

CAMBRIDGE TENANTS UNION

April 8, 1993

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

To the Honorable; the City Council:

On March 29, 1993, Councillor Walsh introduced an order, ostensibly based on the recent Superior Court decision which reaffirmed the constitutionality of Cambridge's rent control laws. In actuality, Councillor Walsh's order was intended to promote the conversion of rent-controlled apartments to condominiums and to undermine efforts to enforce the Removal Ordinance, the law which limits condominium conversion.

At the same council session Councillor Wolf introduced a substitute order, calling for an investigation into "allegations of improper activities by real estate agents and lawyers in promoting sales of rent-controlled condominiums." Councillor Walsh then exercised a charter right, delaying action on both his order and Councillor Wolf's substitute order to the next council meeting.

We wish to express our strenuous opposition to Councillor Walsh's order, which needlessly diminishes an important court victory for Cambridge's housing policies, intimates--without any foundation--that the Removal Ordinance might not be in effect, and adopts a hostile attitude toward the idea that a housing emergency exists in the city.

We strongly support the substitute order introduced by Councillor Wolf, which addresses the continuing contempt for the law shown by those who have deliberately assisted or encouraged the illegal conversion of rental apartments to use as condominiums.

#### Condo Conversion and the Housing Emergency

The decennial U.S. Census data, the 1987 Abt study of housing in Cambridge, and the 1988 Abt study of housing in

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Massachusetts, entitled Massachusetts Housing Inventory and Policy Indicators, make clear that the continuing housing emergency that Councillor Walsh hopes to deny is closely linked to the widespread conversion of rental apartments to condominiums in Cambridge. As developer and lawyer Mr. Walsh has played the central role in these conversions.

Because of widespread condo conversion, the rental housing market has continued to shrink, deepening the imbalance between the supply of rental housing and the demand for it, driving up rents further where rents were not regulated, and reducing the availability of housing, especially for households of limited means, as the pool of controlled rental housing units has now fallen to about 13,000 units.

Preliminary figures from the 1990 U.S. Census reveal a sharp drop in the number of all rental units, including both public and private, in the city over the past decade, a loss which exceeds 2,500. Because the 1980 figure for renter-occupied units did not include temporarily boarded-up public housing units that were subsequently returned to housing use, the actual decline in the number of private rental units between 1980 and 1990 is substantially greater than 2500 units.

Most of the decline in the private rental housing market can be attributed to condominium conversion. Very few rental units were demolished in the 1980s, less than 50 units between 1980 and 1986. Some rental units were lost through combination or merger. In fact, the merger of rental units continued to take its toll in the 1980s as roominghouses and single-room occupancies virtually disappeared, a fact noted by the Community Development Department in the mid-1980s.

Until the construction of upscale condos in the late 1980s, nearly all Cambridge condos were converted from rental apartments rather than newly-constructed. The 1988 Abt study shows that in Cambridge 1900 rental units were converted to condos between 1980 and 1986, while the number of owner-occupants in multi-family structures, that is, former apartment buildings, increased by more than 2,300 in the same period.

In the metropolitan area, essentially the entire region inside Route 495, the number of rental units declined between 1980 and 1986 by about 8,500 units. These figures demonstrate that the rental housing market was being squeezed in the 1980s, both in the metropolitan Boston area and especially in Cambridge, which accounted for 22 percent of the net loss in rental apartments for the entire region.

When the rental housing market is squeezed, unregulated rents soar, which is, of course, what happened in Cambridge in the 1980s. Moreover, condo conversion represents the royal road to gentrification, as wealthier condo owners take the place of poorer tenants. Note the figures for Cambridge: on average, the incomes of Cambridge condo owners are twice that of rent-controlled tenants. According to the 1987 Abt study of housing in Cambridge, the median income of tenant households in rent-controlled apartments was \$22,590; the median income of households in condominiums converted from rent-controlled apartments was \$44,000. 70 percent of the households living in rent-controlled apartments had incomes less than the regional median, adjusted for household size; 33 percent of condo owners had incomes less than the median.

In short, without rent control and restrictions on condo conversion, Cambridge would have become an upper-income community, akin to an exclusive suburb.

#### On the Orders

Councillor Walsh's order, in the guise of a request for information, contains a three-pronged attack on the rent control system.

First, Mr. Walsh proposes a make-work proposal for the Rent Board by toying with the two sunset provisions in the Removal Ordinance: he wants the agency to produce data, on an annual basis back to 1979, to justify the continuing effectiveness of the Removal Ordinance, and intimates thereby that the ordinance may not now be, or might not have been at some time in the past, in effect.

There is no foundation for this notion. The Removal Ordinance makes clear that the law remains in effect until the Board certifies that one of the sunset provisions has been met.

Moreover, Councillor Walsh presents no evidence to challenge with relevant statistics the law's effectiveness. The continuing shrinkage of the private rental housing market since 1970 is evident, both from the lengthy study of this issue which the Rent Board conducted in 1983 and from the most recent census figures cited above. No statistics produced about the Cambridge rental housing market have indicated in any way that the vacancy rate for rent-controlled apartments, the relevant vacancy rate measure in the Removal Ordinance, has ever approached 4 percent.

Second, at the behest of condominium developer Alex Steinbergh, Mr. Walsh proposes that the city encourage the sale of rent-controlled apartments as condominiums. (See the report of the Rent Control Subcommittee, also charter-righted by Councillor Walsh on March 29, 1993.)

In addition, Mr. Walsh is pressing for the Rent Board to decide what the appropriate remedy should be for those individuals who illegally converted rental apartments to use as condominiums before cases have been opened or fact-finding done. This must be read as an invitation to turn any possible enforcement action into its opposite: no enforcement at all.

Finally, Mr. Walsh disparages the idea that a housing emergency exists, adopting the deliberately hostile language of SPOA's legislative bill that there should be "a determination that any housing shortage is not artificially inflated." The studies and statistics cited above should make it clear that a housing emergency does exist, especially when condo developers continue to seek ways to shrink the rental housing market.

For all these reasons, we urge the City Council to reject Councillor Walsh's order. In its stead, we urge the council to adopt Councillor Wolf's order. As condo conversion has played a decisive role in deepening the city's housing emergency, it is vital that those real estate professionals who have actively encouraged and promoted illegal condo conversions should be prosecuted.

These professionals have long been on notice that they must comply with the law. I am enclosing a copy of a letter the Rent Board sent to Cambridge bankers and brokers on this matter in August 1989. The letter is attached as Exhibit A.

Councillor Wolf's order represents an important step in achieving real and effective enforcement of a law that serves as a major bulwark for the protection of tenants and the preservation of Cambridge as a home to large numbers of low and moderate income households.

Respectfully submitted,



Michael H. Turk  
Co-chair  
Cambridge Tenants Union



# CITY OF CAMBRIDGE

831 MASSACHUSETTS AVENUE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL 499-6921

Exhibit A

RENT CONTROL BOARD

D. MARGARET DRURY, EXECUTIVE DIRECTOR

August 24, 1989

Dear Cambridge Real Estate Broker or Banker:

It has come to our attention that a number of ordinances condominium units in Cambridge are being sold under the premise that they can be occupied by the purchaser if a trust holds title. Please be advised that the only way that a condominium can be owner-occupied is if it complies with Ordinance 966. Exemptions under the Ordinance are granted if the first unit deed on the condominium was filed prior to August 10, 1979, or a purchase and sale agreement with a deposit paid was executed prior to August 10, 1979, or where a deed exists which reflects a purchaser who was a tenant who resided in the unit continuously from prior to August 10, 1979 through to the date of purchase, or the unit is in a two or three family building which was exempt from the Rent Control Act at the time of conversion. There are several other limited exceptions to the law. The establishment of a real estate trust does not shield the unit from the mandate that an ordinance unit must be occupied by a tenant. If the occupant of an ordinance unit is a beneficiary of the real estate trust, then such occupation is illegal. In reviewing such cases, the Board looks beyond the trust to issues such as the beneficial ownership, the form of the trust, the rent being paid, who is responsible for repairs, who pays the condominium fees, the mortgagor, and who made the downpayment.

If you have questions about Ordinance 966 or any other aspects of the Rent Control Act, you may call public assistance is any weekday afternoon from 12:45 to 4:45 at 499-6161.

Sincerely,

Donna M. Turley  
Assistant Director

Consent Comm. # 27

Comm. from Michael H. Turk, Cambridge  
Tenants Union, in opposition to an  
order submitted by Councillor Walsh on  
March 29, 1993 regarding Rent Control.

In City Council,

April 12, 1993

*Referred to Calendar  
Item # 5.*

# City of Cambridge

The Rent Control Subcommittee held a public hearing on Tuesday, March 23, 1993 beginning at 5:40 p.m. in the Sullivan Chamber, City Hall, for the purpose of considering a proposed amendment to change the definition of "owner" under Section 3(b)(6) of the Rent Control Act and to receive an update from the Executive Director of the Rent Control Board on the status of enforcement of laws and regulations regarding the owner occupancy of rent controlled condominiums. Present at the hearing were: Councillor Jonathan S. Myers, Chair of the Committee; Councillor Timothy J. Toomey, Jr.; Councillor William H. Walsh; and Councillor Sheila T. Russell.

Councillor Myers convened the hearing at 5:40 p.m. and stated that the first matter to be considered would be an update from the Executive Director regarding rent controlled condominiums.

Terry Morris, Executive Director of the Rent Control Board, outlined the history of his efforts to improve the data base of the Cambridge Rent Control Board (CRCB). The first two phases dealt with classification of permanently and temporarily exempt units and tracking demolished units. The third phase involved classification of owner-occupied two and three unit buildings and the fourth phase has dealt with attempting to classify rent controlled condominiums.

Many condominiums are exempt, but not recorded as such. The first step involved research at the Registry of Deeds and reclassification of those sold prior to 1979 as exempt units. Other record clean-up was done. To date, there are 1511 ordinated and 1506 non-ordinated. There are another 164 in two and three family buildings that are most likely exempt. She expects that there are less than 1300 ordinated units in the city. Based on his current research, he expects that there will be no more than approximately 300 illegal owner occupancies.

The process of investigating condominium units was accelerated in February as a result of Mr. Morris looking into returned mail from the general adjustment mailing. Eighty percent of the returned mail was from condominiums, even though they represent about 20% of the rent controlled stock.

Mr. Morris stated that the Board has made no decision as to remedies in this area, partly because there are several fact patterns that will emerge. There will be those who purchased after but close to the 1979 deadline; there will be innocent purchasers; there will be persons who purchased more than ten years ago and have lived there ever since; there will be those who knowingly took the risk.

# City of Cambridge

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The Board may make a recommendation to the Council to amend the Removal Permit Ordinance for some of these categories; or the Rent Control Board might deal with a small class on a case-by-case basis.

Councillor Walsh asked whether there was a standard to determine whether the ordinance is actually in effect. Terry Morris said that there are at least 2,000 fewer rental units now than in 1970 and the vacancy rates standard is not met so the "sunset" provisions of the Ordinance do not apply. In response to a question from Councillor Walsh as to how he knew there was a decrease in units, Mr. Morris said that no count had been done during the time he was Executive Director but that he understood that both the Goetz report and current census data showed this decrease in the number of units. Councillor Walsh said that it is a terribly threatening experience to receive a letter questioning one's right to live in one's home so it is important for the Board to first ascertain that the Ordinance is in effect. Mr. Morris said that the burden is on those challenging the legitimacy of the Ordinance to establish that it is not effective.

Councillor Walsh asked whether Mr. Morris would ever consider criminally prosecuting people who are violating this Ordinance. Mr. Morris replied that this would be done only as a last resort, after other methods for obtaining compliance with the law.

Councillor Walsh moved that the committee instruct Mr. Morris to cease enforcement actions under the Removal Permit Ordinance until the CRCB has determined whether the Removal Permit Ordinance is still in effect under the sunset provision of that Ordinance. Terry Morris stated that such an order would violate the City Charter.

William Noble, 188 Franklin Street, said that the Ordinance is in effect until the Board files a certificate with the City Clerk under the effectiveness provision. The Goetz study does not correctly state that vacancy rate and the evidence is clear that there are fewer units than in 1970. The Ordinance is clearly in effect. He believes this enforcement action has been mismanaged. There should be more notice and discussion with knowledge that this kind of enforcement effort will cause a backlash. He also questions the timing of this effort. When a public agency changes direction, some groundwork needs to be done.

Councillor Myers asked whether the decision to send out the enforcement letters was an action of the Board or an administrative action. Mr. Morris said that this was his decision, not the Board's, and this phase started in August of 1992, well before there was any question of legislation at the state level.

Robert LaTremouille, 348 Franklin Street, stated that he agrees with Mr. Morris' action. No tenant should be evicted for

condominium conversion. Tenants by the hundreds lost their homes before this removal permit ordinance was passed. He is concerned about administration exemptions issued under the Ordinance. Mr. LaTremouille has in the past submitted legislation to improve the condominium conversion legislation and will now offer it again.

Councillor Toomey asked on what basis the enforcement was being done. Mr. Morris emphasized that this is merely the last phase of analyzing and reconciling the data base. Councillor Toomey asked whether Mr. Morris believed he had a sound legal basis for his actions. Mr. Morris said that he did. Councillor Toomey said that he agrees with Mr. Morris that laws that exist should be enforced. The democratic process allows for repeal of laws that the public does not want.

Councillor Walsh said that in view of the civil rights involved, at the very least, a study should be done to determine whether under the effectiveness provision of the Removal Permit Ordinance, the law is still in effect. Terry Morris said that the issue is basically one of burden of proof. Those who seek to overturn the ordinance must bear the burden of proof of the facts. Councillor Walsh stated that there is more than a 4% vacancy rate and there is more rental housing than in 1970. He did some research on this issue in the early 1980's.

David Sullivan, 287 Huron Avenue, spoke in favor of any and all studies of rent control. The Small Property Owners would be willing to assist in the study. Regarding the law, if it's on the books, it should be enforced; otherwise it should be repealed.

Michael Turk, 24 Prescott Street, spoke on behalf of the Cambridge Tenants Union. He stated that he has seen preliminary 1990 census figures that show a sharp decline in the number of rental units in Cambridge. These figures are available from the Community Development Department. The figures he has seen for vacancy rate are 3.1% overall vacancy in the census data. The figures do not exactly comport because they are not separated into rent control and non rent control units; however, it is strong evidence in favor of the continued effectiveness. Mr. Turk noted that the CRCB did conduct a study of the factors under the effectiveness provision in 1983. In addition, Mr. Turk discussed the Flynn decision of the Supreme Judicial Court upholding the Removal Permit Ordinance.

Alex Steinburgh, 3 Clinton Street, Cambridge, said that it would not be difficult to do the study suggested by Councillor Walsh. He noted that the CRCB should consider the Polednack decision and the Superior Curt decision in his case seeking to sell a unit to a low and moderate income tenant. There may be a right for low/moderate income tenants who bought their units to occupy

them, and as Mr. Morris is doing his research into owner occupied units, he should inquire as to the owner occupant's income and inform them of their right to ask for a removal permit based on their low/moderate income. He suggested that Councillor Walsh add this to his motion and Councillor Walsh agreed to add it.

Councillor Toomey moved to table Councillor Walsh's motion and it was so tabled on a voice vote, with Councillor Walsh recorded in opposition.

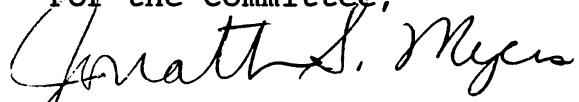
Councillor Myers then turned to the issue of the proposed change in the definition of owner-occupancy. Councillor Russell said that she would rather come back to discuss this issue at another meeting since this meeting would end in ten minutes.

Councillor Myers said that he would take public comments now from those who wanted to discuss it and then would continue the meeting to a day time hour. Councillor Myers scheduled the next meeting for Wednesday, March 31, 1993 at 3:00 p.m.

Robert LaTremouille said that he agreed with Councillor Russell that the situation of inheritance of a formerly owner-occupied two or three unit building can present a difficulty for families, especially during probate. She is raising a valid point. He is not comfortable with the proposal as presented. He suggests continuing the former status while the estate is in probate.

The meeting was adjourned at 7:35 p.m.

For the Committee,



Councillor Jonathan S. Myers  
Chair

7.

COMMITTEE REPORTS

Rent Control Committee for a hearing held on Tuesday, March 23, 1993 regarding a proposed amendment to change the definition of owner of the Rent Control Act and to receive an update on the status of enforcement of laws and regulations regarding the owner occupancy of rent controlled condominiums.

In City Council,

April 12, 1993

*Report accepted,  
Referred to Calendar  
Item # 4.*

relied upon in this phase is also being utilized in Phase IV.

Phase IV (1992-93): This phase began in August 1992. At that time there were 1,942 condos listed as ordinated and 993 listed as non-ordinated. There was much speculation about the accuracy of this data. Many of the ordinated units were in buildings converted prior to August 10, 1979. These were potentially exempt if unit deeds had been conveyed prior to that date. Additionally, many units had been purchased by so-called "pre-79 tenants" and were therefore exempt. The speculation was even more reckless about the number of units which were being occupied illegally.

Using the same methodological approach, other public records were cross-referenced to obtain a more accurate categorization of these units, beginning with a search of records at Registry of Deeds. This effort was accelerated after the mailing of the 1993 General Adjustment. That mailing resulted in an inordinate number of notices to condo owners being returned by the Post Office.

As of March 22, 1993 information on over 500 units has been reviewed. Almost 400 of those have been reclassified as exempt.

With respect to the current effort, it should be emphasized that no decision has been made about appropriate remedies in cases where violations surface. The preliminary research reveals that, even if a group of illegal owner-occupants are identified, it will not be monolithic. It is expected that there will be many different fact patterns and as many as a half-dozen sub-sets which may dictate different remedies. Examples of these sub-sets include owners who:

1. received faulty legal advice regarding the creation of a trust for ownership purposes;
2. purchased shortly (within a year) after the August 10, 1979 deadline;
3. purchased in the early eighties and have been resident since (i.e., more than ten years);
4. were innocent purchasers from illegal owner-occupants;
5. were purchasers ignorant of the law;
6. purchased with full knowledge of the law, but assumed the risk.

## ORDINANCED CONDOS

At the onset of my tenure as Executive Director, I was impressed with the oft-repeated criticism that the RCB records were lacking and that the Board did not have an accurate count of the units actually under control. In response, I initiated a multi-phase plan to inventory the Rent Control database. The present review of ordinances for condominiums has resulted from the implementation of the last phase of that program.

Earlier phases consisted of the following:

Phase I (1990): The essence of this phase was a reconciliation of the Board's paper files with the more recently installed computerized database. All of the units which had been broadly classified in the database as exempt were further categorized according to the basis for the exemption. Units exempted from the Rent Control Act were distinguished from those exempted from the Removal Ordinance. Units which were temporarily exempt due to 2F or 3F owner-occupancy, rental subsidy, affiliate status, were differentiated from those permanently exempt as new construction.

Phase II (1991): One reality commonly described is that the rent control stock has been depleted over the years through demolition, merger and conversion to non-housing use. (Indeed, this was the prime reason for the adoption of the Removal Permit Ordinance in 1979.) The Board's record-keeping was further assailed for continuing to list many of these units on the rent rolls. The answer was to create a classification for units which had been removed so as to track the loss of units. In doing so, the data for many properties was resurrected and re-entered into the database for a historical perspective.

Phase III (1991-92): One of the major reasons for the difficulty in maintaining an accurate inventory of the controlled stock is the temporary exemption of owner-occupied two- and three-family houses. There has never been a requirement for re-registration when previously controlled properties become owner-occupied and exempt as a result.

In August 1991, there were approximately 2,800 controlled units listed in one-, two- or three-family houses. Notwithstanding the difficulty in tracking the status of these units, a systematic review of other public records was undertaken for these properties. Based on reliable evidence so obtained, almost 800 units were administratively reclassified as temporarily exempt. It should be noted that the same evidence

At present, the Board is in the fact-finding stage. Any speculation regarding the outcome is premature and ill-advised.

# City of Cambridge

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The Board may make a recommendation to the Council to amend the Removal Permit Ordinance for some of these categories; or the Rent Control Board might deal with a small class on a case-by-case basis.

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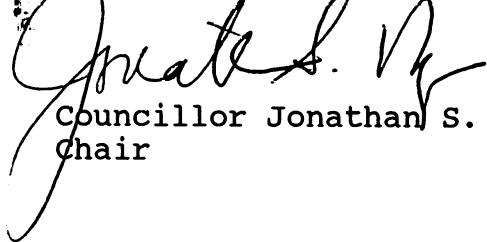
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For the Committee,



Councillor Jonathan S. Myers  
Chair

COMMITTEE REPORTS

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181

Rent Control Committee Report for a hearing held on Tuesday, March 23, 1993 regarding a proposed amendment to change the definition of "owner" under Section 3(b)(6) of the Rent Control Act and to receive an update on the status of enforcement of the laws and regulations of owner occupancy of rent controlled condominiums.

In City Council,

March 29, 1993

*Charter Right  
exercised by  
Councillor Walsh*

*4/12/93 Report accepted*