

City of Cambridge

Richard C. Rossi • City Manager



Executive Department

Lisa C. Peterson • Deputy City Manager

January 11, 2016

To the Honorable, the City Council:

Please find attached a response to the City Council's request for a legal opinion on whether the City can act either through ordinance, home rule petition or additional avenues to protect tenants from dramatic rent increases or unfair evictions, and whether the City has the ability to strengthen the tenant protections provided under the state Condominium Conversion Act, received from City Solicitor Nancy E. Glowa.

Very truly yours,

A handwritten signature in black ink that reads "Richard C. Rossi". The signature is written in a cursive style with a large, stylized "R" and "C".

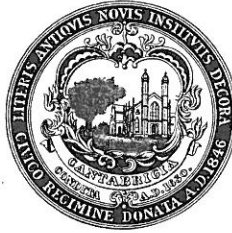
Richard C. Rossi
City Manager

RCR/mec
Attachment(s)

Nancy E. Glowa
City Solicitor

Arthur J. Goldberg
Deputy City Solicitor

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First Assistant City Solicitor



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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

January 11, 2016

Richard C. Rossi
City Manager
City Hall
Cambridge, MA 02139

Re: Report on Legal Protections the City can enact either through Ordinance, Home Rule Petition or Additional Avenues to Protect Tenants from Dramatic Rent Increases and/or Unfair Evictions, and the City's Ability to Strengthen Tenant Protections Provided by the state Condominium Conversion Law.

Dear Mr. Rossi:

This will respond to the City Council's request that the City Manager seek a legal opinion from this office on whether the City can act either through ordinance, home rule petition or additional avenues to protect tenants from dramatic rent increases or unfair evictions, and whether the City has the ability to strengthen the tenant protections provided under the state Condominium Conversion Act.

I. The City's Authority To Regulate Tenant Protections with Regard to Rent Increases and Evictions Absent Home Rule Legislation is Limited

Under Mass. Const. Amend. Art. 2, § 7, (the "Massachusetts Constitution Home Rule Amendment") a city may "exercise any power or function which the general court [the Legislature] has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with the powers reserved to the general court." However, a city may not "enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power." The Supreme Judicial Court (the "SJC") has held that a local legislature enacts "private or civil law" when that legislation creates "new rights or obligations between persons" or if "existing rights or obligations between persons are modified or abolished." See Bloom v. City of Worcester, 363 Mass. 136, 146 (1973). A municipality may enact such legislation relating to these legal relationships only if it could be shown to be "incident to an exercise of an independent municipal power" and that exercise of such power is grounded in more

than a municipality's broad "police power." See Marshal House v. Brookline, 357 Mass. 709, 718 (1970).

The SJC first interpreted the meaning of the private or civil law clause in Marshal House, where the Court held that a by-law enacting a form of rent control was an impermissible private or civil law governing a civil relationship. The Court concluded that the term private or civil law governing civil relationships "is broad enough to include law controlling ordinary and usual relationships between landlords and tenants." Id. at 716.

In Marshal House, the SJC held that enacting a civil law under the general municipal police power to protect the "general welfare" was not a sufficient enough basis for demonstrating that Brookline had an "independent municipal power" to enact this right to below-market rents. The SJC held that Brookline failed to show a specific power to base its authority on in order to claim that the ordinance was enacted "incident to an exercise of an independent municipal power" and thus excepted from the prohibition on enacting a law that related to a civil relationship. See also Bannerman v. City of Fall River, 391 Mass. 328, 332 (1984). ("Furtherance of the general public welfare is insufficient justification for an ordinance which otherwise violates § 7(5) because such an ordinance would not be based on an "individual component of the [city's] police power." Id. at 332. See also CHR General, Inc., 387 Mass. 351 (1982) (SJC struck down Newton's ordinance which also sought to regulate conversion of residential rental units to condominiums on similar grounds).¹

In 1970 the legislature passed general enabling legislation allowing municipalities to adopt local rent control ordinances. General rent control enabling provisions were contained in St.1970, c. 842, which was enacted in August, 1970 and terminated on April 1, 1976. See the following: City of Boston, St.1969, c. 797 as amended; Brookline, St.1970, c. 843; Cambridge, St.1976, c. 36; and Somerville, St.1976, c. 37. At the state election held on November 8, 1994, however, the voters of the Commonwealth adopted an initiative measure which broadly prohibited rent control in Massachusetts. See M.G.L. c. 40P ("Chapter 40P") known as the "Massachusetts Rent Control Prohibition Act".² Section 5 of Chapter 40P explicitly provides that "[t]his chapter shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law. Thus, following a two year phase out period, all forms of rent and eviction control ended in Massachusetts by 1996.

II. In Order to Enact Ordinances Pertaining to Rent Increases and Evictions a Home Rule Petition Would Have to Be Authorized by the Legislature

There is precedent in Massachusetts law for municipalities seeking and obtaining authorization from the Legislature to enact a measure otherwise not within a municipality's

¹ The SJC noted that the City of Newton would likely have the authority to regulate the conversion of residential rental units if the Legislature granted the special act which had been filed during the pendency of that lawsuit. See CHR General, at 358, fn. 8.

² The provisions of Chapter 40P of the General Laws, were added as sections 1-5 of Chapter 40O by St. 1994, 368, Sec. 1, and subsequently re-designated by St. 1997, c. 19, section 10 as Chapter 40P.

Home Rule power. Prior to the enactment of Chapter 40P municipalities had successfully petitioned the Massachusetts Legislature for authority to enact measures relating to 1) rent control; and 2) the power to regulate conversion of residential rental units after the SJC rejected initial efforts by municipalities to enact general legislation regarding those measures. See Marshal House v. Brookline, 357 Mass. 709 (1970) and CHR General, Inc. v. Newton, 387 Mass. 351 (1982). However, with the enactment of Chapter 40P the Legislature might not act favorably on a home rule petition that conflicts with the broad prohibition against rent or eviction control contained therein.

Section 2 of Chapter 40P states that the purpose of the law is “[t]o establish a uniform statewide policy that broadly prohibits any regulatory scheme based upon or implementing rent control...” Section 3, expressly prohibits (a) “[a]ny regulation that in any way requires below market rents for residential properties and (b) any regulation that is part of a regulatory scheme of rent control as defined in clause (a) including the regulation of occupancy, services, evictions, condominium conversions...”³ Section 4 of Chapter 40P permits voluntary rent control provided that the municipality adopting such regulation shall compensate owners of rent control units for the difference between the unit’s fair market rent and the unit’s below market rent controlled rent with such compensation coming from the municipality’s general fund so that the cost is borne by all taxpayers. Furthermore, any such voluntary regulation may not include regulation of evictions or condominium conversion⁴ and may not apply to an entity owning less than ten units or that has a fair market rent exceeding four hundred dollars (\$400.00).

If the City were to submit to the Legislature a home rule petition seeking to regulate rent increases or evictions notwithstanding the preemption provision of Chapter 40P, it might be disfavored by the legislature if it conflicted with the broad provisions of Chapter 40P. This office has been informed that tenant advocates in the City of Boston are currently circulating a so-called “Just Cause Eviction” petition. The petition, if passed, would prohibit a property owner in Boston from evicting a tenant except for certain specified reasons such as non-payment of rent, disorderly conduct, illegal activity, and other cause. Evictions without one of the specified permitted causes would be prohibited. The petition also purportedly requires property owners to participate in mediation with their tenants prior to raising rents. However, to date, Boston has not taken any formal action with respect to this proposal.⁵

As to whether a home rule petition containing “just cause” eviction provisions or similar provisions purporting to regulate rent increases and/or evictions if submitted by the

³ Publicly owned and publically subsidized housing and federally assisted housing and mobile homes are exempt from this prohibition.

⁴ Chapter 40P’s prohibition against regulating condominium conversions in rent control schemes does not supercede the provisions of the Condominium Conversion Act, Chapter 527 of the Acts of 1983; see infra.

⁵ The Massachusetts Legislature on its own initiative could enact statewide tenant protections such as a just cause eviction requirement, notwithstanding the broad prohibitions of Chapter 40P. Recently, the Legislature enacted M.G.L. Chapter 186A, which provides certain protections for tenants who are being evicted as a result of foreclosure action. The Legislature could enact a law that expands those protections to tenants facing eviction for other reasons.

City to and authorized by the Legislature would be deemed “legal” by a Court, it is not possible for me to opine at this time until and unless the Council provides substantive provisions of any proposed home rule petition for my review and analysis.

III. The City Has the Authority to Adopt A Local Condominium Conversion Ordinance that Strengthens Tenant Protections

The state Condominium Conversion Act, Chapter 527 of the Acts of 1983 (the “Condominium Conversion Act”), was not repealed by Chapter 40P and it specifically allows cities and towns to adopt by a two thirds vote of their local legislative bodies, local ordinances or by-laws that are stronger than or differ from the statewide law. Currently the statewide law offers certain notice, eviction and rent increase protections for tenants for a specified period of time, generally one year although longer for elderly, disabled and low income tenants. The statewide law also provides monetary relocation assistance for tenants and provides tenants with the right of first refusal. The statewide law does not apply to buildings with less than four residential units.

Cambridge does not have a local ordinance providing different or stronger tenant protections but has the authority to enact such an ordinance pursuant to the Condominium Conversion Act. A number of communities in Massachusetts including Boston have enacted such local ordinances which generally have added tenant protections. For example Boston adopted a condominium conversion ordinance that differs from the statewide law in several respects including a longer notice period (five years) for elderly, disabled and low income tenants and greater monetary relocation assistance.

IV. Conclusion

Based upon the above analysis it is my opinion that enactment of a local ordinance regulating rent increases or evictions would likely be determined by a reviewing court to be an invalid exercise of the City’s municipal power under the Massachusetts Constitution. A home rule petition authorizing the City to regulate rent increases and/or evictions could be submitted to the Legislature by the City Council; however, as more fully discussed herein, the Legislature might not act favorably on a home rule petition that conflicts with the broad prohibition against rent or eviction controls contained in Chapter 40P. Enacting a local ordinance that provides tenant protections that are greater than the protections provided under the state Condominium Conversion Act would be lawfully permitted pursuant to that Act and may be enacted by a two thirds vote of the City Council.

Very truly yours,



Nancy E. Glowa
City Solicitor