

# City of Cambridge

MASSACHUSETTS

In City Council

*Mandel*

1976

*FHA & MHFA Bills Filing*

	YEA	NAY	ABSENT	PRESENT
Mrs. Ackermann	✓			
Mr. Clem	✓			
Mr. Clinton		✓		
Mr. Danehy		✓		
Mr. Duehay	✓			
Mrs. Graham				
Mr. Russell		✓		
Mr. Sullivan		✓		
Mayor Vellucci	✓			

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CITY OF CAMBRIDGE

In City Council  
March 1, 1976

WHEREAS:--

Tenants in housing which is privately owned, but which is subsidized by the Federal Housing Administration (FHA) or the Massachusetts Housing Finance Agency (MHFA), are low and moderate income tenants who are among those who have the greatest need for protection against arbitrary rent increases and unjust evictions, yet these tenants are arbitrarily and unjustly deprived of those protections because they are not presently allowed to be covered by the rent control law in effect in Cambridge, Chapter 842 of the Acts of 1970, and

WHEREAS:--

The deprivation of rent and eviction control protections for FHA and MHFA tenants has resulted in a serious emergency in the City of Cambridge, detrimental to the public peace, health, safety and convenience, including the lack of any real protections against unjust evictions, and including, most recently, approval by FHA of a \$60 rent increase for tenants in Walden Square (240 units) allowing their landlord to charge \$228 monthly for a one-bedroom apartment and \$248 monthly for a two-bedroom apartment, and approval by FHA of a \$15 rent increase for tenants at Rindge Towers (750 units) allowing their landlord to charge \$190 for a one-bedroom apartment and \$210 for a two-bedroom apartment, therefore be it

ORDERED:--

That the City Council approves and hereby urges passage as soon as possible by the Great and General Court of the attached home rule bills, entitled:

An Act Extending Rent and Eviction Controls to Tenants in FHA Developments in Cambridge, and

An Act Extending Rent and Eviction Controls to Tenants in MHFA Developments in Cambridge.

In City Council March 1, 1976

Adopted by yeas and nays Vote

Yeas 5 Nays 4 Absent 0

Paul E. Leahy  
CITY CLERK  
City Clerk

AN ACT EXTENDING RENT AND EVICTION CONTROLS TO TENANTS IN  
FHA DEVELOPMENTS IN CAMBRIDGE.

SECTION 1. Declaration of Emergency. The General Court finds and declares that the serious public emergency declared in Section 1 of Chapter 842 of the Acts of 1970 continues to exist in the City of Cambridge, and is especially acute among tenants in privately-owned but government-subsidized housing, and that unless residential rents and evictions are regulated and controlled in said subsidized housing, such emergency and the inflationary pressures resulting therefrom, will produce serious threats to the public health, safety and general welfare of the citizens of said city, and that such emergency should be met immediately and with due regard for the rights and responsibilities of the city of Cambridge.

SECTION 2. Coverage. Notwithstanding the provisions of Sections 3(b) and 9(d) of Chapter 842 of the Acts of 1970, or any similar provisions of any other law, the provisions of said Chapter 842 as amended, or of any other law in effect in Cambridge which provides for regulation or control of rents or evictions, shall extend in the City of Cambridge to rental units that were or are financed, insured or subsidized, in whole or part, by any agency of the federal government, other than housing owned by the Cambridge Housing Authority, and which were initially occupied on or before January 1, 1976.

SECTION 3. Effective Date. This act shall take effect upon passage. The maximum rent of a rental unit controlled under Section 2 of this act shall be the rent lawfully charged the occupant for the month of July 1975, until said maximum is further adjusted pursuant to said Chapter 842 or any other rent control law in effect in Cambridge.

AN ACT EXTENDING RENT AND EVICTION CONTROLS TO TENANTS IN  
MHFA DEVELOPMENTS IN CAMBRIDGE.

SECTION 1. Declaration of Emergency. The General Court finds and declares that the serious public emergency declared in Section 1 of Chapter 842 of the Acts of 1970 continues to exist in the City of Cambridge, and is especially acute among tenants in privately-owned but government-subsidized housing, and that unless residential rents and evictions are regulated and controlled in said subsidized housing, such emergency and the inflationary pressures resulting therefrom, will produce serious threats to the public health, safety and general welfare of the citizens of said city, and that such emergency should be met immediately and with due regard for the rights and responsibilities of the city of Cambridge.

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S-74 1976.

## EXTENSION OF LOCAL RENT CONTROL TO FHA HOUSING

The issue of whether FHA housing should, or indeed legally can, be brought under local rent control is one which has received increasing attention in recent months. Those favoring extension of local controls to cover FHA housing do so not so much in the belief that the federal definition of allowable rents is inherently more lenient than their local counterparts, but rather because of a concern that the federal regulations are not being enforced in all cases with the vigor that they might be.<sup>1</sup> More specifically, proponents of extending local controls to FHA housing maintain that FHA personnel have not been vigilant in reviewing requests for rent increases to assure that the costs claimed have in fact been incurred or that landlords have in fact provided an adequate level of maintenance and services. Proponents point out in this regard that the level of maintenance and services in many FHA units has in fact been declining and that this decline has been passively, if not actively, countenanced by FHA representatives who have been convinced by landlords that a reduction in maintenance and services offers the only hope for avoiding foreclosure.

Opponents of extending local controls to cover FHA housing do so on at least two grounds. First they argue that the federal controls are adequate and that the addition of local controls is unnecessary, redundant and confusing at best and could further impair the already financially weak condition of FHA housing.

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<sup>1</sup>The FHA regulations governing rent increases are in some respects more restrictive than their local counterparts. For example, the Insured Project Servicing Handbook, HM 4350.1 Supplement 1, stipulates that rent increases shall be limited to allowable increases in operating expenses and real estate taxes and that no increase shall be allowed in FNOI. On the other hand, the rate used by FHA in initially computing FNOI may be slightly higher than the rates used by Brookline and Somerville. The FHA rate consists of the debt service rate and initial curtail at the time of closing plus 0.5 percent for mortgage insurance and an 0.5 percent override. The FHA regulations also allow provision for anticipated increases in expenses where such increases can be readily foreseen and determined with reasonable accuracy, such as in the case of real estate taxes, public utility charges and firm contracts for services, especially those having escalation clauses.

Second and more fundamentally, those opposing extension of local control to FHA housing argue that the supremacy clause of the Constitution in effect precludes localities from regulating rents in federally subsidized housing. This constitutional argument was advanced by the Attorney General of the Commonwealth in January, 1972, when he disapproved a newly enacted amendment to the Brookline rent control bylaw extending the definition of controlled rental units to include FHA housing.<sup>1</sup> The Brookline amendment defined "Controlled Rental Units" as:

"(1) federally subsidized or financed buildings (including buildings mortgages on which are insured by the federal government or an agency thereof) under any of the programs in the following sections of the National Housing Act, as amended: --207, 220, 221 (d) (3), 221 (d) (4), 231, 236, or section 23 of the United States Housing Act of 1937, as amended; excepting such rental units therein the rents whereof are controlled or regulated pursuant to chapter 842 of the Acts of 1970, heretofore accepted by the town; and further excepting rental units in such buildings to the extent that this Article XXX or any regulations, actions or orders issued thereunder are inconsistent therewith . . . ."

The Attorney General, in a letter dated January 20, 1972, to the Brookline town clerk, stated that the amendment was disapproved:

" . . . for the reason that it attempts to superimpose local control on housing already regulated and controlled by the federal government, namely, federally subsidized or financed buildings under certain specified sections of the National Housing Act, as amended.

"This appears to be in violation of the supremacy clause of the Constitution of the United States, Congress having already occupied the field by adoption of the National Housing Act.

"In the case of Penagaricano v. Allen Corp. 267 F.2d 550 (1959), the Court of Appeals for the First Circuit held that the Puerto Rico Reasonable Rents Act could not be applied to federally subsidized housing for this reason. That case must govern the decision here, whatever personal opinions as to the relative effectiveness of local or federal control may be. See also, Com. of Labor and Industries v. Boston Housing Authority 345 Mass. 406, and Com. of Labor and Industries v. Lawrence Housing Authority, 1970 A.S. 1323." (R. 4, 16-17; Ex. H.)

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<sup>1</sup> Amendments to Article 30 of the Brookline Town bylaws in April and October of 1971 had the effect of lifting local control of owner-occupied two- and three-family units and extending controls to FHA properties.

Subsequently on June 20, 1972, Brookline petitioned the Supreme Judicial Court for a writ of certiorari overturning the Attorney General's decision. The principal thrust of the Brookline petition was that there was reasonable doubt whether the Congress in fact intended to occupy the field and hence preclude local control when it enacted the National Housing Act establishing the various FHA housing programs and that where such reasonable doubt regarding Congressional intent under the supremacy clause has existed in the past, the courts have tended to support the validity of local laws unless an inescapable, irreconcilable conflict between the national and local laws in question either (1) exists on the face of the two enactments, or (2) arises in the course of the enforcement of the two enactments. The Brookline petition further argued that the Brookline bylaw in question not only did not pose such a conflict, but on the contrary, the last clause of the bylaw specifically made the bylaw inapplicable if and when any inconsistency with the National Housing Act should arise. The City of Boston which had previously brought FHA housing under its rent control regulations filed a brief as amicus curiae supporting the Brookline position and further analyzing the related court decisions dealing with the supremacy clause. The Boston brief concluded in this regard that:

" . . . every federal judge to whom the question has been presented, whether on a motion for preliminary injunction, on a motion for summary judgment, or on an appeal from the denial thereof, had declined to rule that, as a matter of law, a city or town is precluded by the Supremacy Clause from regulating rents in federally subsidized housing. "

While the Supreme Judicial Court has not rendered a final decision, the basic issue is clear: namely, did Congress intend that the National Housing Act should preempt the field?

While the Supreme Judicial Court has not as yet directly ruled either on whether Congress intended to preempt the field or whether there is an inherent conflict between the Brookline bylaw and the National Housing Act, the emerging position of the Department of Housing and Urban Development (HUD) is likely to have a major bearing on the outcome. In the past, HUD headquarters officials have largely sidestepped the issue of the application of local rent control regulations to FHA housing. Recently, however, HUD has come under mounting pressure from both the courts and local officials to state whether and to what extent federal interests might be prejudiced by the extension of local rent control to FHA housing. And, as a result, HUD officials in the last few months have been preparing a major policy statement which is expected to be released in the near future.

The forthcoming HUD policy statement accepts as fact that local rent controls can be applied to FHA housing without necessarily conflicting with federal interests and provides basic guidelines to be followed where such local controls exist. More specifically, the proposed policy statement contains the following key points:

1. In general, projects, the mortgages on which are insured or held by HUD, may be subjected to local rent control procedures, and HUD will not interfere with or object to the effect of actions by the local boards. However, HUD will assert exclusive jurisdiction over the rents of such a project where the decision or delay of the local authority jeopardizes HUD's economic interest in the project. In furtherance of this general policy, the following rules should be observed.
2. The new policy covers all HUD multifamily insured programs, subsidized and unsubsidized, where the rents are controlled by the Secretary. All multifamily mortgages held by the Secretary, assigned and purchase money mortgages, are also covered by the policy. HUD will initiate an abstract to the Secretary asking his opinion as to what position HUD should take with respect to HUD-owned properties.
3. Regardless of the existence of a local rent control ordinance, requests by mortgagors for rent increases should be processed by the Director, Housing Management Division, in accordance with normal HUD procedures. If a rent increase is approved (even if the approved increase exceeds that which would be permitted by the local rent authority) a letter of approval should be transmitted to the applicant without reference to the local rent control ordinance or the possibility of HUD asserting exclusive jurisdiction of the determination of maximum permissible rents. In the meantime, the owner should be following the requirements of the local jurisdiction.
4. Given submission of the required data, HUD offices are required to approve or reject requested rent increases within 30 days. If the local rent control board takes over 30 days, the local field office will make a determination as to whether the delay jeopardizes the financial solvency of the project. If so, the field office should report its finding through the ARA for Housing Management to the Office of Loan Management, HM Control Office.

5. When the field office receives an inquiry from a project owner with respect to a HUD-approved rent schedule that exceeds the rent level permitted by the local rent control authority, the field office should then attempt to reconcile the difference with the local rent control board. If the field office is unsuccessful in its attempt at reconciliation, the field office will, through the ARA for HM, inform the Director of OLM of the facts in connection with the conflict and his recommendation thereon.
6. The Director of OLM, in conjunction with the General Counsel, shall review the case and determine whether any further departmental action is desirable. HUD's decision on this matter will be established independently of any action taken by the mortgagor. The possibility exists that a small differential between the rent levels permitted by the rent control authority and those approved by HUD for a particular project might not warrant any type of Federal intervention. While there is no guaranteed level of return to the mortgagor, HUD shall consider such return in making its determination.
7. If a local rent control board approves a rental rate higher than that approved by HUD, the owner must adhere to the lower HUD approved rate.
8. The fact that a defaulted case is considered to be in conflict, will not necessarily preclude HUD from following its usual procedures of accepting assignment or foreclosing the mortgage.
9. It is essential for the field offices to keep the central office informed as to all experience with local rent controls, so that HUD's approach can be adjusted to deal realistically and effectively with the problem of local rent control with a minimum of conflict and cost to all interests affected.
10. HUD personnel should not testify as expert technical witnesses concerning HUD procedures and the administrative and economic effect of the regulation of rents by local authorities upon the Secretary's interests, without prior clearance from the General Counsel.

In conclusion, there would seem little question that the proposed HUD policy statement, if issued as proposed, will go a long way towards resolving the legal question in favor of permitting the exercise of local rent

control over FHA units so long as such local control does not jeopardize the federal government's economic interest in the FHA housing in question. Perhaps more important, the policy statement commits HUD representatives to working closely with local rent control officials in developing procedures for avoiding or reconciling potential conflicts. It is almost inevitable that such conflicts will arise between federal and local regulations, particularly in the case of financially marginal--and physically declining--FHA projects, and that in such cases the legal power of local rent control officials to deal with the problem will largely turn on their power of persuasion over their FHA counterparts.

Exempt HUD Properties in Cambridge

Project Number	Project Name and Address	Units	Sec. of Act
023-00043	334 Harvard Street Cambridge	68	207
023-00046	Harvard Towers Cambridge	110	207
023-32003	Riverriew Apartments Cambridge	81	220
023-35001	872 Mass. Avenue Cambridge	89	221 MR
023-35005	Walden Street Apts. Cambridge	231	221 MR
023-55074	Huron Towers Cambridge	247	221 BMIR
023-55028	Princeton Village Princeton and Wood Streets Cambridge	150	221 BMIR
023-55069	Rindge Apts. Rindge and Alewife Bk. Pkwy Cambridge	506	221 BMIR
023-44018	Harwell Homes Windsor Street Cambridge	58	236
023-44041	Walden Sq. Apts. Sherman St. Cambridge	240	236
023-44039	Rindge Apt. II Rindge Ave. Cambridge	274	236
	Prospect Apts Inc. 270 Harvard Street Cambridge, Mass.		608



# CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 661-0400-0401-0402-0403-0404

## RENT CONTROL BOARD

Alan L. Lefkowitz, CHAIRMAN

### MEMBERS

Alfred Cohn  
Paul Newman  
Paul Watkins  
Lorraine Williams

October 29, 1973

Mr. Steven Rioff  
Management Services Officer  
Massachusetts Housing Finance Agency  
45 School Street  
Boston, Massachusetts 02108

Dear Mr. Rioff:

Based on our discussions last Thursday afternoon, the information supplied by your agency at that time and since, and pursuant to St.1970 c842 Section 3(b)(3)(ii) and (iii) this office considers the following Cambridge property exempt from the Provisions of the Rent Control Act. (St.1970 c842):

MHFA NO.	Project Name and Address
70-127-N	Briston Arms 237-255 Garden Street
70-88-R	Columbia Terrace 55-59 Columbia Street 1-11 Columbia Terrace
71-123-R	Cast II 51-53 Columbia Street
72-035-N	808 Memorial Drive
71-121-N	Franklin Street, Elderly 411 Franklin Street
71-034-N	Inman Square Apts. 1203-1233 Cambridge Street
71-042-N	929 House 929 Massachusetts Avenue
70-064-R	Norstin Apartments 51 & 62 Norfolk Street 70 & 77 Austin Street
69-011-N	Putnam Square Apartments Putnam Street at Massachusetts Avenue
70-077-R	Snyder & Company 14 Salem Street 19-25 Watson Street

# CAMBRIDGE PROPERTY OWNERS ASSOCIATION INC.

614 MASSACHUSETTS AVENUE, CAMBRIDGE, MASSACHUSETTS 02139

Telephone: 354-2626

## Officers

President: CARL F. BARRON  
Vice President: ROBERT A. JONES  
Treasurer: PAUL WATKINS  
Secretary: BARBARA R. DEMARNEFFE

## Directors

Anna Aiello  
Joseph P. Barrell  
Carl F. Barron  
Charles Blevins  
John J. Campbell, Esq.  
Barbara R. DeMarneffe  
John P. Doyle  
Alden I. Gifford  
Howard H. Gilbert  
Robert A. Jones  
Kenneth Koplow  
K. George Nazarian  
Thomas H. Niles  
Samuel Pillsbury  
Paul Watkins

## NEWS RELEASE

March 18, 1976

The Cambridge Property Owners Association Inc. firmly rebuts the claims of Cambridge Tenants Organizing Committee that vacancy decontrol will lead to landlords harassing tenants into leaving their apartments. "This is a purely personal opinion, a nakedly emotional appeal to gain public support for rent control. These same exaggerations and distortions were used back in 1953 when Governor Herter ended wartime rent control. The same fears were voiced at that time. The horrors that were predicted never came true then anymore than they will now," said a property owner spokesman who has managed rental units since the 40's.

"All tenants in Cambridge should remember that the courts protect them from harassment. There are protective laws on the books that have worked well for years. In fact before rent control, evictions occurred less often than at the present time. It is our impression that many

CONTINUED--

many more evictions are being processed with the rent control office than without it," said Carl Barron, President of the Property Owners.

The people of Cambridge need to know that there is nothing more that a landlord dislikes than a vacant apartment. Landlords do not like changeover of good, reliable tenants. They encourage long-term tenants. Furthermore, people are not standing in line to fill Cambridge apartments. There are vacancies all over the city. There is no housing emergency. On the contrary, we may be in a vacancy emergency. In one Sunday paper alone this past weekend, there were 59 ads for vacant apartments, 22 of those ads listing multiple vacancies, bringing the probable total up to more than 100 vacancies. There were also 57 ads trying to sell houses, multiple dwellings or condominiums.

"Another constantly repeated false report is that unnamed and unknown studies show that no deterioration of rent controlled property has taken place in New York City and other communities with rent control. How can CTOC constantly misrepresent the fact when the New York papers carry monthly news of neighborhood blight? There was recent mention of having to bulldoze a deteriorated housing area. It was beyond repair. Our own eyes in Cambridge can see the boarded-up housing at the end of Harvard Street near Kendall Square. Crime, political turmoil, high taxes and an anti-business attitude translated into rent control are taking their toll.

CONTINUED--

Cambridge Property Owners Association Inc.

NEWS RELEASE--March 18, 1976

Page 3

The truth is not being told. The emotions of the people of Cambridge are being manipulated with fear-tactics," said Barron.

END

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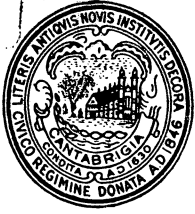
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# CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

## LAW DEPARTMENT

EDWARD D. MCCARTHY  
CITY SOLICITOR

ROWENA E. TAYLOR  
ASSISTANT CITY SOLICITOR

CHARLES WATSON  
LEGISLATIVE AGENT

RUSSELL B. HIGLEY  
ASSISTANT CITY SOLICITOR

March 18, 1976

Councillor Barbara Ackermann  
City Hall  
Cambridge, Massachusetts

Re: An Act Enabling the City of  
Cambridge to Continue to  
Control Rents and Evictions

Dear Councillor Ackermann:

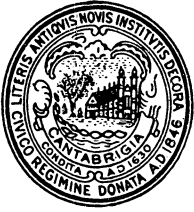
Pursuant to your request, I have examined the amended copy of the above petition. At the last meeting of the City Council, I raised questions as to whether or not MFHA or FHA could be controlled by the act. It was the feeling of the majority that this section be left in tact. If there is future litigation and the section is found to be defective, it will not affect the remainder of the act.

I do not have any proposed changes for the petition.

Sincerely yours,

Russell B. Higley  
Acting City Solicitor

RBH:cas



# CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

## LAW DEPARTMENT

EDWARD D. MCCARTHY  
CITY SOLICITOR

ROWENA E. TAYLOR  
ASSISTANT CITY SOLICITOR

CHARLES WATSON  
LEGISLATIVE AGENT

RUSSELL B. HIGLEY  
ASSISTANT CITY SOLICITOR

March 16, 1976

Councillor Barbara Ackermann  
City Hall  
Cambridge, Massachusetts

Dear Councillor Ackermann:

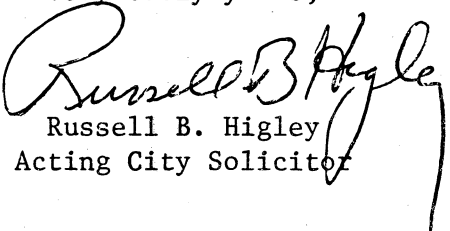
You have asked my opinion relative to the following:

"Delete period in Section 9, line 48 and insert  
after line 48:

Provided that no certificate of eviction shall  
issue to allow or help any housing unit to be  
converted to a condominium unless tenants in at  
least 50% of the units in the affected building  
agree to the conversion and the prospective  
purchaser of the condominium unit presents a  
bona fide purchase and sale agreement beforehand  
in order to obtain said certificate of eviction.

It is my opinion that the proposed language of the  
order would be constitutional.

Very truly yours,

  
Russell B. Higley  
Acting City Solicitor

RBH:cas

# City of Cambridge

## MEETING NOTICE

### Rent Control Legislation

The Committee of the City Council on Rent Control, comprised of the entire membership of the City Council, will meet on Monday, March 8, 1976 at 5:30 P. M. to further discuss proposed legislation for filing with the Great and General Court relative to Rent Control in the City of Cambridge.

For the Committee,

Councillor Barbara Ackermann  
Chairman

CITY OF CAMBRIDGE

In City Council  
March 1, 1976

*C. Ackermann*

WHEREAS:--

Tenants in housing which is privately owned, but which is subsidized by the Federal Housing Administration (FHA) or the Massachusetts Housing Finance Agency (MHFA), are low and moderate income tenants who are among those who have the greatest need for protection against arbitrary rent increases and unjust evictions, yet these tenants are arbitrarily and unjustly deprived of those protections because they are not presently allowed to be covered by the rent control law in effect in Cambridge, Chapter 842 of the Acts of 1970, and

WHEREAS:--

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FHA DEVELOPMENTS IN CAMBRIDGE.

SECTION 1. Declaration of Emergency. The General Court finds and declares that the serious public emergency declared in Section 1 of Chapter 842 of the Acts of 1970 continues to exist in the City of Cambridge, and is especially acute among tenants in privately-owned but government-subsidized housing, and that unless residential rents and evictions are regulated and controlled in said subsidized housing, such emergency and the inflationary pressures resulting therefrom, will produce serious threats to the public health, safety and general welfare of the citizens of said city, and that such emergency should be met immediately and with due regard for the rights and responsibilities of the city of Cambridge.

SECTION 2. Coverage. Notwithstanding the provisions of Sections 3(b) and 9(d) of Chapter 842 of the Acts of 1970, or any similar provisions of any other law, the provisions of said Chapter 842 as amended, or of any other law in effect in Cambridge which provides for regulation or control of rents or evictions, shall extend in the City of Cambridge to rental units that were or are financed, insured or subsidized, in whole or part, by any agency of the federal government, other than housing owned by the Cambridge Housing Authority, and which were initially occupied on or before January 1, 1976.

SECTION 3. Effective Date. This act shall take effect upon passage. The maximum rent of a rental unit controlled under Section 2 of this act shall be the rent lawfully charged the occupant for the month of July 1975, until said maximum is further adjusted pursuant to said Chapter 842 or any other rent control law in effect in Cambridge.

S- 714

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Order by

C. Pennington