

ARTICLE IV. - CONDOMINIUM CONVERSION AND REMOVAL OF RENTAL UNITS^[4]

Footnotes:

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State Law reference— Condominiums, M.G.L.A. c. 183A.

Sec. 7-61. - Condominium conversion policy.

Whereas, a serious public emergency exists with respect to the housing of a substantial number of citizens of the city;

Whereas, the deterioration and demolition of existing housing and an insufficient supply of new housing have resulted in a substantial and critical shortage of safe, decent, and reasonably priced rental housing accommodations;

Whereas, at present in the city there is a great interest in conversion of rental housing occupied by tenants to condominium units;

Whereas, many people of limited means, particularly the elderly and handicapped, are suffering in that they have difficulty in obtaining rental housing within the city at prices which they can afford when displaced from their homes;

Whereas, the United States Department of Housing and Urban Development has determined that a vacancy rate in the total supply of rental housing of five percent or less is a housing emergency; and

Whereas, the effects of condominium conversion cannot be dealt with solely by the operation of the private rental housing market, and unless the removal of rental units from the market are additionally regulated and controlled, the housing emergency which presently exists in the city and the inflationary pressures and displacement of elderly, handicapped and those living on fixed incomes resulting therefrom will produce serious threats to the public health, safety, and general welfare of the citizens of the city;

Pursuant to the authority vested in the city by law, including without limitation, Chapter 37 of the Acts of 1976, as amended by Chapter 218 of the Acts of 1985, there is established the following article.

(Ord. No. 1985-9, § 1, 8-22-85)

Sec. 7-62. - Condominium conversion ordinance.

This article shall be known and may be cited as the "Somerville Condominium Conversion Ordinance."

(Ord. No. 1985-9, § 2, 8-22-85)

Sec. 7-63. - Condominium conversion purpose.

It is the purpose of this article and the policy of the city to protect the tenants of residential rental units, especially when the property owner proposes to convert these to condominium ownership, or to gut or demolish the structure and generally to protect the public health, safety, and general welfare of the citizens of the city.

(Ord. No. 1985-9, § 3, 8-22-85)

Sec. 7-64. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board shall mean the Somerville Condominium Review and Rental Unit Removal Board.

Condominium unit shall mean any unit of a condominium, as that term is defined in Section 1 of Chapter 183A of the General Laws.

Declarant shall mean the owner of real property who records, or proposes to record, the condominium master deed, or on whose behalf the condominium master deed is recorded, thereby subjecting the property to condominium ownership. Pursuant to Chapter 183A, Section 2 of the General Laws the term "declarant" shall include successors in the interest of the owner who originally records the master deed.

Housing accommodation shall mean any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property used for living or dwelling purposes which contains one or more rental units.

Housing rental agreement shall mean an agreement, verbal, written, or implied, between a landlord and a tenant, for use or occupancy of a housing accommodation or for housing services.

Landlord shall mean the entity or individual who holds title to any housing accommodation in any manner, including, but not limited to, a partnership, corporation, or trust. Any duty of a landlord under this article shall extend to anyone who manages, controls, or customarily accepts rent on behalf of the landlord.

Removal from market as applied to a rental unit, includes, but is not limited to:

- (1) The filing of a condominium master deed, pursuant to Chapter 183A of the General Laws, for any housing accommodation any part of which was most recently occupied as a rental unit;
- (2) The sale, execution of an agreement to sell, or recovery of possession by a unit owner of any condominium unit, which was previously a rental unit occupied by a tenant. However, if the last previous occupant was a tenant for at least one year prior to the date of application to the board for a removal permit, and the same person will occupy the unit as the owner of the condominium unit, no removal permit is necessary as to that unit;
- (3) The demolition of a rental unit;
- (4) The rehabilitation, repair, or improvement of a rental unit, other than as required by the laws of the commonwealth or by the city, in such a way as to prevent residential occupancy during the course of the rehabilitation, repair, or improvement;
- (5) The conversion of all or part of any building to a cooperative.

"Removal from market" shall not include:

- (1) Occupancy in good faith of a rental unit by the owner of the housing accommodation in which it is located, or by any member of the owner's immediate family; or
- (2) Occupancy of a condominium unit by a tenant, where the unit owner occupied the unit in full compliance with this article prior to occupancy by the tenant; or
- (3) Occupancy of a condominium unit as to which it can be shown that the master deed was recorded in the Middlesex registry of deeds prior to September 11, 1980.

Rental unit shall mean any building, structure, or part thereof, rented or offered for rent for living or dwelling purposes, the most recent occupant of which was a tenant or tenants. The term "rental unit" may

include houses, apartments, rooming or boarding house units, and other properties used for living or dwelling purposes, but shall not include:

- (1) Rental units in hotels, motels, inns, tourist homes and rooming or boarding houses which are rented primarily to transient guests for a period of less than 14 consecutive days;
- (2) Rental units which a government entity, agency, or authority either owns, operates, finances or subsidizes, if the enforcement of this ordinance with respect to such rental units would result in the cancellation or withdrawal, by law, of such financing or subsidy;
- (3) Rental units in any hospital, convent, monastery, asylum, public institution or college or school dormitory, nursing home or rest home or charitable home for the aged.

Tenant shall mean any person entitled under the terms of a rental housing agreement to the use or occupancy of any housing accommodation.

(Ord. No. 1985-9, § 4, 8-22-85)

Cross reference— Definitions and rules of construction, § 1-4.

Sec. 7-65. - Rental units covered.

This article shall apply to all rental units which had not been removed from the market before September 11, 1980, including condominium units for which the master deed had not been filed. Should the board or office of planning and community development at any time determine the vacancy rate in the city exceeds five percent, then they should provide notice of that fact to the board of aldermen. However, this article shall remain in effect, regardless of such vacancy rate or notification by the office of planning and development, until such time as it is repealed by the board of aldermen.

(Ord. No. 1985-9, § 5, 8-22-85)

Sec. 7-66. - Removal of rental units.

- (a) *Permit required.* No declarant or other landlord shall remove from the market any rental unit, unless and until the board, after hearing, has granted a removal permit.
- (b) *Regulations.* The board may issue orders and promulgate regulations to effectuate the purposes of this section; may prescribe the procedure for applications, notice, hearings, and the granting and withdrawal of permits; and shall set the fee to be paid by the declarant for filing such application.
- (c) *Filing requirements.* In addition to such other removal permit application procedures as the board may promulgate, a declarant applying for a removal permit for the conversion of rental units to condominium units or for the sale or recovery of possession of a condominium unit occupied by a tenant as a rental unit shall file with the board the following documents:
 - (1) A copy of the condominium master deed;
 - (2) A report of an independent, licensed engineer or architect describing the present condition of all structural components and major mechanical systems of the building and also including the approximate dates of construction, installation, major repairs and the expected useful life of each such item;
 - (3) An affidavit under penalties of perjury listing the names of all tenants in the housing accommodations to be converted at the time notice was sent pursuant to this article; a written statement, signed under the penalties of perjury, that the notice requirements of this article have been complied with; and a written statement signed under the penalties of perjury, that the declarant has not and to his or her best knowledge his or her predecessors in title have not, violated section 7-72.

- (d) *Considerations.* In deciding whether to grant a permit under this section, the board shall consider the following criteria, and with respect to them shall state their conclusions clearly in writing:
 - (1) The benefits to the citizens of the city of issuing the permit;
 - (2) The hardships imposed on the tenants residing in the unit proposed to be removed, including any mitigating provisions made by the applicant;
 - (3) Any aggravation of the shortage of rental housing accommodations in the city, especially of units suitable for families of low and moderate income, for elderly, for handicapped, or for people on fixed incomes, which may result from the proposed removals.
- (e) *Decision of board; notice.* The board shall make its decision within 14 days of its final hearing and file the decision with the city clerk forthwith. Notice of the decision shall be mailed promptly to the landlord and to any tenant affected by the decision, and to every person who attended the hearing, who requested a copy of the notice.

(Ord. No. 1985-9, § 6, 8-22-85)

Sec. 7-67. - Notification of conversion.

- (a) A declarant who intends to convert a housing accommodation to condominium ownership must give the board and each of the tenants of any and all rental units therein written notice of his or her intention to so convert the premises no later than one year before the declarant files a master deed.
- (b) Where a master deed has been already filed for a housing accommodation, the declarant or unit owner of any rental units within the condominium shall give each tenant no less than one year prior written notice of their intention to bring an action to recover possession of the premises.
- (c) However, in the case of a housing accommodation occupied in whole or in part by a handicapped tenant or occupied by an elderly or low or moderate income tenant, the period of notice for each such tenant shall be no less than two years.
- (d) The requirements of this section are in addition to and not a substitute for the removal permit requirements of section 7-66.
- (e) All notices given pursuant to this section shall be personally served upon tenants or mailed to tenants by certified mail. The notice shall advise tenants of their rights and of the procedures that exist under this article. It shall also include a statement of such tenant rights and procedures as exist under the rules or regulations of the board governing removal from market of rental units in order to convert them to condominiums as the board may adopt from time to time pursuant to the authority granted by this article.
- (f) No tenant may be given notice by the declarant to vacate the premises upon less than the one-year notice as provided in subsection (b) of this section, except by reason of nonpayment of rent, conduct that disturbs other tenants' peaceful enjoyment of the premises, or other substantial violation of the terms of the tenancy. The terms of the tenancy may not be altered during any notice period under this article. Failure of a declarant to give notice as required by this section shall be a defense to an action by the landlord to recover possession of the rental unit.
- (g) Nothing in this section permits termination by a declarant of a housing rental agreement in violation of its terms. Any tenant under a housing rental agreement shall have the right, at any time after receipt of a notice pursuant to subsections (a), (b) and (c) of this section, to terminate the housing rental agreement upon 30 days' written notice to the landlord, which 30 days shall start to run from the date the next rental payment is due. Such termination shall be without penalty or other termination charge to the tenant.

(Ord. No. 1985-9, § 7, 8-22-85)

Sec. 7-68. - Condominium review board.

- (a) *Composition; appointments; terms.* There shall be a condominium review and rental unit removal board of five members, who shall serve staggered terms of three years. The four members of the condominium review board appointed pursuant to Ordinance No. 1980-14 shall continue to serve as the condominium review and rental unit removal board pursuant to this article, but shall serve staggered terms of three years. Within 90 days of the effective date of the ordinance from which this article derives the mayor shall appoint a fifth member of the board, and shall designate which members of the board will serve initial terms of one, two or three years. All appointments shall be made and vacancies shall be filled by appointment of the mayor, subject to confirmation by the board of aldermen. Composition of the board shall be two city homeowners, two city tenants, and one elderly, handicapped, or low or moderate income city resident chosen by the mayor and subject to the confirmation of the board of aldermen.
- (b) *Vacancies; removal; compensation.* Any vacancies on the board shall be filled for the balance of the then unexpired term. Membership on the board will terminate for any board member who ceases to reside in the city. Board members may be removed by the appointing authority for good cause shown. Members of the board shall receive such annual salary as the board of aldermen shall fix by ordinance.
- (c) *Powers and duties.* The condominium review and rental unit removal board shall have the power and duty to enforce the provisions of this article. The board shall be responsible for carrying out the provisions of this article and shall promulgate such policies, rules and regulations as may be necessary in furtherance of this purpose. Certified copies of all policies, rules and regulations adopted by the board shall be forwarded to the city clerk, who shall forthwith forward them to the board of aldermen within ten days of the promulgation thereof. Copies of board rules and regulations already in existence shall be so forwarded to the city clerk within ten days of the effective date of the ordinance from which this article derives. The board shall be responsible for conducting hearings, and for surveying and updating information concerning rental units in the city. Any person who rents or offers for rent or acts as broker or agent for rental housing accommodation which is or may be the subject of a condominium conversion may be required to furnish under oath or affirmation any information required by the board and produce relevant records and other relevant documents. Such person shall have the right to be represented by counsel. Section 10 of Chapter 233 of the General Laws shall apply to this section.

(Ord. No. 1985-9, § 8, 8-22-85)

Sec. 7-69. - Tenants' right to purchase unit.

- (a) After the granting of a removal permit for condominium conversion or sale pursuant to section 7-66, the declarant shall make a written offer to convey each unit to the tenant who rents or leases that unit. The offer shall be made within 30 days of the granting of the removal permit, or the filing of the master deed, whichever comes later, and shall remain open for another 30 days.
- (b) The tenants' right to first purchase expires at the end of the 30-day period following the declarant's offer.
- (c) If the tenant and declarant do not execute a contract for purchase and sale of the unit during that 30-day period, the declarant may not offer to sell that unit during the following 180 days after the expiration of that 30-day period at a price or on terms more favorable to the prospective purchaser than the price or terms offered to the tenant. This section will not apply to any condominium unit which is converted to exclusively nonresidential use.
- (d) If a declarant, in violation of subsection (a) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (a) of this section to purchase that unit, but does not affect the right of the city to prosecute the declarant for a violation of subsection (a) of this section.

(Ord. No. 1985-9, § 9, 8-22-85)

Sec. 7-70. - Tenant relocation reimbursement.

- (a) When a declarant or other landlord recovers possession of a rental unit pursuant to the granting by the board of a removal permit pursuant to section 7-66, the tenant thus displaced who meets the qualification of this section shall be entitled to recover from the declarant the costs of relocation.
- (b) Within 14 days after receiving a receipted bill for the costs of relocation, the declarant must pay actual moving expenses to a maximum amount of \$300.00 or one month's rent per rental unit, whichever is higher, for any tenant and the tenant's family whose total income for the previous year was equal to or less than the qualification income for Section 8 Housing Assistance for the city. Failure of the tenant to tender verification of income upon written demand by the declarant shall constitute a waiver of the right to receive funds.

(Ord. No. 1985-9, § 10, 8-22-85)

Sec. 7-71. - Access and repair to units.

- (a) The tenant in a rental unit for which a removal permit for condominium conversion has been granted by the board shall not unreasonably withhold consent to the declarant or his or her agents or designees to enter the unit in order to inspect the premises, obtain data, or show the unit to prospective or actual workers or purchasers. The declarant shall give the tenant at least two days' notice of an intent to enter the unit and may enter only at reasonable times.
- (b) A declarant or other landlord shall not undertake rehabilitation, repair, or improvement of a rental unit even if a removal permit has been granted by the board, while the unit is occupied by a tenant, nor permit or create any unreasonable disruption of the common areas of a housing accommodation. "Unreasonable disruption" shall include, but is not limited to restricting access to common areas or units, interference with the quiet use and enjoyment of the premises, abuse of the right of access to units or harassment of tenants.

(Ord. No. 1985-9, § 11, 8-22-85)

Sec. 7-72. - Interruption of essential services.

Any tenant who experiences interruption or discontinuance of essential services in his or her dwelling unit or in the common area of his or her housing accommodation, may notify the condominium review and rental unit removal board and the building and health departments of the city of such conduct. The building and health departments shall, upon notification by the tenant and verification that such conduct does exist, order appropriate corrective action.

(Ord. No. 1985-9, § 12, 8-22-85)

Sec. 7-73. - Cancellation of conversion.

If a declarant, after receiving removal permits and sending notice of intent to convert to the tenants as required by section 7-67(a), abandons the condominium conversion plan, neither the declarant or any subsequent owner of the property may send another such notice to any of these tenants for a period of 18 months. The declarant shall file with the board a statement of the abandonment of the condominium conversion plan, and the above-referenced eighteen-month period shall begin to run upon the date of such filing.

(Ord. No. 1985-9, § 13, 8-22-85)

Sec. 7-74. - Judicial review.

- (a) Any person who is aggrieved by an action, regulation, or order of the board, may seek review of such action. Violations of this article may be prosecuted by any member of the board of aldermen, the mayor, or the board by majority vote.
- (b) The district court for the Somerville judicial district shall have jurisdiction over all such actions and complaints.
- (c) The superior court shall have jurisdiction to restrain by injunction any violation of this article.

(Ord. No. 1985-9, § 15, 8-22-85)

Sec. 7-75. - Report.

The board shall submit an annual report to the board of aldermen which provides comprehensive data and other documentation on the development of conversion condominiums in the city and the implementation of this article.

(Ord. No. 1985-9, § 16, 8-22-85)

Sec. 7-76. - Penalties and fines.

- (a) Whoever violates any provision of this article or makes any false statement or affidavit pursuant to section 7-66(c) shall be punished by a fine in accordance with the provisions of section 1-11.
- (b) One violation of this article shall consist of:
 - (1) A false statement or affidavit submitted to the board pursuant to section 7-66(c) in reference to each unit;
 - (2) An incident of interruption of essential services as defined in section 7-72 for each unit;
 - (3) Each day of removal as defined in section 7-64 for each unit without a permit.

(Ord. No. 1985-9, § 11, 8-22-85; Ord. No. 2006-09, § E, 4-11-2006)

Secs. 7-77—7-90. - Reserved.