



City of Cambridge

7.

IN CITY COUNCIL

December 18, 1989

COUNCILLOR WALTER J. SULLIVAN

ORDERED:

That all items currently pending before the City Council with the exception of those items currently listed under "Unfinished Business" and not acted upon by the end of the 1989 legislative session be placed in the files of the City Clerk without prejudice, subject to recall by any member.

In City Council December 18, 1989.

Adopted by the affirmative vote of nine members.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in dark ink, appearing to read "Joseph E. Connarton".

Joseph E. Connarton, City Clerk.

CITY OF CAMBRIDGE

December 30, 1987

The Rent Control Committee (hereinafter "Committee") as the result of the hearings during the past two years and as the result of information provided through the Abt report and through testimony of the Rent Control Board, its Executive Director and Assistant Executive Director, Cambridge residents, including landlords and tenants, the Building Department, and the Zoning Department hereby makes the following recommendations to the City Council; and

I. Administration

A. Time Restrictions: Remedying Delays

The Committee has been informed that there are substantial delays in rulings on evictions and rent adjustment cases at the Rent Control Board (hereinafter "Board"). Therefore it is the recommendation of the Committee that the Board adopt time restrictions as follows:

1. Rent Adjustments

All rent adjustment applications must be heard and written up by the Hearing Examiner and the Board is to make its decision within one hundred and twenty days of the date of filing of a complete application in the case of buildings which contain fewer than fifty units. In the case of buildings which contain more than fifty units, the period for submission and hearing by the board shall be one hundred and eighty days.

2. Evictions

- (a) In the case of eviction for nonpayment of rent the Hearing Examiner must hear the case and the Board must make its ruling within thirty days of the filing of an eviction for nonpayment of rent;
- (b) All other evictions must be heard by the Hearing Examiner and ruled on by the Board within sixty days of the filing of the same. Continuances granted by any Hearing Examiner shall extend said sixty day time period for the exact amount of time for which the continuance is granted.

2. Owner-Occupants on Sabatical

If an owner-occupant vacates a condominium, a single family dwelling or a two or three family dwelling for a period of not more than twelve months and the said owner-occupant has a good faith intent to return within said twelve months, he or she may charge a fair market rent for that period of time. However, if the sabatical exceeds twelve months, then the rent shall revert to the rent set by the Board.

F. Property Maintenance and Repairs

It has been brought to the attention of the Committee that the Board's policy of requiring Code Violations to justify rent adjustments has contributed toward a general deterioration of the existing housing stock in the City. The Committee recognizes the Board's interest in preventing rent adjustment for the addition of "chandeliers" and other extravagant capital improvements. However, the frustrations of landlords and the concern of the Building Department and the concern of the Committee for the future of the City's housing stock must be considered. Therefore, the Committee requests that the Board within thirty days shall draft an amendment to the restrictions on repairs that will incorporate the need for reasonable capital improvements, including improvements which might not be required by the Code, to upgrade the property and to prevent deterioration of the existing housing stock.

G. General Adjustment

The Board shall make and send written notice of a general adjustment increase or decrease of rents on or before July 1, 1988 and every first day of July thereafter. The amount of said automatic yearly general adjustment shall be equal to an amount not less than the Consumer Price Index Cost of Living Increase. This shall be a minimal yearly adjustment and the Board shall have the authority to increase the general adjustment made yearly at the Board's discretion.

H. Location

It is recommended that the Cambridge Rent Control Board be located into the property purchased by the City on Bigelow Street.

I. Point 8

It is recommended that the current Regulation 72-03 with its "Point 8" check be eliminated.

IV. Ordinance 966 - Removal Ordinance

A. It is recommended to the City Council that the following amendment of Ordinance 966 be allowed:

1. Any condominium presently in existence shall be declared legal. The recording of a unit deed shall be evidence of the existence of a condominium unit. Any such unit can be owner-occupied after the tenant vacates voluntarily. If any harassment or undue influence is proven on the part of the landlord then the unit shall remain ordinated and cannot be owner-occupied. In addition, there shall be a penalty of Five Thousand Dollars (\$5,000.00) for any proven harassment or undue influence by the landlord.

B. Pursuant to Section 1(e) of the Ordinance 966, the Board is obligated to certify yearly to the City Council the amount of units in the City. If the number is in excess of the total number of rental units in the City as of January 1, 1970, excluding public housing units, then Ordinance 966 shall cease to be effective. The Board has not provided data since 1983. It is the Committee's recommendation that a serious question exists as to the validity of the continued effectiveness of Ordinance 966. Therefore, there should be an Order providing for certification of the amount of units with said information to be provided within six months from the date the Council requires certification.

The Committee recommends that any City agency that could be of assistance to the Rent Control Board for collecting and organizing said data shall be so ordered to assist the Board within the specified time limitation, including but not limited to the Community Development Office, the Assessor's Office, and the Building Department and the Cambridge Housing Authority. It should be noted that the Board's failure to provide said data is in violation of Ordinance 966 and the lack of information could very well subject the City to liability. Priority must be afforded this issue. The Committee further requests that an additional temporary staff member be considered by the Council for assistance in compiling the necessary data.

V. Homeownership

A. After review by the Committee and after hearing Cambridge residents, the Committee recommends a policy be adopted favoring home ownership.

through intra departmental means. The Committee has been displeased by the apparent failure of city agencies to cooperate to avoid expenditure of time and money by private citizens.

2. The Executive Director shall recommend to the Board and the Board shall adopt policy directives recognizing adherence to other agencies' areas of interest. For example, when a demolition permit has been issued by the Building Department for safety reasons, the owner shall not be required to apply for a Removal Permit, but the Building Department shall notify the Board of the issuance of the permit.

B. In accordance with Massachusetts General Laws and the recommendation of the Building Department as being an obligation of the Building Department it is recommended that all units in Cambridge should be inspected by the Building Department within the next three years and with the intent that all said units should be brought to code. In the interest of safety, the Board should be advised to dictate a policy for granting automatic rent adjustment for funding repairs required by code. The Board should be advised to establish assistance for working with banks and neighborhood agencies for securing loans for upgrading units in Cambridge. It has surprised the Committee that the Board has proceeded with a policy of assuming that the number of rental units is the priority concern of the Board. It is recommended that safety and considerations of Massachusetts General Laws regarding Building Department Regulations be the main consideration over number of rental units. The Building Department should be directed to hire the staff necessary for implementing the directive.

VII. Means Test

It is recommended that the City Council establish within sixty days a Committee for implementing a means test for future occupancy of rent controlled units. It has become clear that Cambridge citizens of low and moderate income are unable to find affordable housing in Cambridge. A means test would enable these people to secure this housing without displacing existing tenants by having the means test apply to future occupancy. Priority for said units should be given to displaced Cambridge families, homeless families and a partnership should be formed with Rent Control Board and Housing Authority to achieve this goal.

B. Where families desire to re-configure or expand property or units available said work shall not require the application or the granting of a Removal Permit unless a tenant would be evicted as a result thereof.

C. The Committee recommends in general more consideration be given to the right of home ownership, and to a recognition that Rent Control Rules and Regulations are not intended to discourage or deny owner occupancy by families but are indeed intended to affect property which is rented, provided, however, said rental, does not interfere with owner occupancy. The Board should be issued a mandate to prioritize the interest of home ownership provided an existing tenant is not affected. The Hearing Examiner's and the Board's interference with interests of homeownership should be limited to cases of eviction for the purpose of home ownership.

VI. Conflict of Laws

A. It has come to the attention of the Committee that the Executive Director and the Board have seen little guidance from the City Council regarding matters which arise before the Board that are of concern to other city agencies. The Executive Director and the Board members have expressed acknowledgement of their assumed to be highest duty: to retain the existing number of rental units. Said duty has been considered by the Board and Executive Director to be absolute. It is recommended by the Committee that the City Council adopt a statement establishing the priority of safety and of recognition of the rules and regulations of other city agencies, i.e., the Building Department, the Zoning Board as being the governing laws in those areas. No Rent Control Board Rule or Ruling should interfere with the Building Department or the Zoning Department. The Rent Control Board is not the agency which has the authority to establish definitions of buildings and units. It is recommended that the City Council request definitions of building and units from the Building Department and Zoning Department, respectively. It is further recommended that the City Council request of the Building Department within thirty days a statement of minimal habitability requirements for basement units, attic units, and rooms which are not a part of a rooming house which is presently licensed or has in the past been licensed. The Board shall be required to abide by the definitions so established, and the areas of expertise of other city agencies.

1. The Executive Director should be encouraged to resolve any apparent inconsistencies of agency records

landlord's property, especially in cases where the property has recently become controlled rental housing (i.e., a single, two or three family no longer owner-occupied) and in the case of a person in a nursing home and in the case of estates.

- (b) In the event a landlord has relied upon information acquired at the Board, it is recommended that said landlord not be penalized for information that might have been incorrect; provided, however, the landlord must identify the person who was the source of the information given as being an employee of the Board. In the future, all people who provide information to the public shall identify himself or herself whether by telephone or in person.

C. Eviction Changes and Eviction Regulations

1. Upholding written leases

- (a) In the case of an existing lease, the eviction may be brought directly to Cambridge District Court unless said lease is in violation of the Board's rules and regulations or Massachusetts General Laws. It is recommended that the Board establish a policy recognizing the validity of leases. It is a matter of law that a contractual agreement between a landlord and tenant should be upheld.

2. Monetary Settlements

It has come to the attention of the Committee that in mediating certain evictions, the mediating hearing officers have been requesting or encouraging payment of money as settlement of the eviction action. It is recommended that the City Council issue a mandate to the Board against said policy.

3. Harvard Students for Public Interest Law (SPIL)

It has come to the attention of the Committee that SPIL has taken the position that they should represent tenants only at the Rent Control Board. It is recommended to the City Council that SPIL be afforded the opportunity to agree to represent landlords or alternatively that they be asked not to appear before the Board. The practice by a nonprofit local educational institute is unfair practice especially where representation has been continued despite noncooperation and noninvolvement of any tenant in some cases.

3. Special Cases

- (a) All special cases shall be heard by a Hearing Examiner within thirty days of the date of filing. The Hearing Examiner shall have fifteen days from completion of the hearing to write up the report. The Board must rule upon the Hearing Examiner's recommendation within three board meetings of the date that the Hearing Examiner has completed the report.

4. Non-compliance with Time Restrictions

- (a) In the event the cases filed at the Board are not heard and voted upon by the Board within the said time restrictions, then at the option of the landlord or of the tenant the case may be initiated at Cambridge District Court or at Middlesex Superior Court. This paragraph shall apply only to rent adjustments and to evictions. The Board shall be allowed to submit a summary of law to the said court which shall summarize the position of the Board regarding the application for adjustment and the application for eviction. The evictions shall be heard as a standard summary process case. The rent adjustment cases shall be initiated and handled as an appeal to a denial of the rent adjustment by the Board.
- (b) In the event the schedule for Rulings on special cases and all other actions except evictions and rent adjustments has not been complied with then the moving party shall have the option to appeal de novo to the Cambridge District Court or to the Middlesex Superior Court. Any continuance requested by either party and granted by request of either party pursuant to the Board's regulations shall extend the time period for the amount of time equal to the amount of time for which the continuance was granted. The Board's Counsel shall be allowed to submit a written brief for Summary of Law to summarize the Board's decision regarding the special case issues of law.

5. Additional Board Meeting

- (a) In the event the Board determines it has insufficient time for the hearing of cases within the required time limitations, then the Board shall establish additional nights per month for hearing said cases as may be necessary from time to time.

6. Case Management

In response to complaints of long delays in hearings and rulings, during the following twelve months the City Council shall receive from the Board monthly status reports of case management which shall outline dates of filings, hearings and Board meetings for all active cases.

II. BOARD MEMBERS

A. Term

1. Landlord and Tenant Representatives

The term of any Board member shall not exceed ten years and any Board member who has presently served a term(s) exceeding ten years, shall be replaced by the City Manager within ninety days.

2. Chairperson

The term of any Chairperson shall not exceed four years.

B. Alternates

There shall be at least two alternate Board members selected for each of the landlord and tenant Board members. The alternate shall be used in the event of an absent Board member and also the alternate shall be used to assist the Board in holding extra meetings if required by the case load of the Board.

C. Chairperson

The Chairperson shall be selected by the City Manager from three individuals recommended by the Board. The Board shall act immediately after receiving notice of the vacancy but in any event shall submit three names within forty-five days from the date of vacancy. The City Manager shall within thirty days appoint one of three persons recommended by the Board.

D. Qualifications: Hearing Examiners

1. Hearing Examiners must be full time. All Hearing Examiners must not be otherwise employed during the time said examiner is employed as a Hearing Examiner by the Board.

2. The Committee recommends that the use of senior citizens as Hearing Examiners be a policy directive.

III. General Administration: Recommended Amendments

A. Ex Post Facto Regulations

It has come to the Committee's attention that the Board has been adopting regulations which are ex post facto regulations.

1. The Board at its discretion may request the Council's clarification of intent in enacting any ordinance and should be encouraged to do so.

2. Any party aggrieved by an alleged ex post facto regulation shall have the right to initiate an advisory opinion for a minimal filing fee at no cost at the Rent Control Board. The advisory opinion request must be heard and ruled upon within thirty days of the filing of the same. The Board in its discretion may elect to submit a request to City Council for a ruling of clarification regarding the Board's authority to enact a regulation. In the event the advisory opinion is not heard and ruled upon within thirty days then the moving party shall have the option of submitting the request as an appeal at the Cambridge District or Superior Court level.

3. The Board shall not adopt regulations in the future or rely upon regulations or principles which are Ex Post Facto Regulations.

4. The Board shall be directed for each case it hears to consider the mandate against Ex Post Facto Regulations, and to make its rulings in consideration thereof.

B. Parties before the Board

1. Perjury

It is recommended that there be established for each party testifying before a Hearing Examiner or the Board an equal penalty for perjury made under oath.

2. Landlord's Knowledge

(a) It is recommended that there be leniency given to a landlord and its successors and assigns who were unaware of the effect of Rent Control on said

4. Late Payment: Grounds for Eviction

It has been brought to the attention of the Committee that late payment by a tenant is seldom a successful basis for eviction. In the interest of allowing contractual relationships to be upheld by the Board and in consideration of financial need of landlords who have payments to make on certain dates of the month, it is recommended that in the event of chronic late payments, which shall be defined as payment made seven days overdue for four installments per year, then said chronic late payment shall be an automatic eviction basis. Postmark prior to seven days to the due date shall be evidence of compliance by the tenant; provided, however any check which is returned for insufficient funds or any tender of payment which is inadequate or incomplete shall not be deemed to be in compliance hereof.

D. Family Considerations

The definition of family members shall be expanded to include grandparents, grandchildren, nieces and nephews. It is recommended by the Committee that the Board recognize a family's right to benefit from property ownership and that the definition of family should not be restricted to the present definition of "family" which has been adopted by the Board. With escalating housing costs and in recognition of the rapidly diminishing number of families with children, a policy favoring families is needed. Working women - especially single mothers - often desire to take in relatives for child care. Special consideration should be given to grandparents and elderly aunts and uncles or even distant elderly relatives with a demonstrated need for housing.

E. Owner-Occupants

1. Longer Term Owner-Occupants

It is recommended that when an owner-occupant of a condominium, a single family house or a dwelling containing two through six units has resided at the premises for two or more years, vacates said apartment then said owner-occupant shall have the right to lease his or her own apartment at market rate provided that there is a written lease agreement existing. This shall encourage an increase of rental housing and shall not encourage any eviction for the purpose of having a market rate apartment available since it is the owner-occupant who must vacate. Furthermore, any said action shall not result in the remaining units at the premises being de-controlled.



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CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

William H. Walsh
City Councillor

December 31, 1987

Cambridge City Clerk
Joseph Connarton
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Mr. Connarton:

Enclosed herewith please find the Report of the Rent Control Committee. This Report was written by me with the consent and the approval and assistance of Councillors Danehy and Russell. I have also forwarded a copy of this Report to Councillor David Sullivan for his review, comments and the opportunity to write his opinion.

Would you please forward this to the full Council.

Very truly yours,

William H. Walsh
William H. Walsh

WHW/lm
Enclosure

HAND DELIVERY

ltr-connarton/miscell(C)

8.

Calendar Item #1
S-27877

Comm. from Councillor William H. Walsh, Chairman, Committee on Rent Control, transmitting the report of said Committee resulting from hearings held during the past two years concerning the Rent Control Board & information provided in the Abt Report, through testimony of the Rent Control Board, its Executive Director, Asst. Executive Director, residents, landlords, tenants, the Inspectional Services Dept. & Zoning Dept., & the Committee's recommendations.

12/28/89 Placed on file

See Order # 7 of

Dec. 18, 1989

In City Council,

January 11, 1988

*Tabled Pending
Appointment of Council
Committees for 1988-1989*