutional Uses

(h) Hotel or Motel (4.31 i(2))
(i) Radio and television studio (4.32f)
(j) Office and laboratory use (4.34)
(k) Retail business and consumer service establishments (4.35)
(l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1, 2; e 1-7)

11.922(a) The uses listed in the above Section 11.921 shall comply with the provisions of this Section 11.90 when they are created by (a) new construction; (b) conversion of a non-residential structure to residential use; (c) conversion from any use not listed in 11.921 above.For the purpose of this Subsection 11.922 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provisions of this Section 11.90 regarding substantial rehabilitation shall modify any requirement for a removal permit for housing units subject to rent control.

(b) Except for non-residential structures converted to residential uses listed in 11.921 above no structure once subject to the provisions of this Section 11.90 shall be additionally subject to this Section if converted to another use listed in Subsection 11.921. The provisions of this paragraph 11.922(b) shall not apply to any new additions or expansion of a structure which have not themselves been subject to the provisions of Section 11.90

11.93 Quantity Requirements for Residential Uses

11.931 Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11.932 Any residential development subject to this Section 11.90 as determined by Section 11.92 above,and which does not contain seven (7) of fewer waits as defined in paragraph (a), must obtain a special permit under this section 11.93. The Planning Board shall issue such a special permit only if it determines that the development will make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 25 percent of the total number of units authorized according to the following schedule:

(a) The first seven (7) residential units constructed after the effective date of this Section 11.90 on a lot as defined in Section 11.98 shall be exempt from the requirements of this Section 11.90.

(b) For all non-exempt residential units authorized after the effective date of this Section 11.90 on a lot as defined in section 11.98, 25% shall be for low and moderate income households. Where the application of the 25 percent requirement results in a fractional number, one additional inclusionary unit shall be provided.

11.94 Quantity Requirements for Office, Institutional and Retail Development

11.941 Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11.942 Any office, institutional or retail development subject to this Section 11.90 as determined by Section 11.92 above and which exceeds 10,000 square feet of gross floor area as defined in paragraph (a), must obtain a special permit under this Section 11.94. The Planning Board shall issue such a special permit only if it determines that the development will make provision for residential dwelling units suitable for, affordable by and available to low and moderate income households in an amount determined by the following schedule:

(a) The first 10,000 square feet of gross floor area constructed after the effective date of this Section 11.90 on a lot as defined in 11.98 of this Section 11.90 shall be exempt from requirements of this Section 11.90.

(b) For all non-exempt gross floor area required inclusionary housing shall be provided at the rate of one unit for each 10,000 square feet of gross floor area authorized. Where the application of the requirement results in a fraction of a unit, one full unit shall be provided.

11.95 Options for provision of required units

11.951 The low and moderate income units required in Section 11.93 and 11.94 may be provided in any one or combination of the following ways:

(a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11.90 are met.

(b) Cash payment to the City of Cambridge to be administered by the Cambridge Housing Development Trust herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with provision of this section 11.90.

(c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11.96 Determination of Cash Equivalency

The cash equivalent of the required units, as authorized in 11.951 (b) above, shall be determined on a yearly basis by the Cambridge Housing Development Trust and shall be equal to the current total construction cost of the unit or units required.

11.97 Characteristics of Required Units

11.971 The required units shall be provided in the following rotating sequence:

(a) (1) One low income unit; (2) One low income unit; (3) One moderate income unit.

(b) Low and moderate income units shall in turn observe the following rotating sequence:

(1) One three bedroom unit.
(2) One Two bedroom unit.

To illustrate, the first six required units shall have the following characteristics:

First unit - Low income three bedroom unit.
Second unit - Low income two Bedroom unit.
Third unit - Moderate income three bedroom unit.
Fourth unit - Low income three bedroom unit.
Fifth unit - Low income two bedroom unit.
Sixth unit - Moderate income two bedroom unit.

11.972 Where a dwelling to which this Section 11.90 applies is to be devoted exclusively to elderly residents the restrictions in Subsection 11.971 as to unit size shall not apply..

11.973 In no case shall the average size of required units be less than the average size of all other equivalent units authorized. Where no equivalent market rate units are authorized the Cambridge Housing Development Trust shall establish standards for the size of required units which shall be consistent with the size of similar units in public,assisted, and market rate housing.

11.974 The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11.975 For the purposes of this Section 11.90 a low income household shall be one having an eligible income not exceeding 50% of the median family income for the Boston Metropolitan Area; a moderate income household shall be one having an eligible income greater than 50% and not exceeding 80% of the median; the median family income shall be as determined by the Federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

11.976 The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be permanently available for those low and moderate income households. To the extent possible preference shall be given to Cambridge residents.

11.977 Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board upon a positive recommendation by the Trust.

11.978 The provisions of Subsections 11.93 and 11.94 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program provided the intent of these regulations are met.

11.98 Property Subject to this Section

The provisions of this Section 11.90 shall apply to all new, substantially rehabilitated, or converted buildings constructed on a lot subsequent to the effective date of this Section 11.90. For the purpose of this Section 11.90 a lot shall be lot or series of adjacent lots in the same ownership at the time of the effective date of this Section 11.90 regardless of any subsequent change in ownership or subdivision of such lots. The provisions of Section 11.93 and 11.94 shall be applied to the cumulative number of units or gross floor area constructed after the effective date of this Section 11.90 as determined by this Section 11.98.

11.99 Compliance

11.991 Cambridge Housing Development Trust Fund Board

There shall be established a Cambridge Housing Development Trust which shall be an agency of the City of Cambridge and shall be governed by a five member board of trustees who shall be residents of Cambridge and appointed by the City Manager, as follows.

(a) a representative from the Cambridge Housing Authority

(b) a representative of a Cambridge based non-profit housing corporation

(c) a tenant in a public or subsidized housing unit

(d) a tenant in any other housing unit

(e) a Cambridge based business person or real estate developer

11.992 Powers, Duties and Responsibilities of the Trust

The Trust shall:

(a) Manage and dispense all funds and land conveyed to the City of Cambridge under the provisions of this Section 11.90 for the support of low and moderate income housing required by this Section 11.90.

(b) Develop such regulations as may be appropriate for the design and location of all housing required and for any documents, procedures and agreements necessary to carry out the provisions of this Section 11.90.

(c) Provide assistance to the Planning Board and the Superintendent of Buildings in the enforcement of, and in determining compliance with,this Section 11.90.

The Trust shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11.90 and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department

11.993 All deeds, agreements, site plans, and other documents necessary to comply with the provisions of this Section 11.90 shall be submitted to the Cambridge Housing Development Trust for review prior to the issuance of a special permit.Within sixty-five (65) days of such submittal the Trust shall make a report to the Planning Board as to whether all requirements of this section 11.90 have been met. No special permit may be issued until the Planning Board has received such written report from the trust.

All agreements necessary to insure the construction of units or equivalent payment to the City shall be executed before the issuance of a special permit. No certificate of occupancy for any building shall be

issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for payment over an agreed upon length of time.

Any required payments shall constitute a lien on the property. The Superintendent of Buildings shall require the execution of such surety as may be necessary to ensure the required payment to the City of Cambridge should such payment be made after the issuance of a certificate of occupancy.

11.994 The provisions of this Section 11.90 are severable, and if a court holds invalid any such provision, or its application to any person, property, or circumstance, such invalidity shall not impair the validity of any other provision or application which can be given effect in the absence of the invalid provision or application.

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

January 23, 1985

Russell B. Higley, Esquire
City Solicitor
City Hall
Cambridge, MA 02139

Dear Sir:

Enclosed you will find two zoning amendments to the Zoning Ordinances of the City of Cambridge which were passed to a second reading at the City Council meeting held on January 21, 1985 as follows:

1. Petition of the City Council to create a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development".

2. Petition of William Noble on behalf of the Rent Control Coalition by adding a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

Would you kindly review these amendments and indicate your approval or disapproval on the bottom and return to this office.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Enc. First publication no. 2266
First publication no. 2267

c. c. Councillor David Sullivan, Chairman, Committee on Ordinances
Mr. Cellucci, Inspectional Services.

FIRST PUBLICATION NO. 2267.

City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Five

AN ORDINANCE

In amendment to an ordinance entitled "The Zoning Ordinances of the City of Cambridge".

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

The Zone Map accompanying ordinance passed to be ordained September 26, 1979 entitled "The Zoning Ordinances of the City of Cambridge is hereby amended by adding the following new Section 11.90 to Article 11.000, Special Regulations. Said new section to be entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

The purpose of this section is intended to require the provision of housing for low and moderate income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 43, Section 23, Tercentenary Edition, being a part of the City Charter, the ordinance as aforesaid, which exceeds in length eight octavo pages of ordinary book print may be examined at the office of the City Clerk in the form of a printed pamphlet during office hours on or after January 22, 1985.

Attest:- Paul E. Healy, City Clerk.

Passed to a second reading at the City Council meeting held on January 21, 1985 and on or after February 4, 1985 the question comes on passing to be ordained.

FIRST PUBLICATION NO. 2266.

City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Five

AN ORDINANCE

In amendment to an ordinance entitled "The Zoning Ordinances of the City of Cambridge".

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

The Zone Map accompanying ordinance passed to be ordained September 26, 1979 entitled "The Zoning Ordinances of the City of Cambridge" is hereby amended by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provisions of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 43, Section 23, Tercentenary Edition, being a part of the City Charter, the ordinance as aforesaid, which exceeds in length eight octavo pages of ordinary book print may be examined at the office of the City Clerk in the form of a printed pamphlet during office hours on or after January 22, 1985.

Attest:- Paul E. Healy, City Clerk.

Passed to a second reading at the City Council meeting held on January 21, 1985 and on or after February 4, 1985 the question comes on passing to be ordained.

CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

To: The Honorable, City Council January 31, 1985

Subject: William Noble and City Council Petitions Establishing a Linkage/Inclusionary Housing Requirement in the Zoning Ordinance.

The Petitions:

The two petitions, with variations in detail, would establish a zoning requirement that housing developments of a certain size provide 20 to 30% of the constructed units to low and moderate income families and that commercial/institutional development provide similar units at the rate of one for each 10,000 square feet of space developed. The City Council petition would allow money payments in lieu of construction of the required housing units.

Recommendation:

Based on the findings detailed below the Board recommends that the two petitions now before Council not be adopted. In addition to concerns as to their legality under the Zoning Enabling Statute (Chapter 40A) the petitions are significantly flawed in terms of the reasonableness of their requirements and their effect on housing and commercial development in the City. The Board is however committed to the basic objectives embodied in the petitions; it therefore is forwarding draft language to the Council which reflects its deliberations to date. Nevertheless, there remain questions as to even this draft's conformance to the requirements of Chapter 40A (with specific regard to the requirement that bonuses of intensity of development be granted in exchange for the provision of low and moderate income housing). Over the next 60 days the Board would like to suggest that additional options be explored for structuring any bonus provisions in a sufficiently unambiguous way as to discourage any legal challenge to an adopted Linkage/Inclusionary Ordinance. The Council's support and participation in this effort would be of great assistance.

In addition the board recommends that should deliberation of the issue continue after the official life of the current petitions ends in early March (should they not be adopted) provisions be made for orderly processing of building permits until final passage of an ordinance is achieved.

Findings

1. Linkage and Inclusionary requirements imposed on residential and commercial development in the City are reasonable responses to the continuing need for decent, affordable housing for a wide range of incomes and households in the City of Cambridge. Such requirements must however be reasonably related both to the impact those developments make on housing in the City and to the ability of that development to sustain the additional cost the requirements must inevitably impose.

2. It is the Board's opinion that the requirements contained in the current two petitions could not be sustained financially by the small, infill housing construction that is typical in Cambridge. Much housing production would be forgone or the price of the units available in the private market would escalate dramatically. The cost to commercial development would be substantially more than the cost imposed on similar development in Boston (comparison enclosed) and would place commercial development in the City at a significant disadvantage. Lower cost, rehabilitated space, which has served Cambridge to advantage in the past in housing small growth companies would be particularly disadvantaged.

3. Both proposals define housing and income requirements in such detail that it would be unlikely that any private development could meet them without substantial subsidy assistance; most if not all public assistance housing programs available, however, could not themselves meet the requirements of the two petitions. More flexibility would serve the objectives of the petitions more effectively by providing much more housing.

4. The petitions unnecessarily create another administrative layer, through a new Cambridge Housing Trust, whose function could be reasonably handled through existing city housing programs. A new organization could reasonably be created to provide policy direction in the execution of a Linkage Program.

5. The current proposals, in attempting to conform to the apparent requirements of Chapter 40A (the Zoning Enabling statute), require special permits for all but the very smallest developments in the city. The administrative burden on the city and private development under this provision would be substantial. The statutory requirement for increased intensity of development bonuses does not appear to have been met in these current petitions. In addition, land in the same zone is treated substantially differently under these two proposals as there is only a small exemption (10,000 square feet for commercial development) which is unrelated to the size of the lot. Therefore small lots may totally escape the imposition of any requirement while very large lots have most of the development potential taken away unless they meet the requirements of the linkage/inclusionary sections of the zoning ordinance. If a

linkage/inclusionary ordinance is to be immediately useful it must be reasonably secure legally from court challenge.

6. The Board has fashioned a draft linkage/inclusionary provision which addresses many of the concerns expressed above (please review the Memo to the Planning Board from Kathy Spiegelman) by making clear the bonus provisions that are being offered. As drafted the FAR permitted on a lot as-of-right is reduced by 20% unless the provisions of the linkage/inclusionary ordinance are met. The tradeoff to the city is that either the scale of development is reduced and therefore its impact on the city is reduced or an increased scale of development is compensated through the provision of low and moderate income housing.

Nevertheless the Board is still concerned that this proposal would be subject to challenge for not meeting the intent of Chapter 40A to provide bonuses in the form of increased intensity of development in exchange for low and moderate income housing. The Board would like to explore other mechanisms for achieving conformance including tieing housing requirements to granting of variances/special permits for relaxed height or setback requirements and for other relaxation of base zoning requirements now granted in the PUD districts. Additional suggestions may be forthcoming if they are actively sought out.

7. Deliberations on the current petitions have resulted in considerable confusion, delay, and expense on the part of those who wished to secure building permits after considerable time spent in planning and development of a variety of building proposals (including housing projects supported in part by the City of Cambridge). Should further deliberation ensue, it is appropriate that such costly delays be eliminated by permitting the issuance of building permits under current zoning requirements until final adoption of any linkage/inclusionary ordinance has been secured.

Respectfully submitted for
Planning Board

Arthur Parris, Chairman

Chart dated January, 1985

Attachments: Memo to Planning Board dated January 7, 1985
draft Zoning Amendment dated January 31, 1985

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

To: The Planning Board January 7, 1985

From: Kathy A. Spiegelman
Assistant City Manager for Community Development

The Planning Board and Community Development Department have been discussing inclusionary zoning and linkage over a period of years. It is now important to respond to the City Council's petition. At the Council hearing on the two inclusionary zoning/linkage petitions now filed, members of the Council expressed an interest in hearing suggestions for modifying the current proposals.We have recommendations from our previous proposals as well as some additional suggestions based on what we have learned since then.

While the current petitions have some of the elements necessary for successful inclusionary and linkage programs, they do not have many others. The Community Development Department maintains that neither petition in its current form will create a successful program for either inclusionary zoning or linkage. At the hearings we outlined eight points for making such programs successful. The elements we outlined are based on an analysis of our own work and research about other programs. They are based on the assumption that to be successful, an inclusionary zoning program must pool all potential resources to maximize housing opportunities for those who cannot otherwise afford them and that a successful linkage program must embody the basic concept of promoting the economic feasibility of private development.This requires flexibility, cooperation and timeliness on the part of the public sector.

Following is a re-listing of the eight elements for a successful inclusionary zoning and linkage program with proposed changes to the filed petitions. The requirement for the inclusion of low and moderate income units in housing developments and that for linking commercial developments to contributions for low and moderate income housing are two related but distinct programs. It is recommended that the ordinance separate the requirements for each within the zoning code.

1. The private real estate development community joins the public sector in the provision of expanded opportunities for decent, affordable housing.

   - Most of the changes recommended in this memo are intended to make the inclusionary and linkage programs recognize a balance between what the City wants and what developers can provide, this being the only way to see housing actually produced with new private sector participation.

2. Developer contributions are combined with other housing programs to achieve optimal results through leveraging.

   - Cash equivalency is set at level of $40,000 (1/2 the cost of a unit) which implies that the private developer is being asked to share the cost of creating inclusionary units. Requiring the private developer to pay 100% of the cost is a burden which would make many projects infeasible.

   - Require units to be kept available to targeted population for 20 years. As currently phrased, the "permanent" requirement will make it difficult to combine linkage payments with public subsidy programs and still meet this requirement.

3. City makes an affirmative municipal contribution rather than attempting to "regulate new housing into existence.

   A) Offer a quid pro quo through zoning bonuses, expedited processing or other incentive for stepped up developer contributions.

      - Allow up to 80% of permitted FAR before housing requirement is triggered. (See #8) This provides legal strength to the ordinance's provisions. The trade-off for the City is either less intensive development or housing assistance.

      - Add a provision that sites of five acres or more trigger the linkage requirement at 50% of allowable FAR rather than at 80%. This means City does not lose the opportunity to create linkage in large scale projects where such linkage is feasible but the size of land area controlled might provide a loophole.

- Require that any project which requests relief from dimensional regulations automatically triggers the linkage requirements regardless of %-age of allowable FAR used.

- Ordinance should state the City's support for private housing developers to exceed the minimum inclusionary requirements by offering priority access to subsidies to those projects which will provide more than the minimum requirement.This should not, however, become a way to encourage actual zoning violations in inclusionary projects.

B) Assist the private developer to produce the housing. Cannot expect a developer to bear the total burden with no positive City action.

- By requiring a cash equivalency of $40,000 per unit, the City is agreeing to share with the developer the cost and responsibility for producing low cost housing.

4. Flexibility is allowed to negotiate site specific components - e.g. unit sizes, locations, low vs. moderate income mix. These components should not be reduced to a "cookbook" of detailed regulations that may be inappropriate or impossible to achieve.

- Remove from the ordinance the specificity of unit sizes and number of bedrooms. Allow the Advisory Committee to establish standards and for the City to be flexible in negotiating the best combination of details for a project. This would greatly enhance the likelihood of producing housing through this program. It also prevents the creation of detail requirements which prevent the combined use of subsidy programs which have their own specific requirements.

5. Developer contributions are set at reasonable levels.

A) Mandatory contributions should not result in economic infeasibility of development.

- Exempt substantial rehabilitation of buildings which are already regulated by Rent Control and which will continue to be so regulated

when completed. City should not multiply regulatory requirements for particular projects to the extent that such projects become totally infeasible, especially when such over-regulation would serve to discourage preservation of older housing in need of reinvestment, thereby aggravating the shortage of affordable housing.

- Change housing exemption from 7 to 9 units in order to enhance feasibility of small scale or infill housing developments.

- Change commercial development exemption to 30,000 square feet. This lessens possibility that this requirement will prevent a project from going forward. (Incentive for rehab by increasing exemption to 50,000 square feet, see 5D).(In theory it should be possible to pro-rate contributions for all projects rather than provide for exemptions. However, it must be recognized that the Statutory and administrative responsibilities for such a comprehensive program would be much more extensive and might have strong negative impacts on the operation of the program.)

- Allowing payments over time. This dramatically reduces the impact of such a requirement on the feasibility of a development.

- Reduce financial impact by setting cash equivalent at $40,000 per required unit.

B) Contributions should be viewed as part of overall package contributed by developer, including jobs, open space amenities, etc.

- By setting the housing requirements at a feasible level and by using the special permit process, the City will be able to broadly evaluate development impacts and put the housing piece in consideration with other sought-after amenities.

C) Contributions should be flexible - units, dollars or sites.

- The program will work well if the objective of providing expanded housing opportunities is achieved through cooperation and flexibility so that contributors are encouraged to propose mutually beneficial solutions.

D) Contributions should be related to impact of a development project.

- Allow a commercial exemption of 30,000 square feet to tie requirement to projected impacts of developments and reduce impact on local small business expansion.

- Provide for linkage in large scale projects and in projects requesting relief from other aspects of the zoning ordinance (see 3A).

- To encourage rehabilitation of existing buildings, set the exemption for new construction at 30,000 square feet and for rehabilitation at 50,000 square feet.

E) Contributions should be allowed over time.

- Allow linkage payments to be made up front or over ten years: $40,000/unit up front or $40,000/unit indexed to inflation over ten years.

6. Administration of program is manageable - timely processing of applications, clear responsibilities and requirements, representative compositions on Board, adequate staff support and budget.

- An Advisory Committee for Linkage and Inclusionary Housing should be established, to shape policy in the use of funds and implementation of projects generated by the requirements of the ordinance. Rather than a Trust with responsibility to hold funds and administer operations of a program, this group would use the City's current means of administering housing programs which is handled by the Housing Division of the Community Development Department, in conjunction with the Housing Authority, the non-profit housing rehabilitation agencies and the housing subcommittee of the City Council.

- Composition of the Advisory Committee should be representative of the groups who make housing programs work: City officials, residents (both tenant and homeowner), local business interests and local lenders.

7. Targeted population is given access to units over an extended period of time through resale agreements or rent regulatory provisions.

   - Ideal notion of putting a permanent requirement into the ordinance is at variance with most public subsidy programs with which this program should be combined. Standard requirement is 20 years, This is linked to money borrowed for such purposes.

8. Public purpose under zoning is clearly stated making the requirement legally defensible. must not be a "tax." Must not be a "taking."

   - Allow development as-of-right up to 80% of permitted FAR's; more than 80% requires compliance with inclusionary/linkage provisions of the ordinance. This addresses the legal issue of using incentives to encourage housing contributions without denying development rights currently existing nor creating height, bulk, and density limits beyond already ample provisions.

   - To meet the legal requirements of Chapter 40A, it is recommended that the special permit process be used in conjunction with the housing requirements.

cc: Robert W. Healy, City Manager
City Council

A. AMEND THE ZONING ORDINANCE OF THE CITY OF CAMBRIDGE BY DELETING THE EXISTING Section 5.25 - FAR Exceptions AND SUBSTITUTE THEREFOR A NEW Section 5.25 - Floor Area Ratio AS FOLLOWS:

5.25 Floor Area Ratio

a. The maximum ratio of floor area to lot area indicated in Section 5.30 - District Dimensional Regulations shall be permitted only upon compliance with the provisions of Sections 11.100, 1.200, 11.300 of this Ordinance. Maximum Floor Area Ratios permitted without reference to the provisions of Sections 11.100 - 11.200 shall be 80% of those indicated in Section 5.30. for lots of five (5) acres or less, and 50% for lots greater than five (5) acres, as illustrated by the following schedule.

Maximum FAR in Table 5.30	80% of FAR in Table 5.30	50% of FAR in Table 5.30
.5	.4	.25
.75	.6	.375
1.00	.8	.50
1.25	1.00	.625
1.50	1.20	.75
1.75	1.40	.875
2.00	1.60	1.00
2.50	2.00	1.25
3.0	2.40	1.50
4.0	3.20	2.0

b. FAR Exceptions. A parking garage, or that portion of a structure devoted to parking automobiles, shall be exempt from the requirements as to floor area ratio but shall conform to all other dimensional requirements of the district in which it is located.

B. AMEND THE ZONING ORDINANCE OF THE CITY OF CAMBRIDGE BY CREATING THREE NEW Sections 11.100, 11.200 and 11.300 AS FOLLOWS:

Create a new Section 11.100

11.100 Low and Moderate Income Household Inclusionary Housing Requirements for Residential Development.

11.101 Purpose

This Section 11.100 is intended to require the provision of low and/or moderate income family housing as a component of many new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11.102 Applicability

11.102.1 The provision of this Section 11.100 shall apply to any residential development containing any one or combination of the following uses:

(a) Detached dwelling for one family (4.31 a)
(b) Two family dwelling (4.31 b)
(c) Townhouse development (4.31 d)
(d) Multifamily dwellings (4.31 g)
(e) Existing dwelling converted for more than two families (4.31 h)
(f) Elderly oriented congregate housing (4.31e)
(g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

11.102.2 The uses listed in the above Section 11.102.1 shall comply with the provisions of this Section 11.100 when they are created by (a) new construction or (b) conversion of a non-residential structure to residential use. For the purpose of this Subsection 11.102.2 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provision of this Section 11.102.2 regarding substantial rehabilitation shall modify any requirements for a removal permit for housing units subject to rent control. However, substantial rehabilitation of dwellings subject to Cambridge's rent control ordinance and approved by the Cambridge Rent Control Board shall not be subject to the provisions of this Section 11.100

11.103 Quantity Requirements

11.103.1 Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11.103.2 Any residential development containing uses subject to this Section 11.100 as determined by Section 11.102 above shall make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 10% percent of the total number of residential units authorized, The requirements of this Section 11.100 shall apply to the total development authorized on the subject lot (as defined in Section 11.305) only after application of both of the following threshold and exemption provisions:

Threshold

(a) Total gross floor area of all development on the lot (residential and other uses) is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, or 50% for lots greater than five (5) acres. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district which are permitted or required as-of-right, as detailed in Section 5.30.

Exemption

(b) More than nine (9) dwelling units have been constructed after the effective date of this Section 11.100. The ten (10%) percent requirements of this Section 11.103 shall however be applied only to dwelling units constructed in excess of the nine units described in this paragraph (b).

Where the application of the 10% requirement results in a fractional number one additional inclusionary unit shall be provided.

11.103.3 All requirements of Section 11.300 shall be met.

11.200 Low and Moderate Income Linkage Housing Requirements for Office, Institutional and Retail Development.

11. 201 Purpose

This Section 11.200 is intended to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. 202 Applicability

11. 202.1 The provision of this Section 11.200 shall apply to any office, institutional and retail development containing any one or combination of the following uses:

(h) Hotel or Motel (4.31 i(2))
(i) Radio and television studio (4.32f)
(j) Office and laboratory use (4.34)
(k) Retail business and consumer service establishments (4.35)
(l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1,2; e 1-7)

11. 202.2 (a) The uses listed in the above Section 11.202.1 shall comply with the provisions of this Section 11.200 when they are created by (a) new construction or (b) conversion from any use not listed in 11.202.1above. For the purpose of this Subsection 11.202.2new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure.

(b) Except for non-residential structures converted to residential use which shall be suject to Section 11.100 no structure once subject to the provisions of this Section 11.200 shall be additionally subject to this Section if converted to another use listed in Subsection 11. 202.1

11.203 Quantity Requirements

11.203.1 Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial and other non-residential development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11.203.2 Any office, institutional or retail development subject to this Section 11.200 as determined by Section 11.202 above shall make provision for residential dwelling units suitable for, affordable by and available to low and moderate income households (required units) in an amount equal to one required unit for each 12,000 square feet of gross floor area authorized on the subject lot as defined in Section 11.305 after application of both of the following threshold and exemption provisions. Where the application of the above requirement results in a fractional number one additional unit shall be provided.

a. Exemption

The first 30,000 square feet of gross floor area constructed after the effective date of this Section 11.200 shall be exempt from requirements of this Section 11.200 Where the gross floor area constructed is as a result of substantial rehabilitation of an already existing structure, 50,000 square feet shall be exempt.

b. Threshold

The total gross floor area of all development on the subject lot, as defined by Section 11.200 , is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, and 50% for lots greater than five (5) acres. Nevertheless, with the exception of the gross floor area identified in paragraph (a) above all gross floor area constructed after the effective date of this Section 11.200 shall be subject to the linkage requirements of this Section 11.200 once the 80% or 50% thresholds have been exceeded. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district that are permitted/required as-of-right, as detailed in Section 5.30.

11.203.3 All requirements of Section 11.300 shall be met.

11.300 STANDARDS, CRITERIA, PROCEDURES, AND ADMINISTRATION FOR INCLUSIONARY AND LINKAGE HOUSING REQUIREMENTS.

11.301 Special Permit

All residential, office, retail and institutional development subject to Sections 11.100 and 11.200 shall be permitted only after issuance of a special permit from the Planning Board of the City of Cambridge. In issuing a special permit the Board shall find that the provisions of Section 10.40 have been met as well as the purposes, standards and criteria established in these Sections 11.100, 11.200 and 11.300.

11.301.1 All deeds, agreements, site plans, and other documents necessary to demonstrate compliance with the provisions of Sections 11.100 - 11.300 shall be submitted to the Planning Board as part of the special permit application.

Should a special permit be issued all agreements necessary to ensure the construction of units or equivalent payment to the City shall be executed before the issuance of a building permit. No certificate of occupancy for any building in an authorized development shall be issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for compliance over an agreed upon length of time, not to exceed ten (10) years.

Any required payments or deferred compliance obligations shall constitute a lien on the property. The Planning Board shall require the execution of such surety as may be necessary to ensure compliance should it be made after the issuance of a certificate of occupancy.

11.302 Options for provision of required units

11.302.1 The low and moderate income units required in Sections 11.100 and 11.200 may be provided in any one or combination of the following ways:

(a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11.300 are met.

(b) Cash payment to the City of Cambridge to be administered in accordance with policies and standards developed by the Cambridge Inclusionary Housing and Linkage Advisory Committee herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with of this Section 11.300 Such cash payment may be made over ten years provided any deferred payments are made in constant dollars as determined by the Consumer Price Index.

(c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11.303 Determination of cash equivalency

The cash equivalent of the required units, as authorized in 11.302.1 (b) above, shall be $40,000 per required unit, adjusted annually by the Community Development Department using the consumer price index for the Boston Metropolitan Area as published by the United States Department of Labor or any successor agency.

11.304 Characteristics of Required Units

The following standards shall be applied to all required units built or financed in whole or in part through the provisions of Sections 11.100-11.200. The Advisory Committee may, as part of its responsibilities, develop such policies and standards as may be appropriate to advance the intent of the following regulations.

11.304.1 The required units shall be intended and designed for families and shall contain a minimum of two bedrooms. For the purpose of this Section 11.300 a family shall be three or more persons related by blood, marriage or operation of law, or as defined by any public subsidy program employed.

Where housing is to be devoted exclusively to elderly, handicapped, and other special needs households these restrictions as to unit and family size shall not apply.

11.304.2 For the purpose of these Sections 11.300 a low/moderate income household shall be one having an eligible income not exceeding 80% of the median family income for the Boston Metropolitan Area; the median family income shall be as determined by the federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

Units shall be offered so that eligible households shall pay no more than thirty (30) percent of their eligible maximum household income for the units provided (monthly rent or mortgage and taxes for purchased units).

11.304.3 The required units shall, to a reasonable extent, serve a diversity of incomes and family sizes and shall to the extent possible preferentially serve Cambridge residents. It is the intent of these Sections 11.100 - 11.300 that very low income as well as moderate income households be served.

The Advisory Committee shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market rate housing.

11.304.4 The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11.304.5 The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be available for a minimum of twenty years for those low and moderate income households.

11.304.6 Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board.

11.304.7 The provisions of this Section 11.300 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program.

11.304.8 The City of Cambridge encourages developers to exceed the inclusionary housing requirements of Section 11.100. It is the untention of these Sections 11.100-11.300 that such developments should receive priority access to available housing subsidies.

11.305 Property Subject to this Section

The provisions of Sections 11.100-200 shall apply to all new construction and converted buildings constructed on a lot after the effective date of these Sections 11.100-300. For the purpose of Sections 11.100 - 11.200 a lot shall be defined as:

(a) a lot or adjacent lots in the same ownership in existence on November 15, 1984 regardless of any subsequent change in ownership or control or subdivision thereof; or

(b) a group of such Lots in different or the same ownership on November 15, 1984 which has been assembled in whole or in part for development purposes or which constitutes a development parcel.

The provisions of Sections 11.00 and 11.200 shall be applied to the cumulative number of units and/or gross floor area constructed on a lot after November 15, 1984 as determined by this Section 11.305

11.306 Cambridge Inclusinary Housing and Linkage Advisory Committee

There shall be established a Cambridge Inclusionary Hosuing and Linkage Advisory Committee which shall be governed by a seven member board whose members shall be residents of Cambridge and appointed by the City Manager, as follows:

(a) a representative from the Cambridge Housing Authority

(b) a representative of a Cambridge based non-profit housing corporation, on a rotating basis.

(c) a Cambridge tenant

(d) a Cambridge homeowner

(e) a Cambridge based business person or real estate developer

(f) a Cambridge lender

(g) Cambridge City Manager or his designee

11.306.1 Powers, Duties and Responsibilities of the Advisory Committee

The Advisory Committee shall:

(a) Review the dispersal of all funds and land conveyed to the City of Cambridge under the provisions of these Sections 11.100 and 11.200.

(b) Develop such policies production and standards as may be appropriate for the of housing required and/or financed under the provisions of these Sections 11.100 - 11.300.

(c) Provide assistance to the Planning Board in the administration of this Section 11.300

The Advisory Committee shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11.306 and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department.

11.306.2 All deeds, agreements, site plans, and other documents submitted to the Planning Board in application for a special permit under Sections 11.100, 11.200 and 11.300 shall be submitted to the Advisory Committee for review prior to the issuance of a special permit. Within sixty-five (65) days of such submittal to the Advisory Committee it shall make a report to the Planning Board as to whether all requirements of this Section 11.300 have been met. No special permit may

be granted until the Board has received such written report from the Advisory Committee, or 65 days have elapsed.

C. THE ZONING AMENDMENTS A AND B SHALL TAKE AFFECT UPON ORDINATION BY THE CITY COUNCIL. BUILDING PERMITS ISSUED BEFORE ORDINATION SHALL CONFORM TO THE ZONING PROVISIONS CURRENTLY IN EFFECT.

Impact of Linkage Fee on Commercial Rents

1985 CDD Proposal

	Project Size (S.F.)				
	50,000	100,000	150,000	200,000	250,000
UP FRONT					
Total Amount	$ 80,000.	$240,000.	$400,000.	$600,000.	$760,000.
Total Units	2	6	10	15	19
YEAR					
1					
Annual Amount	$ 8,000.	$ 24,000.	$ 40,000.	$ 60,000.	$ 76,000.
Annual Per SF	$ .16	$ .24	$ .27	$ .30	$ .30
2					
Annual Amount	$ 8,400.	$ 25,200.	$ 42,000.	$ 63,000.	$ 79,800.
Annual Per SF	$ .17	$ .25	$ .28	$ .32	$ .32
3					
Annual Amount	$ 8,820.	$ 26,460.	$ 44,100.	$ 66,150.	$ 83,790.
Annual Per SF	$ .18	$ .27	$ .29	$ .33	$ .34
4					
Annual Amount	$ 9,261.	$ 27,783.	$ 46,305.	$ 69,458.	$ 87,980.
Annual Per SF	$ .19	$ .28	$ .31	$ .35	$ .35
5					
Annual Amount	$ 9,724.	$ 29,172.	$ 48,620.	$ 72,931.	$ 92,379.
Annual Per SF	$ .20	$ .29	$ .33	$ .37	$ .37
6					
Annual Amount	$ 10,210.	$ 30,631.	$ 51,051.	$ 76,578.	$ 96,998.
Annual Per SF	$ .21	$ .31	$ .34	$ .38	$ .39
7					
Annual Amount	$ 10,721.	$ 32,163.	$ 53,604.	$ 80,407.	$101,848.
Annual Per SF	$ .22	$ .32	$ .36	$ .40	$ .41
8					
Annual Amount	$ 11,257.	$ 33,771.	$ 56,284.	$ 84,427.	$106,940.
Annual Per SF	$ .23	$ .34	$ .38	$ .42	$ .43
9					
Annual Amount	$ 11,820.	$ 35,460.	$ 59,098.	$ 88,648.	$112,287.
Annual Per SF	$ .24	$ .36	$ .39	$ .44	$ .45
10					
Annual Amount	$ 12,411.	$ 37,233.	$ 62,053.	$ 93,080.	$117,901.
Annual Per SF	$ .25	$ 37	$ .41	$ .47	$ .47
OVER TIME					
Total Amount	$100,624.	$301,873.	$503,115.	$754,679.	$955,923.
Avg. Ann. Amt	$ 10,062.	$ 30,187.	$ 50,312.	$ 75,468.	$ 95,592.
Avg. Ann. SF	$ .21	$ .30	$ .34	$ .38	$ .38

Note: Above annual figures based on average 5% annual inflation rate.

Prepared by Cambridge Community Development Department
January, 1985

Comparison of Linkage Fees and Impacts on Commercial Rents

Development Project Size	1985 CDD Formula			1984 Council Formula			Boston Formula		
	Total (units)	Annual Cost (Average) Amount	Per S.F.	Total (units)	Annual Cost Amount	Per S.F.	Total	Annual Cost Amount	Per S.F.
30,000 Square Feet	$ 0.	$ 0.	$ .00	$ 150,000. (2)	$ 23,642.	$ .79	$ 0.	$	$ .00
50,000 Square Feet	$100,624. (2)	$10,062.	$ .21	$ 300,000. (4)	$ 47,283.	$ .95	$ 0.	$ 0.	$ .00
100,000 Square Feet	$301,873. (6)	$30,187.	$ .30	$ 675,000. (9)	$106,387.	$1.07	$ 0.	$ 0.	$ .00
150,000 Square Feet	$503,115. (10)	$50,312.	$ .34	$1,050,000. (14)	$165,491.	$1.11	$250,000.	$20,833.	$ .14
200,000 Square Feet	$754,679. (15)	$75,468.	$ .38	$1,425,000. (19)	$224,595.	$1.13	$500,000.	$41,666.	$ .21
250,000 Square Feet	$955,923. (19)	$95,592.	$ .38	$1,800,000. (24)	$283,699.	$1.14	$750,000.	$62,500.	$ .25

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 4, 1985

To the Honorable, the City Council:

Enclosed please find the Planning Board recommendation on the two Linkage/Inclusionary Housing zoning petitions now under consideration.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

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David E. Sullivan
City Councillor
Cambridge, MA 02139

Ms. Terry Lurie
Cambridge Housing Authority
270 Green Street
Cambridge, MA 02139

Mr. William Noble
Camb. Rent Control Coalitic
1151 Massachusetts Avenue
Cambridge, MA 02139

(label as "Attachment 5"] (Please type this list one name to a line, including organization names, but omitting addresses.)

Mr. Charles Ash
Cambridge Committee of Elders
15 Pearl Street
Cambridge, MA 02139

Ross Zerchykov
6 Washington Avenue
Cambridge, MA 02138

Mr. Robert W. Healy
City Manager
795 Massachusetts Avenue
Cambridge, MA 02139

Mrs. Geneva Malenfant
75 Henry Street
Cambridge, MA 02139

Mr. Ron ~~Audinko~~ Saduko
MIT
Room 5-207
77 Massachusetts Avenue
Cambridge, MA 02139

Mr. Mike Rosenberg
Cambridge Community Devel.
57 Inman Street
Cambridge, MA 02139

Mr. Michael G. McCarthy
Arthur D. Little, Inc.
20 Acorn Park
Cambridge, MA 02140

Ms. Marie Spaulding
American Science & Engineer
Fort Washington
Cambridge, MA 02139

Mr. David Hughes
Cambridge Chamber of Commerce
359 Massachusetts Avenue
Cambridge, MA 02139

Mr. Jeremy Moskow
14 Remington Street
Apartment 302
Cambridge, MA 02138

Mr. Drew Leff
Project Developer
Forest City Rental
314 Dartmouth
Boston, MA 02116

Mr. Joseph A. Kellogg
Cambridge Community Develop.
57 Inman Street
Cambridge, MA 02139

Mr. Jim Canavan
34A Cedar Street
Cambridge, MA 02140

Daniel J. Clinton
City Councillor
Cambridge, MA 02139

Alice K. Wolf
City Councillor
Cambridge, MA 02139

Mr. Miles Cares
40 Pearl Street
Cambridge, MA 02139

Thomas W. Danehy
City Councillor
Cambridge, MA 02139

Mr. Frederick Levy
2 Frost Terrace
Cambridge, MA 02138

Mr. Henry Joseph
5 Florence Street
Cambridge, MA 02139

Francis H. Duehay
Vice Mayor
Cambridge, MA 02139

Mr. James F. Mingey
Schochet Associat~~ion~~es
720 Statler Bldg.
Boston, MA 02116

Mr. Richard Griffin
Council on Aging
51 Inman Street
Cambridge, MA 02139

The Honorable
Mayor Leonard J. Russell
Cambridge, MA 02139

Ms. Helen R. Sidman
Schochet Associat~~ion~~es
720 Statler Bldg.
Boston, MA 02116

Mr. Michael Turk
Camb. Rent Control Coalition
1151 Massachusetts Avenue
Cambridge, MA 02139

Walter J. Sullivan
City Councillor
Cambridge, MA 02139

Alfred E. Vellucci
City Councillor
Cambridge, MA 02139

Ms. Sandra Graham
City Councillor
Cambridge, MA 02139

Donna Brescia
4 Garden Court
Cambridge, MA 02138

Mr. Stephen Gary
CEOC
.1 Inman Street
Cambridge, MA 02139

Ms. Lisa Sloane
ECHO
186 Hampshire St.
Cambridge 02139

Mr. Bob Kuehn
Housing Economics
806 Massachusetts Avenue
ambridge, MA 02139

Mr. Gerry Boyle
Executive Assistant to
Mayor Leonard T. Russell

Ms. Nancy Phillips
GBCD
73 Tremont Street
Cambridge, MA 02139

Mr. Peter Berry
Cambridge Housing Authority
270 Green Street
Cambridge, MA 02139

Mr. Edmond Ayres
Council on Aging
.5 Pearl Street
.ambridge, MA 02139

Mr. James Caragiannes
4 William Street
ambridge, MA 02139

Mr. Walter Milne
MIT - Room 208
77 Massachusetts Avenue
ambridge, MA 02139

Jan A. Brodie
Graham Gund Associates
12 Arrow Street
ambridge, MA 02138

Ms. Mary Babic
79 Walnut Street
Somerville, MA 02143

DRAFT 9/19/84

Create a new Section 11.90

11.90 Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

11.91 Purpose

This Section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11.92 Applicability

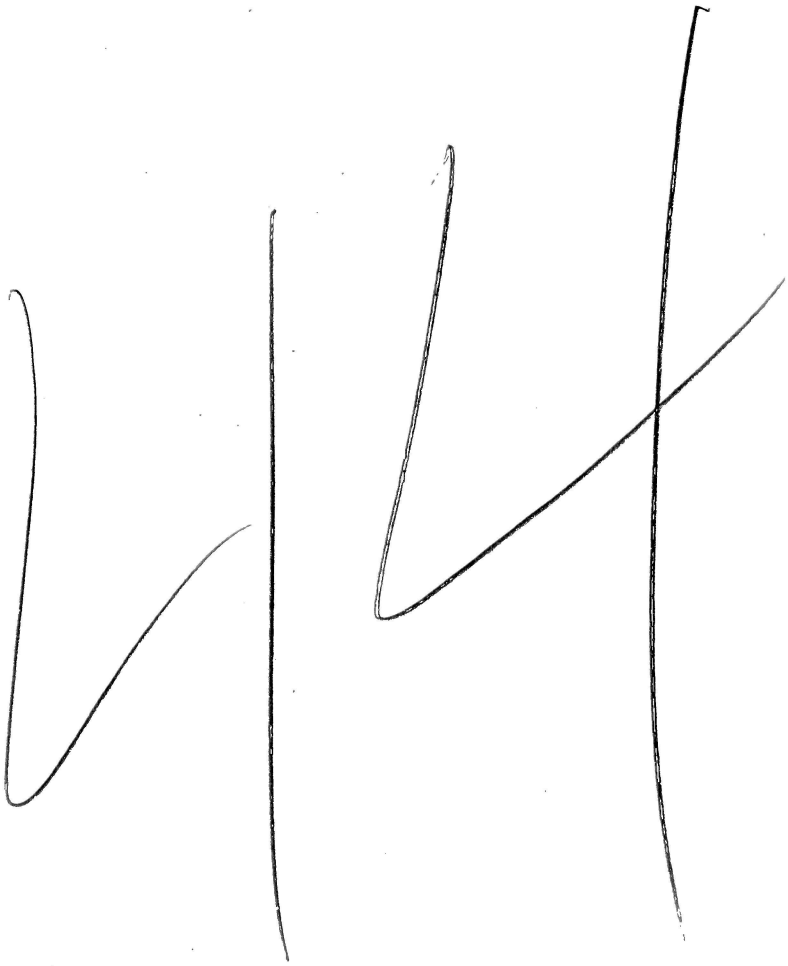
11.921 The provisions of this Section 11.90 shall apply to any residential, office, institutional and retail development containing any one or combination of the following uses:

Housing Uses

(a) Detached dwelling for one family (4.31 a)
(b) Two family dwelling (4.31 b)
(c) Townhouse development (4.31 d)
(d) Multifamily dwellings (4.31 g)
(e) Existing dwelling converted for more than two families (4.31 h)
(f) Elderly oriented congregate housing (4.31e)
(g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

Office, Retail and Institutional Uses

(h) Hotel or Motel (4.31 i(2))
(i) Radio and television studio (4.32f)
(j) Office and laboratory use (4.34)
(k) Retail business and consumer service establishments (4.35)
(l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1, 2; e 1-7)



11.922(a) The uses listed in the above Section 11.921 shall comply with the provisions of this Section 11.90 when they are created by (a) new construction; (b) conversion of a non-residential structure to residential use; (c) conversion from any use not listed in 11.921 above.For the purpose of this Subsection 11.922 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provisions of this Section 11.90 regarding substantial rehabilitation shall modify any requirement for a removal permit for housing units subject to rent control.

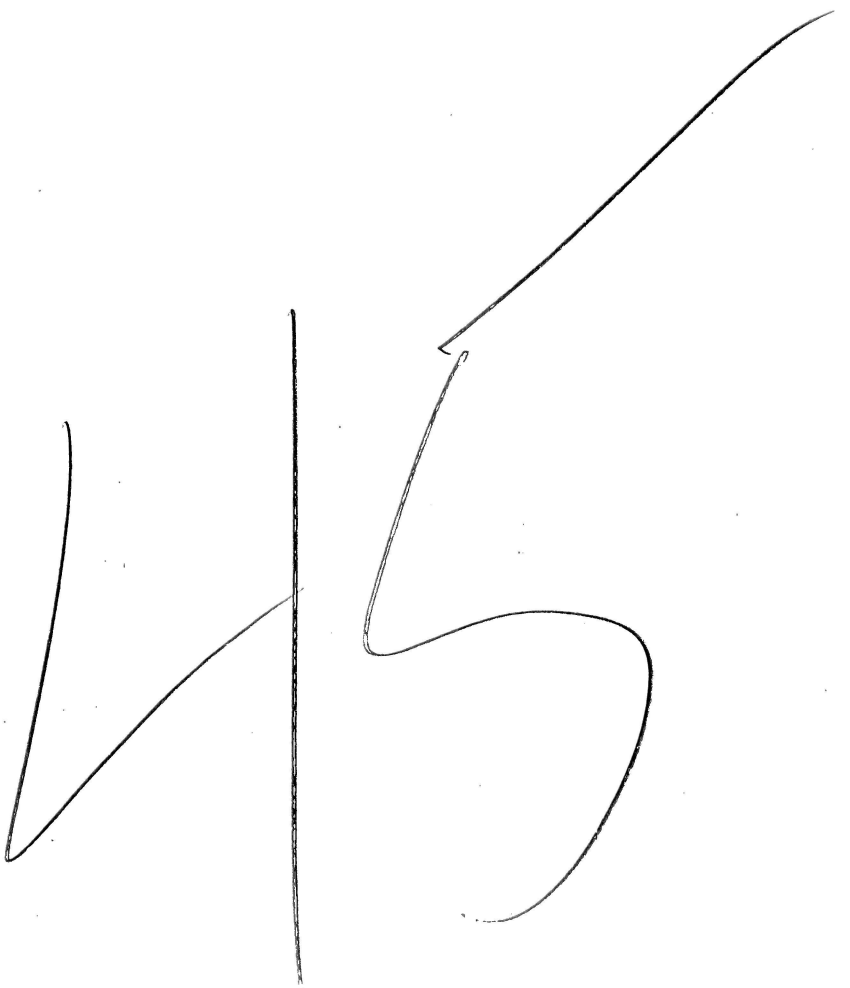
(b) Except for non-residential structures converted to residential uses listed in 11.921 above no structure once subject to the provisions of this Section 11.90 shall be additionally subject to this Section if converted to another use listed in Subsection 11.921. The provisions of this paragraph 11.922(b) shall not apply to any new additions or expansion of a structure which have not themselves been subject to the provisions of Section 11.90

11.93 Quantity Requirements for Residential Uses

11.931 Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11.932 Any residential development subject to this Section 11.90 as determined by Section 11.92 above,and which does not contain seven (7) of fewer waits as defined in paragraph (a), must obtain a special permit under this section 11.93. The Planning Board shall issue such a special permit only if it determines that the development will make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 25 percent of the total number of units authorized according to the following schedule:



(a) The first seven (7) residential units constructed after the effective date of this Section 11.90 on a lot as defined in Section 11.98 shall be exempt from the requirements of this Section 11.90.

(b) For all non-exempt residential units authorized after the effective date of this Section 11.90 on a lot as defined in section 11.98, 25% shall be for low and moderate income households. Where the application of the 25 percent requirement results in a fractional number, one additional inclusionary unit shall be provided.

11.94 Quantity Requirements for Office, Institutional and Retail Development

11.941 Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11.942 Any office, institutional or retail development subject to this Section 11.90 as determined by Section 11.92 above and which exceeds 10,000 square feet of gross floor area as defined in paragraph (a), must obtain a special permit under this Section 11.94. The Planning Board shall issue such a special permit only if it determines that the development will make provision for residential dwelling units suitable for, affordable by and available to low and moderate income households in an amount determined by the following schedule:

(a) The first 10,000 square feet of gross floor area constructed after the effective date of this Section 11.90 on a lot as defined in 11.98 of this Section 11.90 shall be exempt from requirements of this Section 11.90.

(b) For all non-exempt gross floor area required inclusionary housing shall be provided at the rate of one unit for each 10,000 square feet of gross floor area authorized. Where the application of the requirement results in a fraction of a unit, one full unit shall be provided.



11.95 Options for provision of required units

11.951 The low and moderate income units required in Section 11.93 and 11.94 may be provided in any one or combination of the following ways:

(a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11.90 are met.

(b) Cash payment to the City of Cambridge to be administered by the Cambridge Housing Development Trust herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with provision of this section 11.90.

(c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11.96 Determination of Cash Equivalency

The cash equivalent of the required units, as authorized in 11.951 (b) above, shall be determined on a yearly basis by the Cambridge Housing Development Trust and shall be equal to the current total construction cost of the unit or units required.

11.97 Characteristics of Required Units

11.971 The required units shall be provided in the following rotating sequence:

(a) (1) One low income unit; (2) One low income unit; (3) One moderate income unit.

(b) Low and moderate income units shall in turn observe the following rotating sequence:

(1) One three bedroom unit.
(2) One Two bedroom unit.



To illustrate, the first six required units shall have the following characteristics:

First unit - Low income three bedroom unit.
Second unit - Low income two Bedroom unit.
Third unit - Moderate income three bedroom unit.
Fourth unit - Low income three bedroom unit.
Fifth unit - Low income two bedroom unit.
Sixth unit - Moderate income two bedroom unit.

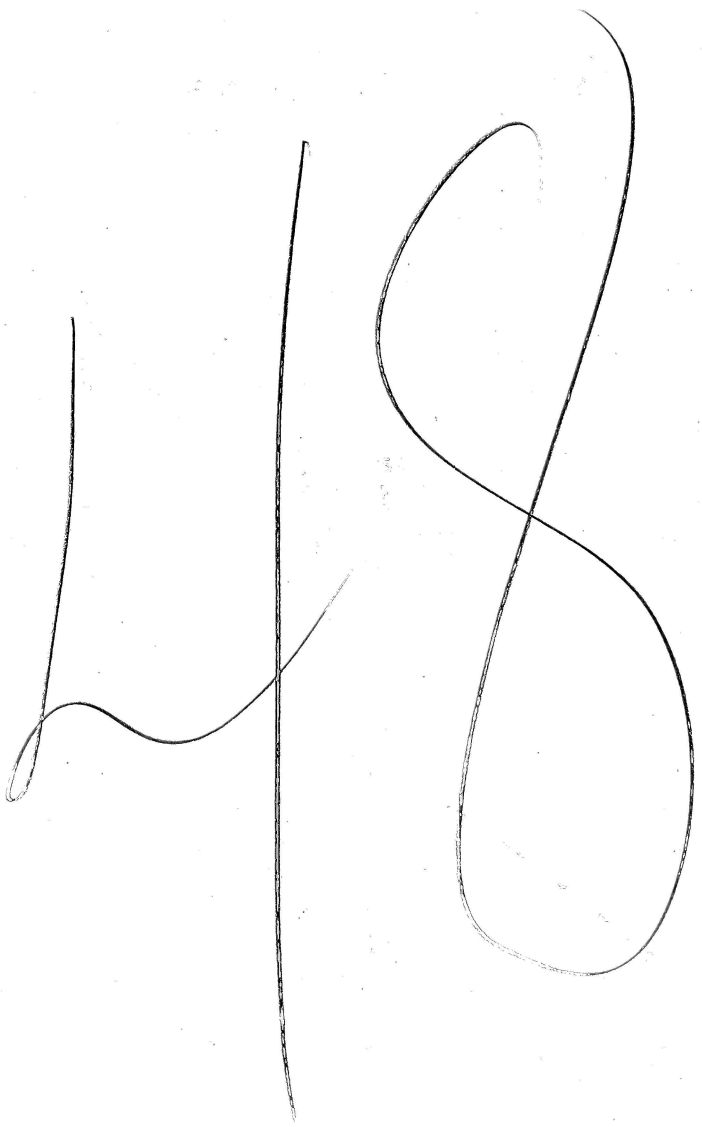
11.972 Where a dwelling to which this Section 11.90 applies is to be devoted exclusively to elderly residents the restrictions in Subsection 11.971 as to unit size shall not apply..

11.973 In no case shall the average size of required units be less than the average size of all other equivalent units authorized. Where no equivalent market rate units are authorized the Cambridge Housing Development Trust shall establish standards for the size of required units which shall be consistent with the size of similar units in public,assisted, and market rate housing.

11.974 The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11.975 For the purposes of this Section 11.90 a low income household shall be one having an eligible income not exceeding 50% of the median family income for the Boston Metropolitan Area; a moderate income household shall be one having an eligible income greater than 50% and not exceeding 80% of the median; the median family income shall be as determined by the Federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

11.976 The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be permanently available for those low and moderate income households. To the extent possible preference shall be given to Cambridge residents.



11.977 Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board upon a positive recommendation by the Trust.

11.978 The provisions of Subsections 11.93 and 11.94 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program provided the intent of these regulations are met.

11.98 Property Subject to this Section

The provisions of this Section 11.90 shall apply to all new, substantially rehabilitated, or converted buildings constructed on a lot subsequent to the effective date of this Section 11.90. For the purpose of this Section 11.90 a lot shall be lot or series of adjacent lots in the same ownership at the time of the effective date of this Section 11.90 regardless of any subsequent change in ownership or subdivision of such lots. The provisions of Section 11.93 and 11.94 shall be applied to the cumulative number of units or gross floor area constructed after the effective date of this Section 11.90 as determined by this Section 11.98.

11.99 Compliance

11.991 Cambridge Housing Development Trust Fund Board

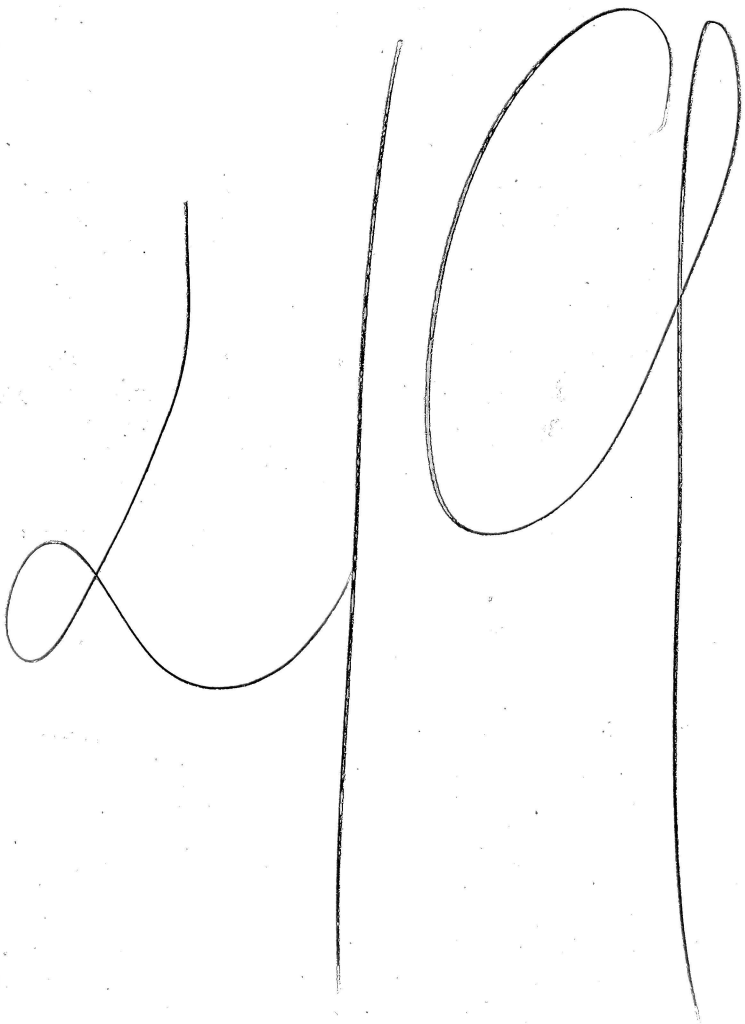
There shall be established a Cambridge Housing Development Trust which shall be an agency of the City of Cambridge and shall be governed by a five member board of trustees who shall be residents of Cambridge and appointed by the City Manager, as follows.

(a) a representative from the Cambridge Housing Authority

(b) a representative of a Cambridge based non-profit housing corporation

(c) a tenant in a public or subsidized housing unit

(d) a tenant in any other housing unit



(e) a Cambridge based business person or real estate developer

11.992 Powers, Duties and Responsibilities of the Trust

The Trust shall:

(a) Manage and dispense all funds and land conveyed to the City of Cambridge under the provisions of this Section 11.90 for the support of low and moderate income housing required by this Section 11.90.

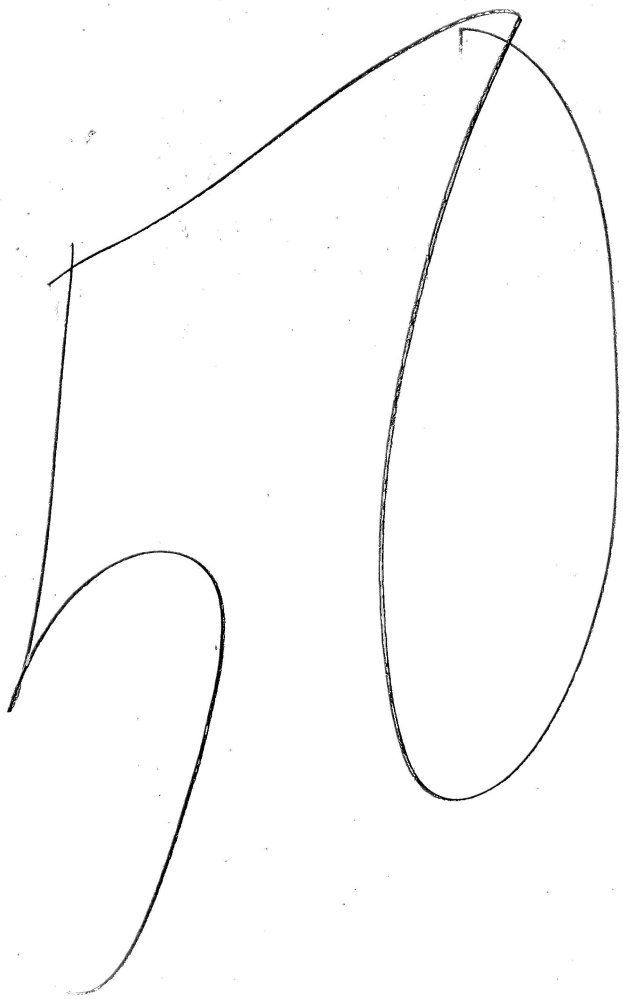
(b) Develop such regulations as may be appropriate for the design and location of all housing required and for any documents, procedures and agreements necessary to carry out the provisions of this Section 11.90.

(c) Provide assistance to the Planning Board and the Superintendent of Buildings in the enforcement of, and in determining compliance with,this Section 11.90.

The Trust shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11.90 and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department

11.993 All deeds, agreements, site plans, and other documents necessary to comply with the provisions of this Section 11.90 shall be submitted to the Cambridge Housing Development Trust for review prior to the issuance of a special permit.Within sixty-five (65) days of such submittal the Trust shall make a report to the Planning Board as to whether all requirements of this section 11.90 have been met. No special permit may be issued until the Planning Board has received such written report from the trust.

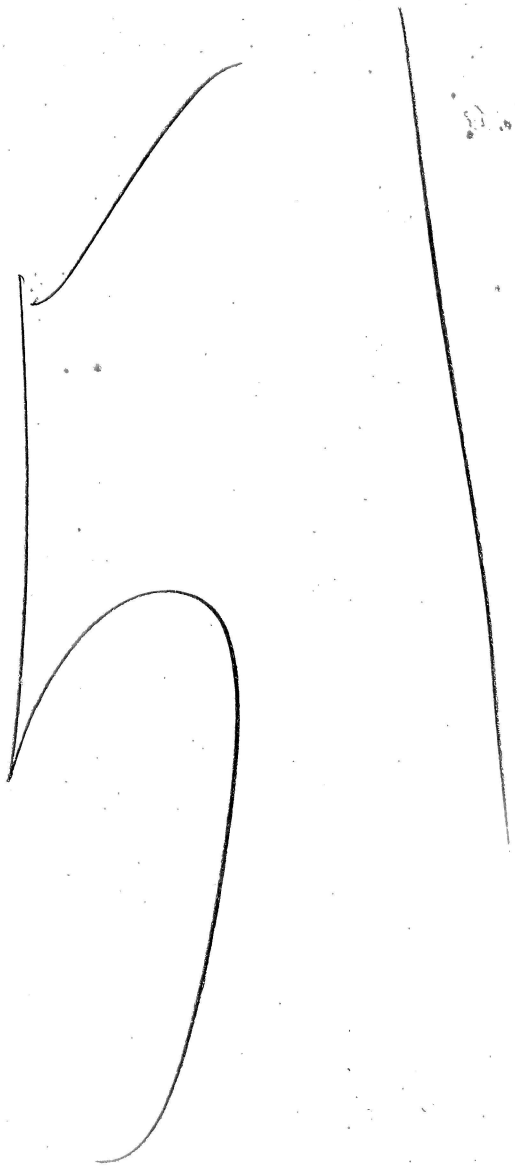
All agreements necessary to insure the construction of units or equivalent payment to the City shall be executed before the issuance of a special permit. No certificate of occupancy for any building shall be



issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for payment over an agreed upon length of time.

Any required payments shall constitute a lien on the property. The Superintendent of Buildings shall require the execution of such surety as may be necessary to ensure the required payment to the City of Cambridge should such payment be made after the issuance of a certificate of occupancy.

11.994 The provisions of this Section 11.90 are severable, and if a court holds invalid any such provision, or its application to any person, property, or circumstance, such invalidity shall not impair the validity of any other provision or application which can be given effect in the absence of the invalid provision or application.



O-14

Comm. received from C.D. Sullivan, Chairman of the Working Group on Inclusionary Zoning & Linkage, transmitting the final report of the Working Group & a draft ordinance to create a new Section 11.90 entitled "Low & Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional & Retail Development".

Filed as petition of the City Council
Noted by CD Sullivan
3/4/85 Placed on file due to expiration of time limit

In City Council,

October 29, 1984

10/29/84
to Planning Board
and
Ord Committee
for
Hearing & Report
Copy sent to Planning Bd & Ord Comm 10/30/84 CLG