CTU CAMBRIDGE TENANTS UNION

April 21, 1991

Cambridge City Council
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

To the Honorable; the City Council:

In producing CTU's April 19, 1991 letter to the City Council, there were two references to "Exhibit C". This caused one exhibit to be left out of the ten copies submitted cn Friday.

Please make the following correction to those ten copies: on Page 10, first line, change "Exhibit C" to "Exhibit C1". Ten copies of missing Exhibit C1 are enclosed. Please insert one copy of Exhibit C1 between Exhibits C and D in each of those ten copies. We regret the inconvenience.

Respectfully submitted,

William S. Noble

(for) CAMBRIDGE TENANTS UNION
(William S. Noble)

cc: 10 copies of Exhibit C1

CTU CAMBRIDGE TENANTS UNION

April 19, 1991

Cambridge City Council
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

To the Honorable; the City Council:

As we stated in our letter of April 4, CTU believes it would have made more sense for the Rent Control Committee of the Cambridge City Council to restrict its attention to a few areas of concern and deal with those areas thoughtfully and thoroughly. The Committee, however, chose to make recommendations on a long list of topics, some of which like the "tenant tax" it did not even discuss at its fall meetings.

This letter is the second part of our response to the work of the Rent Control Committee. It presents the position of the Cambridge Tenants Union on each of the Committee's recommendations and pending City Council orders. In the conclusion, CTU sets out some more general concerns.

THE RECOMMENDATIONS AND RELATED CITY COUNCIL ORDERS

1. Annual General Adjustments

"Predictability" has become a buzzword. What tenants need is a rational, direct, simple and fair general adjustment method, presented in clear English, not jargon, instead of the hocus-pocus the Cambridge Rent Control Board ("Board") engages in every year or so in protracted hearings with formulae and arcana seemingly designed to drive people away or drive them dizzy.

At this point, given that the Board has been approving general adjustments which grant unjustifiably high rent increases since 1985, it is no favor to tenants to institutionalize them as an annual rite.

We understand that it might make sense for landlords to know that general adjustments will occur at a set time of year. If so, then we urge that some thought be given to what time of year might be best for tenants and landlords. For tenants, getting rent increase notices right after the holidays is difficult. CTU

recommends (1) looking at the advantages and disadvantages of different months; and (2) at least moving the current target date for notices back to March or April.

Of course, no law or regulation mandates that the Board do a general adjustment every year. In periods of steady prices and low inflation, rents too should remain stable and a general adjustment might only be necessary every other year. It should not be difficult to develop simple, reasonable criteria to decide whether a general adjustment is necessary in any given year.

As for the general adjustment method, the Board should move to verify as many costs as possible and grant an increase only for costs which are verified. The general adjustment increase should not exceed the rate of inflation. We attach as Exhibit A a memorandum CTU submitted to the Board which spells out in more detail CTU's position on the general adjustment method.

2. Rent Increase Cap

A developer commented to one of us that "this rent cap [30% over two years] is no problem." Indeed, it isn't, and it won't help tenants much either: rents can more than double in three years. The point of a rent cap is to keep justified rent increases to a level which tenants can pay.

Skyrocketing rents quickly move beyond wage or salary increases. While some households have a measure of discretion as to how much of their income they are willing to pay for rent, that discretion has a limit. Not paying rent leads to eviction.

On the landlord side, a rent cap is a touchy issue because it defers income. Under the Rent Control Act (Act), landlords are entitled to a fair net operating income. When rent increases are phased in, like capital improvement increases which are amortized over various useful lives, the Board must provide a fair interest to landlords on the amount deferred. Equally important, no rent cap can hold rental income below operating expenses which must be paid monthly (utility bills), quarterly (water bills), semi-annually (tax bills) or annually (insurance).

Within these constraints, however, CTU believes there is room to create a rent cap which will work, which will be legal, and which will help scale rent increases down and phase them in so that tenants' incomes can catch up. A CTU proposal for a rent cap is attached as Exhibit B.

The proposal made as part of the report by an ad-hoc group called the Cambridge Housing Alliance is attached as Exhibit C.

Beyond this work, there are additional considerations. A percentage cap is only one of two terms which must be considered. The other is the rent to be capped. If that rent is low, the percentage increase will be low, perhaps too low to pay operating expenses. If that rent is high, the same percentage will generate an increase so large it is meaningless as a rent cap. To solve these difficulties, CTU recommends a combination of absolute dollar amounts and a percentage. The percentage should work well for the majority of rents around the median; the absolute dollar amounts should solve the difficulties described in capping low rents and high rents.

3. Affordable Housing Preservation Fund

Tenants already pay for their housing; they pay rent. Part of that rent is for maintenance and repair, part, if their landlord has filed, is for capital improvements. If housing under rent control falls into disrepair, tenants and the city can seek code enforcement action against a landlord. A new tool to put teeth into such efforts is being developed by Cambridge Somerville Legal Services in the "Up to Code" Project.

Asking tenants to pay to maintain any rental building except the one where they live has many flaws, and we refer city councillors to the Winter edition of The Tenant Independent ("CTU Nixes Tenant Tax", p. 12). Since that article came out, it has become clear that many tenants and landlords agree on opposition to a tenant tax.

Support for a tenant tax seems to come from people who are looking for a response when they are asked about all those "rich" tenants who are supposed to live in rent-controlled apartments. They want to be able to say, "Yeah, maybe that's a problem, but we're taxing them." This may sound good if one accepts the flawed premise, but it's a poor ground for policy. Government should act for the right reasons. Government should not tax tenants because some liberals feel guilty about a few rich folks who have been put in rent-controlled apartments by landlords, the very same people who then turn around and complain about "wealthy" tenants.

In addition to questioning the motive for this prcposal, both tenants and landlords also question its legality. Landlords, of course, don't like being put in the same boat with

retail shops, restaurants, and other businesses which already must spend time and resources collecting various taxes (sales, meals, etc.) for government. And tenants feel they are being called on to pay a tax which is unfair and unconstitutional.

For CTU, which for years has urged outreach by the Board to landlords with low-rent apartments, it is almost bizarre to see the first such effort used to justify a tenant tax. Andrea Devine's "Rent Control Field Study on Low Rent Units" reported on a number of issues. These issues and their solutions often, it seems to us, can be resolved on a case-by-case basis. Using Ms. Devine's ground-breaking work as reason to propose a tenant tax seems to be reaching way too far.

As a first step, CTU urges that the City Council establish and quantify the need for rehab funds for rent-controlled buildings. How many buildings need how much work? How many of those buildings are owned by poor landlords who cannot fund the work required with their own money? How many tenants in those buildings will be displaced if code violations are corrected and costs for work not due to willful neglect cause rents to go up significantly? How many of these buildings are owned by landlords who have invested their money elsewhere while neglecting or "milking" their rent-controlled properties?

Questions like these need answers. Then tenants, landlords, and the city will know what kind of problem, if any, is really out there and how big it is and how much money is needed to fix it. With those basic facts established -- work the Rent Control Committee did not do -- the best and fairest source of funding can be determined.

One final note: laws which exempt more people than they cover usually cause problems. The Abt study found 70% of tenants in rent-controlled apartments were low or moderate income and that 80% of rent-controlled households have incomes less than $30,000 per year. A tax applied to rent-controlled tenants which exempts 80% to tax 20% may be a bureaucrat's delight, but would certainly be poor policy. A lower tax on <u>all</u> rent-controlled tenants, which is now being suggested in some quarters (<u>CCA News</u>, April, 1991), turns an already regressive tax plan into an even more regressive one.

4. <u>Reorganization of Code Inspection Efforts</u>

Health and housing code inspectors need and should get better training. The Inspectional Services Department (ISD) can

and must improve its operation. For example: send the inspector who writes the initial inspection report back for follow up; make ISD files available to the public whenever the ISD office is open; put reports and building permit information into a computer database which offers access from public terminals; make sure tenants and landlords are present for an inspection -- i.e., don't enter an apartment with the landlord when a tenant is not home, unless the landlord presents written permission from the tenant; etc. In these and many other ways, ISD can greatly improve its performance.

Reorganization of city housing agencies, however, may not even touch internal ISD problems. It may just mask them in the general confusion which will attend a reshuffling of personnel and chains of command if some housing superagency is created. If the City Council thinks the problem is the Building Commissioner, then do something about the building commissioner. If it is found that political patronage and cronyism is a problem at ISD, then root out political patronage and cronyism. If it is found that some inspectors are too cozy with landlords, then hire new inspectors.

Part of the difficulty at ISD may be what in other contexts is termed "clientism". Since ISD works mostly with landlords, builders and developers, it has come to see advancing those private interests as advancing ISD's interest. The answer to clientism is not reorganization; it is education, training, and fair enforcement of the laws entrusted to the ISD.

These, we emphasize, are CTU's views. The facts remain to be determined. No ISD representatives appeared at any of the Rent Control Committee meetings.

Finally, while we do not know whether the Rent Control Committee was aware of CASLS's Up-to-Code project during its deliberations, CTU recommends strongly to the City Council that CASLS's approach, which is based on a great deal of practical experience with code inspections, be enacted. Putting teeth into code enforcement will go a long way toward resolving this issue.

5. City-wide Survey

We hope the Board, after twenty years, knows where its rent-controlled buildings are. If not, the problem is, simply to get the Board's data up to date and make that data reflect reality. To require detailed inspection of all rent-controlled buildings,

however, is to do something very different. The two points need to be kept separate.

For years, CTU has urged and pleaded with the Board to get and keep its data accurate. That is first and foremost a rent-control issue. With a concerted effort on the part of the Board's staff, CTU believes this work can be accomplished relatively quickly, perhaps in six months or less. The Board has already made, we believe, a start on this effort; it needs direction and encouragement and, if necessary, the resources to finish the task.

The trick is to get staff people out of Board offices to do a street survey and enter the results into the Board's computer database. Then, each and every new Board decision must be entered promptly into the computer. Having good registration data on line will answer many questions about rent control and will give everyone accurate numbers from which to start policy discussions.

The second issue, surveying buildings and apartments to learn their condition and to do a capital needs assessment is not only different but is also much more time-consuming. The Ford report calls for an initial focus on "at risk" and low-rent buildings. "At risk" buildings (we assume this means "expiring use") are not currently rent-controlled. CTU agrees that low-rent buildings would be a good starting point. If the inspections are to be code inspections, then ISD should do them. If the inspections are to be something more, then a special program, open to public scrutiny, needs to be set up to work with both landlords and tenants.

CTU has had experience with one such effort. The Community Development Department (CDD) does so-called "distressed building" surveys. After the city issued a report on some of the surveyed buildings, CTU tried to get the survey data. The CDD refused to release it saying it was "proprietary" and therefore confidential. Next, CTU filed a freedom of information request to get the data, only to receive a memorandum prepared by city's law department shoring up the CDD's claim of confidentiality. Again, CTU was denied access to the survey data.

Everyone should understand that no one from a city agency can just walk out and demand access to private property to do a capital needs assessment, regardless of what the rehabilitation criteria may be. Still, there must be a way to coordinate respect for a landlord's privacy with the public's need to have basic data before supporting a new city rehab policy.

In the CDD surveys, where data could be corroborated independently, the CDD estimates, which ran about $35,000 to $40,000 per apartment, turned out to be extremely high. There is an alternative. The Enterprise Foundation calls it "selective rehab". CTU has called it "no-frills rehab". What it means is that you don't replace it if it works. Don't throw out the old bathtub with feet to install a fiberglass built-in. Don't trash old porcelain pedestal washbasins and put in plastic laminate vanities. Do what needs to be done for health and safety. Leave out cosmetic work, unnecessary up-grades, and gold-plating. With this approach, rehab costs can be reduced dramatically.

The difficult questions here revolve around (1) building systems: Is it best to do parts of a system or to redo the whole system? (2) Should contractors do all the work in an apartment or building at once or to do it in stages? And (3), should work be scheduled so that tenants can afford to pay for it, or so banks get comfort up front for a 15 year loan? The City Council should also understand that some landlords use these legitimate questions to attempt to remove units from rent control.

Answering these questions will require cooperation from both landlords and tenants. It will also require a separate program which is not part of rent control.

6. Cooperative Improvement Program

Anyone who has been through a contested rent increase knows why the process takes time and why it must have built-in safeguards. Credibility can be a problem. Some tenants have close connections to some landlords. Documentation presented to the Board is often poorly arranged, incomplete, or lacks clear attribution to a specific building or apartment. Yet the Board hearing officer must sort out the facts and the Board must make specific decisions under the Act and Board regulations which can stand up to judicial review should tenant or landlord appeal to the Courts. This means that rents must be set on the basis of verified costs.

In the case of work beyond that required to fix code violations, tenants do have a say in what work gets done in their apartments. Building on that right and the experiences of Chauncy Street tenants who have tried to make a pre-approval process work with Chestnut Hill Realty, the Board could try a pilot program if the evidence in hand suggests it might be a benefit. But careful thought must be given to what safeguards

are needed to ensure that this program doesn't become a loophole in the Board's necessary scrutiny of capital improvement rent increases.

City Council Order #12 submitted on April 8, 1991 deals with this issue and refers to "a regulation which encourages the use of a pre-approval process."

If this regulation is Regulation 77, a regulation passed to help landlords working with non-profit rehab agencies gain access to bank financing by allowing actual monthly finance costs to be built into the rent, then we do not recommend use of this regulation by for-profit landlords. Under Regulation 77, tenant pre-approval is now non-existent and tenant rights available under other regulations are curtailed.

If the regulation in question is Regulation 73, CTU would support expanded use of Regulation 73 rent adjustments, including capital improvements, where tenants and their landlord can agree.

7. Small Landlord Program

Parties to an adjudicatory process have rights and those rights may not be abridged. For this reason, it is not possible to set arbitrary time limits on cases, however attractive doing so might be politically. Moreover, even a single unit can generate a complex and time-consuming case. There is no rule of thumb based on building size.

Some Board resources could, however, be allocated to helping, where appropriate, Cambridge residents who own a single 4-6 building under rent control, but CTU does not believe the Board can or should create special programs for classes of owners or tenants unless such special programs arise directly from provisions of the Rent Control Act, Chapter 52, or city ordinances. Building size, by itself, should not be the determinant of how Board resources are allocated. Where small landlords have special problems which make it difficult for them to receive fair treatment under rent control, CTU continues to advocate for the outreach program to landlords with low rents which we first proposed in 1986.

8. Time Limit Evictions

The problem with the Ford report recommendation is that it violates both the letter and spirit of rent control. All tenants have the same rights in eviction cases. Those rights must be upheld regardless of whether a tenant raises or does not raise a "defense". The fact that landlords must also go to district court if they are successful in obtaining a certificate of eviction from the Board is not a reason to abridge tenants' rights. CTU opposes this recommendation.

9. Pilot Mediation Program

The Board already attempts to "mediate" evictions, but the playing field is not level for tenants. In essence, it comes down to a landlord's money against a tenant's home. Mediation works best when parties have interests of similar magnitude at stake. If the Board can find ways to level the playing field for tenants, then mediation may be beneficial. CTU supports a small-scale exploration of how well mediation could work to resolve other disputes between tenants and landlords. We suggest that mediation may work better if it starts before formal petitions or applications are filed by either party.

Cases that can be mediated successfully will take less time than cases which must be adjudicated. To the extent that mediation works, it will save the Board time and resources. For this reason, CTU does not support funding a new staff mediator position.

10. Housing Access Office

As far as we understand the law, rent control not only does not, but it can not regulate access to controlled rental units. The city can, and CTU has proposed this, set up a housing office to give everyone equal access to rent-controlled housing. As things stand, the universities run housing offices at which many local landlords post notices of vacancies in buildings under rent control. Only students tend to see these notices. A Housing Office run by the city and located in the Central Square area would vastly improve notice of and access to rent-controlled apartments for everyone. We continue to support this proposal.

In the Ford report, this section is also used as a vehicle for discussing who lives in rent-controlled apartments. CTU finds that Mr. Ford has either misunderstood or mis-characterized

the Abt Report, and we are therefore attaching as Exhibit C a copy of CTU's analysis of that report. Overall, rent control provides more housing for more of the groups Mr. Ford mentions then other types of housing in Cambridge. Rent control compares favorably with subsidized housing in part because there are more rent-controlled units. This is a strong argument for protecting all controlled rental units the city still has and for recovering as many of those which have been lost as possible.

There are several other important points to be made here. First, about 50% of rent-controlled apartments are one bedroom or studio. Apartment size, not denial of access, is the simple reason fewer families live in those apartments. Second, if "recipients of public assistance" means tenants who get housing assistance payments under Section 8 or the State 707 program, then 70% of those recipients do live in buildings under rent control. If more do not, it is because landlords have not allowed participants in these programs to rent more of their apartments. Common sense suggests that something would be very wrong if more "recipients of public assistance" did not live in housing run by the Cambridge Housing Authority (CHA) than in other types of Cambridge housing.

To ensure that African Americans and other minorities secure fair access to rent-controlled apartments, CTU urges that checks be run by anti-discrimination agencies to see that landlords are complying with laws against discrimination.

We heard no evidence before the Committee about "tips" to building supers or other payments, but they probably occur. Reward posters for apartments under rent control have been more visible in the past; they are less visible now. Nevertheless, the Board should crack down on any landlords or tenants found to be illegally brokering access to any controlled apartment.

One problem that members of CTU run across is not mentioned in the Ford report. More and more landlords seem to be reserving rent-controlled apartments for employees, friends, business associates, or employees of business associates or subcontractors. It may be perfectly appropriate for some of these people to occupy an apartment under rent control. In other cases, as in "affiliate" housing, abuses can and may be occurring. CTU believes that shining the light of publicity on these situations can help. Perhaps the Board could publish appropriate notices.

11. Compliance/Enforcement Officer

CTU endorses the creation, at long last, of this position and notes that this proposal has already been enacted.

What has not been done, however, is to look carefully at just how rent control has been "scammed" over the years and what can be done about it today. We hope the city council will direct the Rent Board to conduct a thorough investigation of evasion and decontrol schemes with an eye toward how to recover units or see justice served after many years of inaction.

Further, CTU does not believe that a compliance/ enforcement officer can do the job alone. If the board makes a policy decision, written or unwritten, not to enforce certain provisions of the Act or Ordinance or Chapter 52, then no amount of work by a single compliance officer can overcome that policy decision.

For example, the Board apparently made an in-house, unpublished decision not to work to retain two and three-family buildings under rent control because enforcement efforts could eventually be thwarted when a valid owner-occupant moved in. This one decison has cost Cambridge hundreds of rental units, as two's and three's were decontrolled directly for condominium conversion.

CTU recommends that the city council set policy in this area and require the Board to enforce the law and preserve rental housing under rent control. If some sort of "triage" must be done -- and CTU urges that adequate resources be made available to prevent the loss of rental housing simply because we can't replace it -- then the city council must be the body which sets the policy guidelines for those decisions.

12. Remove Transitional Exemptions / Condominium Evictions

Provided the language is drafted carefully, CTU supports without reservation closing any loophole left in the law twelve years after enactment of the Removal Ordinance.

13. Expiring Use Buildings

To protect tenants from condominium conversions and/or from eviction caused by an inability to pay huge rent increases, CTU supports placing "expiring use" buildings under rent control to whatever extent is possible.

14. Public Information

The problem with good public information is two-fold: getting the information out and making the subject understandable. The Board has made a number of significant efforts to inform both tenants and landlords about its policies.

Often the stumbling block is the complexity of what the Board does. While CTU has urged the Board on many occasions to simplify its practices and procedures, we recognize the difficulty of laying down simple rules when skillful developers and landlords seem able to come up with a way around the most carefully crafted Board regulation. Perhaps some public policy sessions at the Rent Board should be devoted to looking at just this question: How can Board regulations and procedures be simplified and still be fair and effective?

CTU and other groups have requested repeatedly that important documents from the Board, such as general adjustment notices, affidavits of conditions, hearing notices, rent increase notices, etc., be provided in other languages, especially in the context of hearings where the Board becomes aware that English is not the first language of the tenants.

15. Affiliate Housing.

Neither the the Ford Report nor the council's order grasps the essence of this matter. If the City Council wants to do something about the "affiliate" housing exemption from rent control, then two key actions are necessary. First, the exemption must be closed. Second, current affiliate units must be returned to rent control as each existing "affiliate" tenancy comes to an end.

CTU members have presented a thorough analysis of this question to both the Board and to the Rent Control Committee. We present it here to the full City Council as Exhibit D. We also attach as Exhibit E an extensive discussion of the question from the recent Blanche Street case. In that case the Board allowed MIT to return affiliate units to rent control and receive credits which were then used to justify the removal of other controlled rental units. It was an outcome contrary to the interest of tenants, the city, and, we hope, this City Council in preserving rental housing under rent control.

Since the "affiliate" housing exemption is an exemption for use, that exemption ends when an affiliate tenancy ends. Please

read the language we attach for an order that will do the job. CTU urges the council to act on this question. If the City Council does not bring affiliate units back under rent control, it has failed to act.

16. Establish a Revolving Loan Fund

CTU supports and has long supported establishment of a Revolving Loan Fund (RLF). Four points must be emphasized. First, the initial capitalization requestd by the Committee is too small. Five million dollars would be right. Given the economic times, however, CTU supports an initial capitalization of $2,000,000 to be drawn from revenues generated by the hotel/motel tax.

Second, the RLF must be for buildings and apartments under rent control. Third, scope-of-work documents must adhere to the principles of selective rehab: no goldplating, no gut rehabs. And fourth, the funds must not go through the Affordable Housing Trust, at least not in its present form. Additional comments on this issue may be found in the conclusion.

17. Minimum Rent Levels

CTU considers this a poorly designed and probably illegal proposal under rent control. Where landlords are not receiving a fair net operating income and/or are not maintaining buildings, other remedies are available. We do not believe this issue needs further study, but since the City Council is apparently calling for a study, we will await the results of that study before commenting further.

18. Banking Policy

CTU has supported this position for a long time. Leveraging city deposits to get banks to meet fully their responsibilities under the Community Reinvestment Act (CRA) makes sense. We hope the councillors have also read the Alliance report of July, 1990 (Exhibit F). One section was devoted to this issue. Since the CRA has been on the books since 1977, it's high time to act.

Nowhere in the related City Council order can CTU find any requirement that CRA funds be targetted to buildings under rent conrol. CTU recommends this omission be rectified.

CONCLUSION

CTU has a number of general concerns about the work of the Rent Control Committee and about the slew of orders now before the City Council.

The Committee, with the exception of its criticism of ISD, seems to take the position that city agencies can get the job done. CTU's experience over the years is almost the opposite. We, both as tenants and as a tenant organization, have had a great deal of difficulty dealing with the Cambridge city administration.

In the boom 1980's, of course, Cambridge took a very pro-development, pro-new construction direction, and city agencies played their part accordingly. Now, in the 1990's, the pendulum may be swinging back more to center. Concerns of people and neighborhoods and tenants need attention in this city. But old habits die hard, and we urge this city council to take a close look at whether the same people in city government who ran the development boom can really change their attitudes and do the tasks the City Council seems ready to assign to them.

Affordable Housing Trust Board

This Trust board is a closed circle. All members are appointed by the city manager. The board is dominated by agencies. Those members who are not associated with city agencies are developers, working either with development companies or with universities. Thus, members of the Board are the very people who want to use Housing Trust funds for projects at their own agencies or departments. Almost every time a vote comes up to allocate funds at the Trust board someone has a conflict of interest.

CTU sees little chance that the Trust board as presently constituted will handle funds intended for rent-controlled housing in a manner beneficial to tenants living in rent-controlled apartments. Each agency presently represented on the Trust Board has its own special agenda with respect to rent control. Many in the agencies view rent-controlled housing as a preserve in which they can poach at will for their own purposes.

If the Affordable Housing Trust is to administer any funds intended for buildings and apartments under rent control, then the Board must be completely restructured. It would be

preferable if a way could be found under the current city charter to take control of the Trust board out of the hands of the city manager.

When the Trust board is restructured, community and neighborhood people, both tenants and homeowners, must be given a majority. Agency personnel may be represented in a small minority of seats, but for the most part they should assume new roles as advisors to the voting members from the community.

Unless changes in the Affordable Housing Trust Board can be made along these lines, CTU does not favor committing any funds intended for rent-controlled units to this board. We urge the City Council to find some other way to review loan applications and disperse monies from the revolving loan fund for buildings under rent control.

The Rent Control Board

There are those who feel that since tenants have problems with the Rent Board and landlords do too, the Board must be OK. That view is simplistic. Just because tenants and landlords may both criticize the Rent Board does not, by operation of logic or common sense, prove that the Board is doing a good job. This must be said, because otherwise many will simply pass off criticisms by appealing to this time-honored canard.

Over the years, we find that the Board has tended to press cases to protect its own administrative turf and perogatives, but it has not tended to press cases which would preserve rent control units or actively enforce the law in order to advance the interests and rights of tenants. Lately, some of the problems the Board has been having in court actually seem to flow from an unfortunate penchant for restricting the scope of fact-finding to exclude relevant, but often controversial evidence about a landlord's motives. This seems to occur most often in removal permit cases.

Earlier in the history of rent control, the Board took more care to affirm the rulings of its hearing officers, overturning or amending their reports less frequently. Lately, a deal-making atmosphere seems to pervade the Board. This has meant, especially in the controversial and complex cases which set policy, that the Board appears to treat the hearing officers' report only as a starting point for structuring a deal. Aside from the implications for policy, these trends make it more difficult for the Board to attract and retain good staff people, since the staff does not see its work respected.

For these reasons, CTU does not believe that careful, considered, balanced work on the questions and issues raised by the Rent Control Committee report and pending City Council orders can be obtained from the Rent Board at the present time. Yet, most of the orders before this City Council refer delicate and complicated issues to the Rent Board for a determination of policy direction and for implemenatation.

This poses a dilemma, at least for tenants, since the City Council does not have the staff to do this kind of work. The most direct solution, which this City Council seems determined to avoid, is to make changes in agency and administrative personnel.

In all honesty, but realizing the limitations of our ability to trace precisely the nature of ongoing relationships between city councillors and the city manager, we do not expect key personnel to change any time soon. That being the case, we request (1) that this City Council make the key decisions on as many of the policy questions it has raised as it can, thereby providing policy guidance to the agencies; and (2) that this City Council change the composition of the Affordable Housing Trust Board to give community residents, both tenants and landlords, a majority.

CTU wishes to thank members of the City Council for their patience in reading a response to the work of the Rent Control Committee which has grown long. Although we were unable to submit this letter in time to make the list of communications for the April 22, 1991 council meeting, we ask that the City Council include CTU's response as part of the record of the April 22 rent control hearing.

Respectfully submitted,

William S. Noble

(for) CAMBRIDGE TENANTS UNION
(William S. Noble)

enc: Exhibits A-F
as described

EXHIBIT A

CTU PROPOSAL TO THE CAMBRIDGE RENT CONTROL BOARD FOR A NEW GENERAL ADJUSTMENT METHOD

The Cambridge Tenants Union (CTU) submits this proposal to the Cambridge Rent Control Board (Board) in the hope that the Board will find it helpful in adopting a better and fairer General Adjustment method for 1991 and beyond. CTU believes a new method is necessary because, under rent control, general adjustments should not double rents every few years. CTU's proposal has the following basic elements.

I. Adjustment Period

General adjustments should cover only changes in expenses and an allowance for inflation, if any, from the date of one general adjustment to the next. This means that the Board should not go back to 1967 and "build up" rents from that year. It also means there will no longer be "latent vectors."

II. Verified Costs

CTU proposes that wherever possible the Board use only verified costs in passing through changes in expenses in general adjustments for 1991 and subsequent years. Where the Board's computer can access individual building data from, for example, the assessor's office for real estate taxes, abatements and residential exemptions or the water department for water and sewer bills, the Board should use that data. We believe there is no disagreement on this point.

Where data is reasonably accurate for each building and is in the Board's own computer database -- e.g., heating costs, the Board should use that data. Other utility rates are known and consumption, where paid for by the landlord, can be estimated with reasonable precision based on building size and type and other information already available to the Board.

The full change in each expense in this category of known, or reasonably well known, expenses should be allowed. Because these costs are verified, general adjustments should go either <u>up or down</u> as these costs change.

The operating expense categories which are more difficult to verify are insurance, painting and decorating, maintenance and repairs, supplies, management and other miscellaneous operating expenses.

A. Insurance Costs

The Board has already tried, without particular success in our view, to estimate and track these costs for past general adjustments by adjusting Regulation 72 data. For 1991 and following years, we suggest that the Board allow only for the cost of basic, reasonable and prudent property insurance (e.g., fire, extended coverage and vandalism) to cover only a property's assessed valuation. The Board may obtain assessed valuations from the Assessor's Office by computer link.

To verify insurance costs, the Board will need to survey landlords in much the same way it currently surveys for fuel costs. Perhaps the two questionnaires can be combined. Each year 1/3 or 1/4 of all rent-controlled properties should be surveyed on forms requiring a signature under the pains and penalties of perjury to determine current insurance costs and coverages for each building. Obviously, this would mean buildings not surveyed for 1991 would have to be estimated on the basis of similar buildings in the same neighborhood which were surveyed.

If, for administrative reasons, the Board cannot initiate this change for the 1991 general adjustment, then CTU urges the Board to take whatever steps are necessary to ensure that insurances costs can be verified for subsequent general adjustments.

B. Maintenance Costs

For purposes of this proposal, we believe it makes sense to combine painting and decorating, other miscellaneous operating expenses, maintenance and repair, management, and supplies into one category which we will call "Maintenance." Here, it is imperative to separate landlords who perform maintenance from those who do not. The Board's own recent study of low-rent buildings shows that many landlords charging low rents are in fact doing absolutely no maintenance or have virtually abandoned their buildings. In these cases whatever maintenance is being done is being done by tenants.

Clearly, landlords who perform no maintenance should receive no general adjustment increase for a category in which they made no expenditures. The difficulty is separating landlords who perform maintenance from those who do not. Under the current system, landlords who have a policy of no maintenance are just cashing larger checks each year, and tenants are not getting the habitable apartments to which they are entitled by law.

According to the Board's study of low-rent buildings, tenants in these buildings tend not to cite code violations because they cannot afford to pay higher rents. As part of a general adjustment, it is not fair for the Board to give these tenants higher rents, which they may have difficulty paying, when they receive absolutely nothing in return. The only way, fair to landlords and tenants alike, to account for the great variations in "maintenance" expenditures is to ascertain actual expenditures for this category through an individual building adjustment (Reg. 72).

Past Board general adjustment policy in this area has been unfortunate because it rewarded landlords who let buidings deteriorate. Massachusetts separates good drivers from bad drivers and makes the bad drivers pay more for automobile insurance. For the same reason, the Board needs to separate landlords who perform "maintenance" from those who do not. Until the Board does so, the components of CTU's "maintenance category" should not be included in a general adjustment.

III. Adjustment of Net Operating Income

As a matter of policy and principle, CTU does not believe that the Board should adjust net operating income for inflation. Given that position, but given the difficult task of separating, in a general adjustment, operating expenses from net operating income, CTU recognizes that the Board will most probably continue to provide some allowance for inflation in general adjustments. Therefore, the question becomes how big should the allowance be?

CTU strongly urges the Board to ensure that the burden of inflation is borne equally by landlords and tenants. A 50/50 sharing is not only fair but helps to make rent control work by keeping an important part of the problem of high rents from being incorporated fully into general adjustments.

IV. Grievance Procedure

If rents under the 1991 or subsequent general adjustments increase by more than 10% for any rent-controlled unit and if tenants on a form to be signed under the pains and penalties of perjury can show a strong likelihood of error, then the Board should allow tenants a reasonable time, say two weeks, in which to file for review of the Board's calculations. CTU does not believe general adjustment errors are numerous, but the recent case of 345 Harvard Street, where general adjustment errors were compounded into massive rent increases over several years, made

us realize -- and we hope made the Board realize -- that some sort of grievance procedure is required as part of general adjustments.

The threshold should be relatively high, but tenants with a genuine problem should not be barred from seeking redress from the Board before they are required to pay higher rents which have a strong likelihood of being erroneous. The grievance procedure should also encompass issues like tax abatements, residential exemptions, maintenance work claimed but not performed, etc.

V. Treatment of Prior Rent Caps and Cut-offs

In past general adjustments, the Board has capped increases at 15% and has not allowed rents to decrease. CTU believes that both tenants and landlords should be notified in these cases.

For landlords who had rents capped, the Board can explain the Regulation 72 option. But, because we contend that the Board's previous general adjustment formula has been flawed, landlords should not be offered any option to charge both a general adjustment increase for 1990 and/or 1991 and a Reg. 72 increase. All landlords must continue to make an election of either a Reg. 72 adjustment or a general adjustment, but not both, in any given year.

By not allowing rent decreases for tenants in past general adjustments, the Board has, in effect, violated the Act by requiring those tenants to pay more than what would properly have been the legal maximum rent for their apartments. CTU does not have a solution to offer the Board for these past injustices. It is clear, however, that the Board must set a better example in the future by passing through all or most of the dollar amount of any rent decreases generated in future general adjustments.

EXHIBIT B

CAMBRIDGE TENANTS UNION

November, 1988

Revised Rent Cap Proposal

1. The Cambridge Rent Control Board ("the Board") shall limit the severity of rent increases by phasing in all rent increases for any controlled rental unit so that the rent shall not increase in any given year by more than three times the rate of inflation or 15%, whichever is less, and not more than 10% in any succeeding year for which rents in the previous year increased by 10% or more, provided that gross rents for the building are at least equal to real estate taxes plus current operating expenses approved by the Board.

2. The city manager shall set up a low-interest, revolving loan fund (RLF) to assist in preserving rent-controlled properties as affordable rental housing by financing timely maintenance, repairs and necessary capital improvements. The RLF shall have an initial endowment of $2 million. Loans shall be made available from the RLF, under suitable procedures, to individuals who are small landlords, who own or control fewer than ten units, and who are unable to obtain financing elsewhere. No trusts, corporations, or limited partnerships shall be eligible for an RLF loan. The annual interest rate on RLF loans shall be equal to the annual rate of inflation, as determined by the Greater Boston Metropolitan Area CPI for the preceeding calender year, or 6%, whichever is less.

3. The City of Cambridge shall not do business with or deposit money in lending institutions which do not lend to rent-controlled properties for the purposes of preserving affordable rental housing. When the Community Reinvestment Act is triggered, the City shall involve itself to ensure that new banking ventures, or an established bank which wishes to expand, assist rent-controlled properties.

III. SOME SUGGESTED SOLUTIONS

A. Better Enforcement

1. Rent Control Compliance Officer

The City Manager shall fund and appoint rent control compliance officer(s) as soon as possible. The position(s) shall be full-time. Duties shall include: investigation and documentation of actions and /or circumstances which violate rent control laws of Cambridge; recommendations for prosecution to the general counsel; site visits and inspections; liaison with the Registry of Deeds, assessor's office; testifying at hearings, etc. Compliance officer(s) shall investigate, document, and assist in the correction or prosecution of violations of rent control including but not limited to illegal owner occupancy, illegal vacancies, deliberate neglect, unregistered buildings, rent overcharges, conversion of rent controlled apartments to offices or other non-housing uses.

2. Board Actions

Actions by the Board to use the powers outlined in II above to enforce Cambridge rent control laws and reduce the burden of defensive litigation now filed by landlords. These actions include imposing fines, filing for criminal prosecution of flagrant violations, filing affirmative cases to secure benefits, enforcing subpoenas, narrow interpretation of exemptions, etc.

3. Restore Apartments

Taking action restore apartments to rent control whenever such opportunities arise.

4. Limit Stays of Decisions

Granting stays of Rent Board decisions only where such stays are likely to advance the purposes of the rent control laws.

5. Accurate Database

Ensuring that the Board computer data base is up-to-date and accurate..

The following two proposals, the Rent Cap Proposal and the Revolving Loan Fund Proposal, are intended to work in a complementary manner and should be enacted together:

B. Enact an Annual Rent Increase "Cap"

The Board shall limit the severity of rent increases by phasing in increases in the legal maximum rent for any controlled rental unit so that the total rent increase in any given year does not exceed three times the rate of inflation or 15%, whichever is less, in the first year, and if required, does not exceed 10% in the next year and in any immediately following years, without interruption, until any required phase-in of rent increases is complete, provided that in any year gross rents for the building are at least equal to property taxes plus current operating expenses approved by the Board.

Notwithstanding these provisions, the total annual rent increase in a controlled rental unit shall not exceed $75/month in current dollars. This limit shall be adjusted annually for inflation.

C. Revolving Loan Fund

1. Fund Operation

The City Manager shall establish a low-interest, revolving loan fund (RLF) to assist in preserving rent-controlled properties as affordable rental housing by financing timely maintenance, repairs and necessary capital improvements of buildings under rent control. The RLF shall have an initial capitalization of $2 million to be funded at the rate of at least $1 million per year from appropriate public and private sources of revenue (see 2 following); this annual funding may be reduced proportionately as loan repayments are received.

EXHIBIT C1

Cambridge Housing Study - Summary of Data

The following chart summarizes data from the Cambridge Housing Study for six categories of households --elderly, minorities, families, poor, those above the median income and those earning above $30,000 per year-- distributed among the four categories of housing the study deals with --rent controlled, subsidized, non-rent controlled and owner occupied. Page numbers indicated for each category refer to source pages in the study. The percentages in parentheses on the third horizontal line for each household category are percentages of that type of household within each category of housing.

Household category	Rent controlled	Subsidized	Non-rent controlled	Owner occupied	Total
Elderly (p. iii)	23%	27%	14%	36%	100%
	1198	1420	709	1860	5187
	(7%)	(26%)	(8%)	(21%)	----
Minorities (p.iii)	36%	30%	20%	14%	100%
	2910	2458	1628	1151	8147
	(17%)	(45%)	(22%)	(13%)	----
Poor - 50% of median income or less (p.19)	39%	36%	15%	10%	100%
	4964	4534	1850	1240	12,588
	(29%)	(83%)	(25%)	(14%)	----
Families (p. 26)	28%	21%	18%	33%	100%
	3134	2342	1959	3631	11,066
	(18.31%)	(42.87%)	(26.47%)	(41%)	----
Above the median income (p.19)	37%	1%	22%	40%	100%
	5135	219	3108	5580	14,042
	(30%)	(4%)	(42%)	(63%)	----
Income above $30,000 per year (p. 81)	32%	1%	24%	43%	100%
	3423	164	2590	4606	10,783
	(20%)	(3%)	(35%)	(52%)	----

EXHIBIT D

June 6, 1990

Draft Proposal to the Cambridge Rent Control Board

REVISING THE EXISTING EXEMPTION FOR "AFFILIATE" USE AND OTHER PROVISIONS

I. Introduction

In memoranda dated January 27, February 10 and February 12, 1988, the Board's legal staff advanced sound reasons and a convincing legal argument to enable the Board to change prior Board policy with respect to the then existing exemption for "new" construction. The Board subsequently voted to close the exemption.

We suggest that the reasoning used to make that change in policy applies here. There is not, nor has there ever been, any sound reason to interpret the language of Section 3(b)(5) of the Act to exempt certain controlled rental units owned by institutions just because the institution decides to reserve and rent those units to its "affiliates".

As stated in the Declarations of Emergency in both the Act and the Removal Ordinance, rent control is necessary to preserve and protect an adequate supply of decent rental housing for "the citizens of Cambridge". To promote the purposes of the Act and the Ordinance, the Board must interpret exemptions narrowly.

At least since the "Northgate" decision of June 16, 1972, the Board has failed its mandate with respect to the "affiliate" exemption. Instead, for many years, the Board granted "affiliate" exemptions from rent control simply upon receiving a written application from an institutional landlord.

In 1979, enactment of the Removal Ordinance made it necessary for institutional landlords to obtain a removal permit before converting controlled rental units to "affiliate" use. Few, if any, institutional landlords did so, however, and Board regulations did not catch up with the law until 1984. Ironically, since the day, early in 1984, when the Board adopted Regulation 48-07, which requires a removal permit for conversion of a controlled rental unit to "affiliate" use, not a single removal permit application for "affiliate" use has been filed.

The change suggested here is, therefore, not a radical departure. Closing the loophole of an exemption for "affiliate" housing use will clarify the Board's position and will advance the purposes of the Act. Today, large institutional landlords do

not appear to believe that applications for removal permits for "affiliate" use will be approved by the Board. It is our view that instead of making such applications, most institutional landlords have decided to give their own "affiliates" preference in selecting new tenants for controlled rental units. Thus, in reality, the "affiliate" exemption is now a dead letter. Board policy should take this reality into account.

II. Changing Board Policy to Close the "Affiliate" Exemption

First, the Board should determine the number of controlled rental units lost through "affiliate" exemptions to establish the detrimental impacts of past Board "affiliate" policy on the supply of controlled rental units. Second, the Board should repeal the Northgate order of June 16, 1972. Third, the Board should adopt a new regulation on "Affiliate" use, similar to the following draft regulation:

> Proposed Regulation 13-01 (__)
>
> Rental units in any ... public institution or college or school dormitory operated exclusively for charitable or educational purposes;" as used in Section 3(b)(5) of the Rent Control Act shall not mean rental units in any building which, although owned or managed by an institution listed in Section 3(b)(5), are not located within said institution and shall not mean rental units in any building where any other rental unit is a controlled rental unit.

III. Amending the Removal Permit Ordinance

The Board should also support adoption of an amendment to the Removal Permit Ordinance which contains explicit language defining conversion of any controlled rental unit to "affiliate" use as "removal from the market." We propose the following draft for a new Section 1(b)(4)(vi):

> (vi) convert a controlled rental unit owned or managed or under contract by an institution listed in Section 3(b)(5) of the Act or its agent to "affiliate" housing use by reserving the unit for or renting the unit only to person(s) required to have an "affiliation" with said institution as a condition for such reservation or rental.

In the alternative, the Board may choose to adopt a policy order stating that the language of Section 3(b)(5) of the Act does not permit an exemption for "affiliate" use to exist.

IV. Transistion Rules

Since the "affiliate" exemption is based on use and is granted only when controlled rental units are rented exclusively to "affiliates" of the institution which owns, manages or contracts for the unit, it follows that the exemption ends when an occupant is no longer an "affiliate" or when the unit becomes vacant.

For this reason, it is entirely appropriate for the Board, when and if it decides to close the current exemption for "affiliate" housing use, to require that all exempt "affiliate" units return to their previous status as controlled rental units. The situation is analogous to that which obtains when units exempted through the Section 8 or 707 programs, i.e., Section 3(b)(3) exemptions, return to rent control.

The Board should consider and draft regulations incorporating suitable transistion rules for returning exempt "affiliate" housing units to rent control. Such rules will clearly have to make a distinction between units where no work was done on a unit while it was exempt and units where capital improvements were made. Since Harvard, for example, is now charging market rents for its "affiliate" units, the Board will have to give careful consideration to how it sets new legal maximum rents for formerly exempt "affiliate" units.

V. Preventing de facto Removal of Controlled Rental Units by Institutional landlords renting exclusively to "affiliates."

Please see the Memorandum on this subject submitted to the Board by Hatch Sterrett.

Respectfully submitted,

Jan Handke
Bill Noble
Mike Turk

that they never heard the landlord's housing claims? The tenants contend that simple justice and fairness require something more, namely an opportunity to fully and fairly present evidence before the Board to rebut the landlord's claims.

The only effective way for the Board to rectify this situation is to conduct an evidentiary hearing, admit evidence on the negative impacts of this development, and then properly consider such evidence in fashioning an appropriate set of benefits which will balance all of the detrimental effects of granting these permits.

IV. TENANTS' SUBSTANTIAL RIGHTS WERE PREJUDICED BY THE BOARD'S WRONGFUL EXCLUSION OF EVIDENCE ON THE NUMBER, TYPE, SIZE, OCCUPANCY, AND HISTORY OF THE LANDLORD'S "AFFILIATE" HOUSING UNITS.

A. "Affiliate" Housing Units are Owned by Educational Institutions and Allegedly Rented to Tenants with an Affiliation with the Institution.

"Affiliate" housing is not mentioned in the Act or Ordinance. An exemption for "affiliate" units exists only because the Board reads the Act too broadly. In pertinent part, Sections 3(b) and 3(b)(5) of the Act state:

> 'Controlled rental units', all rental units except:...
> (5) rental units in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes;... (Addendum, 2-3).

The Board specified its notion of "affiliate" housing in the "Northgate" order of June 16, 1972:

> Rental units owned or leased by the Northgate Community Corporation and rented or reserved for rental to persons required to have an affiliation with the Massachusetts Institute of Technology in order to be entitled to enter into an agreement to rent such units are not included within the definition of 'controlled rental units'...
>
> Persons having an affiliation with the Massachusetts Institute of Technology shall be: full and part-time students, employees, staff members, and any other persons so designated by the Massachusetts Institute of Technology as long as such designation, in the opinion of the Rent Board, is not in conflict with the Rent Control Act or this order. (R.A. 646-647).

Thus, "affiliate" housing units are really the same as other controlled rental units in Cambridge except for the fact that they are owned by educational institutions and are supposed to be rented to individuals affiliated with the institution which owns the units.

Under its 1972 order and its overly broad reading of Section 3(b)(5) of the Act, the Board treated such units as exempt, making them, in effect, single unit dormitories. (R.A. 761). Until 1984, all the landlord had to do to exempt a controlled rental unit for "affiliate" use was to write a letter to the Board stating that the unit was occupied by an affiliate. The Board then changed its registration records without holding a

hearing or conducting an investigation. (R.A. 630, 729).

The Cambridge District Court sustained the Board's 1972 position, in the matter of Searls v. Lefkowitz, No. E-4 (November 6, 1972) (Feloney, J.) (R.A. 642-645), and no further review of that decision was sought.

In August of 1979, however, the City Council passed the Removal Permit Ordinance which prohibited the conversion of rent controlled units to other uses, including dormitory use. Lamb v. Rent Control Board of Cambridge, 17 Mass. App. Ct. 1038 (1984); Southview Cooperative Housing Corporation v. Rent Control Board of Cambridge, 16 Mass. App. Ct. 1102 (1983)(rescript).

Four and one-half years later, in February, 1984, the Board adopted Regulation 48-07 thereby acknowledging, however belatedly, that a removal permit must be obtained before a unit could be converted to "affiliate" use because such conversion removes units from rent control. (Addendum, 62).

B. The Landlord Made "Affiliate" Housing An Issue in This Case.

In its initial proposal to the Board in 1986, the landlord stated:

> With respect to the buildings on the even side of Blanche Street, MIT proposes to demolish

> those buildings. However, MIT will then take six units of rental houses (sic) in Cambridge, which are currently not open or controlled, by reason of being affiliated housing, and will dedicate those six uncontrolled units to rent control...(R.A. 655-656). (emphasis supplied).

The six "affiliate" units offered for apartments in two-family, frame houses on Blanche Street were never specified before the Board voted on June 21, 1989, but they were to be selected, by the landlord, from two-bedroom units located in two large, multi-story, brick and stone buildings near Harvard Square, 1010 and 1039 Massachusetts Avenue, owned by the landlord. (R.A. 629, 657-667).

C. Tenants Sought to Introduce Relevant Evidence on "Affiliate" Housing.

The tenants objected to the landlord's proposal to substitute "affiliate" units for controlled rental units and, in rebuttal, attempted to present evidence regarding the number, type, size, occupancy, and history of units which the landlord had designated as "affiliate" units both before and after August 10, 1979, the effective date of the Ordinance. (R.A. 708-728).

Specifically, the tenants presented two witnesses, Anne Kaufman, an attorney and former Assistant Director of the Board (R.A. 692-695) and Sue Reinert (R.A. 769) to attempt to introduce evidence showing that the landlord had removed, without a hearing or a permit, approximately

thirty-seven controlled rental units after August 10, 1979 and at least fourteen controlled rental units specifically from the buildings at 1010 and 1039 Massachusetts Avenue after August 10, 1979. (R.A. 634-638). The tenants also attempted to present evidence on whether the "affiliate" units were actually occupied by the landlord's affiliates.

In each instance, the landlord objected and the hearing officer erroneously sustained those objections because, in his opinion, the actual numbers and circumstances were not relevant to these proceedings. (R.A. 713-714). In addition, tenants' exhibits were not accepted into evidence but were marked only for identification. (R.A. 634-638, 725-726, 777-783).

D. The Board Must Consider Substantial Evidence Regarding "Affiliate" Housing Units to Evaluate Properly These Applications for Removal Permits.

Under G.L. c. 30A, the tenants have the right to present witnesses and evidence to rebut the landlord's case for removal permits. The Board and its hearing officer, however, did not allow the tenants to place such evidence on the record. The tenants were harmed by these actions, when the Board, at its June 21, 1989 meeting, voted 3-2 to accept the return of "affiliate" units to rent

control as a benefit without hearing any evidence on the occupancy and history of those units or indeed having any idea what specific units they were.

Under the Ordinance, in making any decision to grant or deny applications for removal permits, the Board has no discretion; it must consider each of the three criteria listed in Section 1(d). (Addendum, 16-17). To perform this duty where "affiliate" units are offered to replace controlled rental units, it is necessary for the Board to have evidence on the record regarding the number, type, size, occupancy, and history of "affiliate" units owned by the landlord, and to have evidence on the number of "affiliate" units removed from the market by the landlord after August 10, 1979 without a permit.

It is only on the basis of such evidence that the Board can determine whether the landlord's "affiliate" housing in general, or units at 1010 and 1039 Massachusetts Avenue in particular, might be acceptable as a benefit or as an adequate substitute for removing controlled rental units by demolition.

E. The Board Erred in Denying Tenants an Opportunity to Place Relevant Evidence Concerning "Affiliate" Housing on the Record.

The hearing officer excluded evidence on "affiliate" housing, over the tenants' objections, because he considered "affiliate" units to be "dormant" controlled rental units (R.A. 200),[16/] which could under certain circumstances revert to rent control status. He believed that such dormant units could not be "an adequate substitute for controlled rental units". (R.A. 194-195).

Because of this view, the hearing officer did not summarize the testimony of the tenants' two witnesses and did not record or explain the tenants' objections to his rulings excluding testimony and documents, although he stated he would do so. (R.A. 719). In his report, he provided only a condensation of the "affiliate" housing issue to the Board. (R.A. 68).

In two votes on March 16, 1988, the Board affirmed the hearing officer's Finding #56 that "affiliate" housing units were not an adequate

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16/ See Anastasi v. Rent Control Board of Cambridge, 21 Mass. App. Ct. 606 (1986).

substitute for controlled rental units.[17]/ On June 21, 1989, however, the Board voted, without explanation, to reject Finding #56 on "affiliate" housing (R.A. 515), thereby expressly nullifying the hearing officer's finding and the Board's two previous votes that "affiliate" housing units are not an adequate substitute for controlled rental units.

The June 28, 1989 Notice of Ruling (R.A. 514-519) did not provide any explanation for the Board's arbitrary reversal of its previous findings and votes, as required by Board Regulation 40-02.[18]/ (Addendum, 42). Moreover, in Section 4

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[17]/ Finding #56 states: "[Section 1(d)(3)] I find that the issuance of removal permits would aggravate the shortage of decent, affordable rental housing, because, for reasons discussed in more detail in the recommendation which follows, the affiliate housing units with which MIT seeks to replace existing rent-controlled housing are not an adequate substitute, and because MIT's proposal does not address the long-term vacancies of 46, 52, 55-57 (units #1 and 3), and 56-58 Blanche Street." (emphasis supplied) (R.A. 194-195).

[18]/ In rejecting Finding #56, without explanation on June 21, 1989, the Board has taken two inconsistent positions. The Board failed to reject the hearing officer's recommendation that "affiliate" housing was not an adequate substitute for rent-controlled housing because "it decreases the number of potentially controlled units." (R.A. 200). This recommendation now stands in direct contradiction to the June 28, 1989 Notice of Ruling, which, by the Board's third and different vote on "affiliate" housing, was tailored to fit the Board's own proposal for granting removal permits. (R.A. 226-228, 283-289, 514-519).

of the June 28, 1989 Notice of Ruling, the Board stated explicitly that it now found the landlord's proposal to return six "affiliate" units to rent control to be a benefit under Section 1(d) of the Ordinance:

> The proposed removal permit will not aggravate the shortage of housing because M.I.T. will be returning six units of affiliate housing to rent control and building six new rent controlled units. (R.A. 516).

Thus, the Board accepted the landlord's proposal to substitute six "affiliate" units for the units the landlord wished to demolish without having any evidence on the record regarding which "affiliate" units it would be accepting.

F. In this Case the Board Must Consider Facts on "Affiliate" Units and Whether Such Units are Exempt from Rent Control.

The Trial Court misperceived both the current practice of the Board with respect to "affiliate" housing and the tenants' argument.[19]/

Contrary to the Trial Court's assertion, the Board has not "continuously considered" "affiliate" units as "exempt from the Board's jurisdiction."

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[19]/ This appeal is a review of the Board's decision under the state Administrative Procedures Act, G.L. c. 30A, §14. Accordingly, this Court is not required to give special weight to the decision of the Trial Court in this case. Southern Worcester County Regional Vocational School District v. Labor Relations Commission, 377 Mass. 897 (1979); Taunton Greyhound Association, Inc. v. State Racing Commission, 10 Mass. App. Ct. 297 (1980).

(R.A. 574). Since February of 1984 the Board has by regulation required a removal permit to exempt a controlled rental unit for "affiliate" use. (Addendum, 62). Moreover, it is not correct for the Trial Court to state that "affiliate housing is not an issue on which the Board needed to hear evidence." (R.A. 574).

Just because a unit may be listed in Board records as exempt does not mean its return to rent control automatically confers a benefit to persons sought to be protected by the Act and Ordinance or serves to alleviate the critical rental housing shortage in Cambridge.

The Board erred in deciding to accept "affiliate" units without relevant facts. The Board also erred when it failed to consider whether such units had been improperly removed for "affiliate" use from 1979 to the present. Finally, the Board erred when it failed to consider whether its "affiliate" housing exemption was based on a lawful interpretation of Section 3(b)(5). See pages 42 to 45, infra.

1. Returning "affiliate" housing units to rent control does not automatically confer a benefit or substitute adequately for the removal of controlled rental units.

The critical date is August 10, 1979. In Slade v. McLaughlin, 402 Mass. 432 (1988), the

Court made it clear that if a unit was devoted to controlled rental housing use on or after August 10, 1979, then a permit must be obtained before that unit can be abandoned or devoted to other use. Similarly, in Rent Control Board v. Cambridge Tower Corporation, 394 Mass. 809 (1985), the Court again stated that the intent of the Ordinance is to preserve the number of controlled rental units which existed on August 10, 1979.

Both the Board and the hearing officer erroneously assumed that the landlord's proposal to swap six units of "affiliate" housing for six controlled rental units on Blanche Street involved an "even trade" because the exact number of controlled rental units would be maintained. (R.A. 200). But the Board unlawfully excluded evidence concerning the deficit in the number of controlled rental units created when the landlord, after August 10, 1979, designated certain units as "affiliate" units and thereby removed them from rent control. Without this evidence, the Board had no basis upon which it could find that the landlord's proposal to "return" such units was an "even trade" or conferred any benefits.

In fact, the landlord's proposal does not even begin to cure the existing deficit with respect to "affiliate" units removed by the landlord without a

permit after August 10, 1979. That deficit must be made up by the landlord before any return of its "affiliate" units to rent control could be considered a benefit under the Ordinance.

Furthermore, the tenants contend that a simple numerical swap should not have been used by the Board, nor should such an approach be affirmed by this Court. The Ordinance requires a "benefit" and not just an even trade. If, however, the Board is going to use numbers, then the Board must use real numbers. Real numbers based on relevant evidence are the only appropriate basis for determining benefit and measuring whether the landlord has mitigated the aggravation caused by demolition of six controlled rental units.

2. "Affiliate" units are not exempt, as a matter of law, and cannot, therefore, substitute for controlled rental units.

Generally, specific exceptions to a regulatory scheme are interpreted narrowly. Martin v. Rent Control Board of Cambridge, 19 Mass. App. Ct. 745 (1985). An agency must also follow the intent and the plain and ordinary meaning of words in its enabling statute. Martin, Id. See also pages 18 to 19, 22 supra. A plain reading of Section 3(b)(5) of the Act leads to the conclusion that, to be exempt, "affiliate" units must be "in...a college or school dormitory." (Addendum, 3)

(emphasis supplied).

The housing units offered by the landlord at 1010 and 1039 Massachusetts Avenue are not in dormitories and are far from the landlord's campus. (R.A. 629). In 1983, landlord's Assistant to the President conceded:

> Whatever 'affiliate housing' is, it is not a dormitory. In fact, it is no different in character from rental housing owned by an individual who happens to rent apartment units to people affiliated with an educational institution. (R.A. 633).

The tenants agree. The Northgate order is wrong. The Searls decision is wrong. The tenants objected both to the landlord's contention that these units are exempt and to the Board's acceptance of the "affiliate" designation on the thin rationale that renting an apartment to an employee of the landlord transforms that apartment into a dormitory.

G. Board's Treatment of "Affiliate" Housing in this Case Sets an Erroneous Precedent.

Because this landlord owns a substantial pool of "affiliate" units and because uncontroverted testimony on the record shows that it owns, or intends to acquire, and remove many other controlled rental units on or immediately adjacent to the Simplex development area (R.A. 615-618, 621), the tenants suggest that to allow the Board to accept the return of "affiliate" units to rent

control as a benefit under the Act and Ordinance without substantial evidence will set a serious and an erroneous precedent for removing more controlled rental units on or near sites where development is promoted by owners of "affiliate" housing.

The Board's arbitrary, unfounded, and unexplained reversal of Finding #56, its acceptance of "affiliate" units as an automatic benefit and substitute for controlled rental units as well as its refusal to hear relevant evidence on "affiliate" housing units and on the "affiliate" exemption constitute errors of law and an abuse of discretion. The Board's actions are arbitrary and capricious, have deprived the tenants of substantial justice and have prejudiced the substantial rights of the tenants.

In the evidentiary vacuum in which the Board acted with respect to "affiliate" housing, the Board could hardly fail to miscalculate the effect that accepting six "affiliate" units for the demolition of six controlled rental units would have on the shortage of rental accommodations for low and moderate income persons in Cambridge and decide erroneously to grant removal permits.

The tenants suggest that one way to resolve the "affiliate" housing question is to decide: (1) whether the Board's interpretation of Section

3(b)(5) is correct as a matter of law and whether "affiliate" units should be exempt from rent control. If they are not exempt, then their return to rent control does not confer any benefit or substitute for controlled rental units removed by the landlord in this case;

(2) whether, if "affiliate" units are lawfully exempt under the "Northgate" scheme, a removal permit was required to remove a controlled rental unit after August 10, 1979. If a permit was required, then the return to rent control of units removed by the landlord after August 10, 1979 without a permit does not confer any benefit or substitute for controlled rental units removed by the landlord in this case; and

(3) whether, if "affiliate" units are lawfully exempt under the "Northgate" scheme and do not require a removal permit even if removed by the landlord after August 10, 1979, the Board is required to take and consider evidence on the size, type, occupancy, history, and exempt status of any specific "affiliate" unit to be accepted by the Board as a benefit and as a substitute for controlled rental units removed by the landlord in this case.

EXHIBIT

PROGRESS REPORT: RECOMMENDATIONS FOR

Implemenation of the Community Reinvestment Act

I. INTRODUCTION

Included in this report is a set of proposals that have been developed as demands to be made of banks. Banks willing to reinvest in their community, as mandated by the Community Reinvestment Act (CRA), will be asked to make available substantial amounts of money at favorable rates and flexible terms to help in the financing of affordable housing. In addition to negotiating for these types of programs, we will also address the question of how to deal with banks that have actively destroyed affordable housing in Cambridge by lending to speculators who buy rent controlled properties with the intent of converting them to market rate condos. It appears we can challenge these banks not only by using the Community Reinvestment Act to challenge them before federal regulators, but also by going directly to the Commissioner of Banks to crack down on them for unsound banking practices.

A. Particular Needs of Cambridge

It is the goal of this proposal to detail specific types of lending practices that respond to the particular needs of Cambridge, and which we can reasonably expect to be adopted by banks that have a willingness to reinvest in the Cambridge community. Because of the historically tight housing market in Cambridge and our unique position of having preserved over then thousand units of housing with rent control laws, Cambridge has needs that are dramatically different from other communities. Thus the requests we make of banks should reflect the special circumstances of Cambridge. Simple first-time home buyer programs are not going to solve the basic affordable housing problems in Cambridge. In this city, affordable housing programs must assist rental housing development and preservation as well as the more creative types of ownership such as limited equity co-ops.

B. The Role of Banks

In a general sense, it is understood that public investment must ultimately be the central element in efforts to preserve and create affordable housing. Yet no private institution in our society has a larger role in shaping the housing market than do banks. Their decisions about whom to loan to, at what rates, and in with what terms, play a major role in determining who lives in Cambridge, what types of investment is made in Cambridge properties, and whether certain properties remain affordable. We can insist that banks in Cambridge live up to basic standards of socially responsible investing.

Within the bounds of fiscal responsibility, banks have significant latitude to make judgments about what types of loans are safe and reasonable investments. Many Cambridge-based banks have a strong record of making these choices in ways that help the community; some banks operating Cambridge have provided significant amounts of capital to speculative projects which are questionable credit risks and which unquestionably have played a role in the elimination of affordable housing in Cambridge.

C. Who Can be Helped by Responsible Bank Behavior

An active partnership between banks, the community and the city can build on some of the good work banks are already doing, and can combat some of the irresponsible banking practices hurting Cambridge. In this partnership, banks will be asked to help. Banks will be asked to structure loans and evaluate potential borrowers in ways that assure that low and moderate income people (and those building affordable housing) do not face unnecessary barriers to obtaining credit. By developing lender activities that are responsive to these people's needs, rather than to the needs of speculators, banks can become an increasingly important part of the solution to the affordable housing crisis. Their greatest impact will be in those situations where the need is not for subsidies, but rather for capital

at flexible terms. Banks can help in circumstances in which subsidies already exist; banks can help by not arbitrarily refusing the rent to responsible small landlords seeking to rehab rent controlled property; banks can help in situations in which a lower income borrower has an income that can justify the loan being applied for, but simply needs certain kinds of terms. The proposals that follow are concrete ways in which these principles can be acted on.

II. SUGGESTED LENDER ACTIVITIES

A. Preservation

1 Favorable interest rates and costs (eg, reduced points, appraisal and other closing costs) for construction loans.

2 Construction loans which contemplate phases construction and might thus exceed the normal time period for construction.

3 Use of local government inspectors or other means of reducing requisition costs.

4 Creating a pool of funds from Cambridge lenders available at favorable rates and managed by one lender so that "one stop" shopping is created. This would save prospective borrowers time, provide continuity and the opportunity for increased understanding on the lenders' side (eg, subsidies, affordable housing underwriting, tax credits, and deed issues). By standardizing loan closing documents, legal costs could be reduced.

5 Willingness to consider "sweat equity" for first time buyers in conjunction with cash down-payment. This would require agreement on the scope of work and time frame for buyers, and a monitoring mechanism.

B. New Construction

1 Favorable interest rates and costs (eg, reduced points, appraisal and other closing costs) for construction loans.

2 Construction loans which contemplate phases construction and might thus exceed the normal time period for construction.

3 Creating a pool of funds from Cambridge lenders available at favorable rates and managed by one lender so that "one stop" shopping is created. This would save prospective borrowers time, provide continuity and the opportunity for increased understanding on the lenders' side (eg, subsidies, affordable housing underwriting, tax credits, and deed issues). By standardizing loan closing documents, legal costs could be reduced.

4 Willingness to consider graduated payment mortgages.

C. Rent Controlled Properties

1 Continued dialogue with non-profits, Rent Control Board, Community Development Department and tenant groups regarding rent control regulations, ability of lenders to work in tandem with subsidy programs and Rent Control Board. Continue to familiarize lenders with Rent Control process.

2 Monitor use of existing Small Property Loan Program to determine future demand, opportunities for streamlining the process, and impact on tenants.

3 Work with city officials and non-profits to identify problem properties before foreclosure, tax taking or condemnation.

4 Prevent purchase of buildings at prices greater than the building's potential income by preventing the use of other buildings as collateral.

D. Limited Equity Cooperatives

1 Similar to A.4. above, consider pooling resources to create share loan fund. May require demonstration of sufficient current or near future demand as provided by Community Development Department RCO program.

2 Availability of loan pool funds for blanket mortgages would be accompanied with effort to familiarize lenders with concept and operation of limited equity cooperatives.

3 Work with other Boston area lenders, MHFA, EOCD, and CEDAC to identify and/or create secondary market for blanket mortgages.

E. Bank Services

1 Check cashing services.

2 Life-Line Accounts (for elderly, SRO tenants, and others).

Respectfully Submitted
The Community Reinvestment Ac t Task Force

For a listing of Task Force participants, contact
Tom Watkins at 864-7661.

COMMUNICATIONS 5-582

Communication received from William S. Nobel, for the Cambridge Tenants Union, transmitting the position of the CTU on the Rent Control Committee's recommendations.

In City Council,

April 29, 1991

Referred to Hearing