

Proposed New Condominium Conversion Ordinance

FREQUENTLY ASKED QUESTIONS

Condominium Conversion Ordinance: Background Information

Question #1: What is a “condominium”? What is a “cooperative”?

Answer: **Condominium:** A condominium unit is an individual unit in a building that can be separately owned from the rest of the building by an owner entity and then generally either offered for sale or rental. For a condominium to be established an owner must comply with the requirements of M.G.L. c. 183A for formation of a condominium. This law requires owners or developers to file a “master deed” with the Registry of Deeds and otherwise comply with the statute. The master deed sets out the ownership structure of the building and includes architectural plans showing what parts of a building are to be owned exclusively by a unit owner and what parts of the building are held in common by all the owners (often things like roofs or front entrances).

Cooperative: A cooperative under the proposed Ordinance refers to a housing cooperative under M.G.L. c. 157B. Generally a housing cooperative is a corporation which owns or holds property in which owners have shares. Generally the shares translate into apartments or houses. Cooperatives are governed by an elected Board which sets out rules pertaining to the cooperative housing.

Where this FAQ describes the law as it relates to condominium conversion the same rules apply if rental units are being converted from rental units into cooperatives available for purchase.

Question #2: What is a “condominium conversion ordinance”?

Answer: A condominium conversion ordinance sets forth requirements that need to be met when an owner wants to convert a rental unit to a condominium unit. These requirements usually include providing protections for tenants living in units the landlord intends to sell as condominiums.

Question #3: Does Somerville already have a Condominium Conversion Ordinance?

Answer: Yes. Somerville enacted a local condominium conversion ordinance in 1985. The current Ordinance can be found on the Condominium Review Board website here: <https://www.somervillema.gov/departments/condominium-review-board>.

Question #4: What is the status of Somerville’s Ordinance and when was it enacted? Has it been amended since?

Answer: Under the Massachusetts Constitution, a Massachusetts city or town generally needs permission from the state legislature to enact laws governing landlord/tenant relationships. In 1985, the state legislature gave Somerville permission to adopt a condominium conversion law to “regulate the conversion of housing accommodations in said city to the condominium or cooperative form of ownership and the evictions of tenants incident to the conversion or sale of condominiums.” (St. 1985, c. 218)

In 1985, under this authorization, the City of Somerville adopted its current Ordinance that regulates removal of rental units from the market and their conversion to condominiums or cooperatives. This law set out protections for tenants in rental units being removed from the rental market because they are undergoing conversion to condominium units. It also established a Condominium Review Board (“CRB”) to make determinations on whether a permit to convert a unit to a condominium would be granted. Protections provided in the current law are based on costs of housing and realities of the rental market in 1985 and have not been updated since.

Question #5: What is the Massachusetts state condominium conversion law c. 527, St. 1983 and how does it affect Somerville?

Answer: In 1983, the State of Massachusetts passed a law providing tenant protections to all Massachusetts tenants living in buildings being converted to condominiums that have four or more units. This state law provides minimum protections to tenants. It also allows cities and towns to adopt their own local condominium conversion ordinances without needing to get special permission from the State. If the city or town has its own law, state protections will not apply to its residents. If there is no local law, state law governs condominium conversions. Since Somerville has its own law, state law does not apply.

Question #6: Why is the City proposing an updated condominium conversion ordinance?

Answer: The terms of Somerville’s current ordinance do not reflect current market conditions. The goal of the proposed ordinance is to increase and update protections for tenants facing displacement due to condo conversion. Additional protections are necessary given the difficulty low and moderate income, elderly and tenants with disabilities face trying to relocate within Somerville and the long waitlists for the City’s affordable housing programs. In addition, the City wishes to enhance procedures for allowing tenants to participate in the hearing process when permit applications are reviewed.

Question #7: What would the proposed condominium conversion ordinance do?

Answer: The proposed ordinance primarily provides protection to tenants facing displacement as a result of conversion.

Tenant Rights

Question #8: Who would be entitled to tenant protections under the proposed condominium conversion ordinance?

Answer: Under both the current and proposed condominium conversion ordinances, any tenant who is living in the unit at the time the owner forms intent to convert that rental unit is entitled to the tenant protections granted by the ordinance. Any tenants found to have been displaced from a unit without being afforded the full protections of the condominium conversion ordinance may be entitled to damages or other claims under state consumer protection laws.

Question #9: What tenants get enhanced protections under the condominium conversion ordinance?

Answer: Under current law, low and moderate income, elderly and handicapped tenants are entitled to enhanced protections. The law has no definitions of elderly or handicapped.

Under the proposed ordinance, households with a tenant older than the age of 62, an income at or below 80% of the Area Median Income for the 12 months immediately preceding service of the conversion notice, and/ or who has a mental or physical impairment, as defined, is entitled to receive enhanced protections.

Question #10: Are tenants protected against eviction during the notice period? How long is this notice period? Can owners still evict for other reasons?

Answer: Yes, tenants are protected against eviction during the notice periods described below.

Under the current ordinance, renters who are elderly, disabled and/or low-/moderate-income are entitled to a notice period of two years, and cannot be evicted during this period of time unless they have failed to pay their rent, disturbed the peaceful enjoyment of other tenants or committed some other substantial violation of the terms of their tenancy. All other tenants are entitled to a notice period of one year, with the same restriction on evictions.

Under the proposed ordinance, the notice period for a tenant who is elderly, disabled and/or low-/moderate-income is five years, and one year for all other tenants. The property owner is required to assist tenants who are elderly, disabled or low-/moderate-income in finding suitable alternative housing. If this is not done within the initial five year notice period, the tenant is entitled to an additional two years notice. Tenants cannot be evicted during their notice period for purposes of selling the unit as a condominium. Owners can evict a tenant for non-payment of rent or other substantial violation of a rental agreement.

Note: Like the proposed ordinance, state law requires landlords to find comparable replacement housing or the notice period is extended for two additional years. The City of Boston ordinance has the same five year notice period provided in the proposed ordinance.

Question #11: When will tenants be notified that their landlord is seeking to convert their building to condominiums?

Answer: The current ordinance requires an owner intending to convert to provide notice of such intent one year prior to the filing of a master deed.

The proposed condominium conversion ordinance requires all tenants to be notified both of the owner's intention to convert their rental unit to a condominium unit and of the tenant's rights during that process. The requirement that an owner serve their tenant when they first have the intent to convert makes it more difficult for owners to vacate their buildings without providing their tenants with the rights guaranteed in the ordinance.

Question #12: What is the notification requirement if the property is vacant?

Answer: Under the current ordinance, there is no specific requirement for advanced notice to the CRB for vacant properties. The current ordinance states that any applicant seeking to convert a property to condominium units must provide the CRB and all tenants notice of their intent, but it does not specify a particular time period for advance notice if there are no tenants occupying the building at the time the owner applies for a conversion permit. Currently, the CRB does not require any notice period for vacant properties.

Under the proposed ordinance, if an applicant is submitting an application to convert a vacant property that had been previously used as a rental unit, the property owner must provide notice to the CRB at least one year in advance. Whether or not the unit is vacant, the owner must provide the CRB with a list of any tenants that resided in the property in the past 12 months, so that they can be notified of the conversion application.

Question #13: Are tenants entitled to a relocation payment? How much?

Answer: Yes, all tenants are entitled to a relocation payment.

Under the current ordinance, only tenants who have incomes that qualify them for the Section 8 Housing Assistance program in the City of Somerville are entitled to a relocation payment of \$300 or one month's rent, whichever is higher. No other tenants are entitled to a relocation payment.

Under the proposed ordinance, tenants who are elderly, disabled and/or low-/moderate-income are entitled to a relocation payment of \$10,000, and all other tenants are entitled to a relocation payment of \$6,000.

State law requires relocations payments to be paid to all tenants and the City of Boston requires the same \$10,000 and \$6,000 amounts provided herein.

Question #14: Can a tenant's rent be increased during this notice period? How much?

Answer: Under the current ordinance, the terms of the rental agreement cannot be changed during the notice period. This includes the monthly rent amount, and thus prohibits any rent increases.

Under the proposed ordinance, a tenant's rent can be increased by no more than 10% or their current rent multiplied by the Consumer Price Index increase which is set by the US Department of Labor- whichever amount is less. An increase higher than that amount is a violation of the ordinance, and may even constitute a condominium conversion eviction.

State law has the same limitations on rent increases as the proposed ordinance.

Question #15: What is considered a Condominium Conversion Eviction?

Answer: The current ordinance does not use the term "condominium conversion eviction," but it does prohibit the interruption of essential services such as utilities. The current ordinance also prohibits performing repairs that cause an unreasonable disruption and interfere with the quiet use and enjoyment of the housing accommodation.

Under the proposed ordinance, a condominium conversion eviction occurs when a property owner creates conditions that substantially interfere with the tenants' quiet use and enjoyment of their unit and/or engages in activity intended to compel the tenant to vacate the unit prior to expiration of the notice period.

Right to Purchase

Question #16: What is the tenant's right to purchase?

Answer: The right to purchase is the exclusive right of a tenant whose rental unit is being converted to a condominium unit to purchase their unit at fair market value. Any tenant

residing in a unit that is undergoing conversion to a condominium unit has the right to purchase their unit under both the current and proposed condominium conversion ordinance.

Question #17: Who has the right to purchase? How long do they have to exercise this right?

Answer: Any tenant who is currently residing in the unit at the time the owner forms intent to sell unit as a condominium unit is entitled to the right to purchase.

Under the current ordinance, after the owner has been granted approval by the CRB to convert their property from rental to condominium units, they have 30 days to provide the tenant with an offer to purchase the unit. At that point, the tenant then has 30 days to accept the offer and execute a purchase and sale agreement for the unit. If the offer is not accepted, the owner cannot sell the unit at a lower price than what was offered to the tenant for 180 days following the expiration of the 30 day time period.

Under the proposed ordinance, a tenant who is elderly, disabled or low-/moderate-income has 180 days to exercise their right to purchase from the date the owner provides them with a purchase and sale agreement. Any other tenant has 120 days to exercise their right to purchase from that date. The owner cannot sell the unit for less than the price that was offered the tenant for 180 days from the date the tenant was provided with the owner's sale terms.

Question #18: How are prices set?

Answer: Under the current ordinance, there is no language specifying any guidelines for how the price is determined. In practice, owners set the prices of their own volition. However, they cannot charge a lower price for 180 days after they offer the tenant a particular price in a purchase and sale agreement.

Under the proposed ordinance, the owner of the property may set the price. This price however, must be based on the fair market "as-is" value of the property. This means that the purchase price cannot be set in anticipation of extensive renovations.

Question #19: Do affordable housing developers also have a right to purchase?

Answer: Under the current ordinance, no.

Under the proposed ordinance, if a tenant does not choose to exercise their right to purchase, that right is then given to the City of Somerville, or a designated affordable housing developer for the purpose of keeping the property affordable. This way, if a tenant cannot purchase their unit, but does wish to stay, the designated affordable housing developer has the opportunity to buy the unit and continue to rent it to the current occupant at an affordable rent or sell it to that occupant at an affordable price. This measure will help to prevent displacement due to condominium conversion.

In the case of vacant units, the designated affordable housing developer will have the opportunity to purchase the unit and either sell or rent it to a new income-eligible tenant, thus creating or maintaining an affordable unit.

Question #20: How long do affordable housing developers have to decide whether they want to purchase and what do they have to do?

Answer: A designated affordable housing developer must let the property owner know of its intent to purchase within the same 120 day period provided to the tenant. After providing such notice the affordable housing developer will have 30 days to execute a purchase and sale agreement.

Question #21: What happens if both the tenant and an affordable housing developer wish to purchase?

Answer: Within the time periods prescribed, the tenant has priority over any other entity also wishing to purchase the unit.

Condominium Review Board

Question #22: Does Somerville already have a Condominium Review Board and what does it do?

Answer: Yes. The existing Somerville CRB consists of five Somerville residents; two renters, two homeowners and one person who is elderly/disabled and/or low-/moderate-income. The CRB holds monthly meetings to review all applications for condominium conversion. Every application must go before the CRB, and someone must be present at the meeting to present the application and answer any question the CRB might have. The meetings are always open to the public and held in an accessible building. There is time for public comment for each application that is before the CRB. At present there are no required procedures for informing current or former tenants of the date and time of the hearing on a condominium permit application or regarding their right to testify at such a hearing.

Question #23: Would the Condominium Review Board change if the new Condominium Conversion Ordinance is adopted?

Answer: The composition and main functions of the CRB would remain the same. Procedures regarding hearings on condominium conversion permits would change, however. The owner would need to provide a list of all the names and contact information for tenants residing at the premises within the previous twelve months, if known. All tenants will be notified by the CRB in advance of the date and time of hearings where their unit is on the agenda. Additional hearing procedures can be established by the CRB.

Question #24: What criteria will the Condominium Review Board use to decide whether to issue a permit?

Answer: Under the current ordinance, the following criteria are supposed to be used to determine whether or not a permit is granted:

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.

Under the proposed ordinance, the appropriate permit shall be granted if all requested documents are provided and the applicant is found to have complied with all provisions of the condominium conversion ordinance. However, the CRB may deny any permit if it is found that any provisions of the ordinance were not followed, or it is determined that the hardships imposed on the tenant justify a denial.

Question #25: Do permits issued by the Condominium Review Board ever expire?

Answer: Under the current ordinance, permits do not expire.

Under the proposed ordinance, if a property owner does not sell the unit they have converted within two years of receiving a permit from the CRB the permit will lapse. If an applicant submits an application without a master deed and obtains conditional approval to convert to condominium units, the conditional permit will lapse after one year if no master deed is filed.

Question #26: What are the penalties for violation of the proposed condominium conversion ordinance?

Answer: Under the current ordinance, the fine for a violation of the condominium conversion ordinance is \$200 per violation. Each violation of the ordinance constitutes a separate offense.

Under the proposed ordinance, the fine for violating a provision of the condominium conversion ordinance is no less than one thousand dollars per violation. Each violation of the ordinance will constitute a separate offense.