



## CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

March 21, 2019

### REPORT OF THE LEGISLATIVE MATTERS COMMITTEE

Attendee Name	Title	Status	Arrived
Mark Niedergang	Chair	Present	
Lance L. Davis	Vice Chair	Present	
Matthew McLaughlin	Ward One City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Present	
Katjana Ballantyne	Ward Seven City Councilor	Present	
William A. White Jr.	City Councilor At Large	Present	
Ben Ewen-Campen	Ward Three City Councilor	Present	
Jefferson Thomas ("J.T.") Scott	Ward Two City Councilor	Present	
Mary Jo Rossetti	City Councilor at Large	Present	
Wilfred N. Mbah	City Councilor at Large	Present	
Stephanie Hirsch	City Councilor At Large	Present	

Others present: Eileen McGettigan - Law, Shannon Philips - Law, Hannah Carrillo - OSPCD, George Proakis - OSPCD, Ellen Shachter - OSPCD, Kevin Klein - ISD, Matthew Zaino - ISD, Annie Connor - Legislative Liaison, Kimberly Wells - Assistant Clerk of Committees.

The meeting took place in the Council Chamber and was called to order at 6:02 PM by Chairman Niedergang and adjourned at 9:46 PM.

### **Condominium Conversion Ordinance**

(see [www.somervillema.gov/cco](http://www.somervillema.gov/cco) for revised draft ordinance and other documents)

#### **205420: Assistant City Solicitor submitting an updated Condominium/Cooperative Conversion Ordinance.**

This ordinance has been a work in progress for one year now, and many revisions have been made. Councilor Davis motioned that the Council adopt the March 12th draft as the current working version. The motion passed on a voice vote.

President Ballantyne expressed concern that owners should be allowed to sell to family members prior to offering tenants or others the right of first refusal and shared drafted language that if the owner is transferring property to a relative within the fourth degree of kindred, there shall be no tenant/city right to purchase. She suggested an amendment that she had written out to address this. There was significant discussion of the amendment, and she revised her amendment as a result

Councilor White noted that the fourth degree of kindred extends to great-great grandchildren, great-great grandparents, first cousins, great aunts/uncles, and grand nieces/nephews and wanted to clarify that this extent of the exclusion was the intention. Councilor Davis further asked for clarification that this would enable an unrelated tenant to be evicted. President Ballantyne confirmed that the tenant protections would remain, but the family would have the first right to purchase. Councilor White expressed concern that this could be a way to circumvent the rules through utilization of extended family members and Councilor Hirsch added that perhaps an owner-occupancy requirement be considered. Councilor White agreed that a period of time for required occupancy could be a way to accomplish the goal without allowing for the intent to be easily distorted. Councilor Davis shared that a way to address these concerns might be to institute a time period within which the tenant/city right to purchase would be reinstated if the property was listed for sale. Chairman Niedergang and Councilor White also agreed that a "holding period" would be an effective way to address the issue without requiring a lot of administrative work.

President Ballantyne moved to amend the ordinance Section 7-64 (1)(b)(iii) before the word "that" (iv) to add "except as set forth in 7-64 (4)(c) if an owner has an intent to convert a housing accommodation to a condominium or cooperative form of ownership, and the owner is transferring property as part of a conversion to a relative within the fourth degree of kindred, there shall be no tenant/city right to purchase. Any notices pursuant to Section 7-64 are not required to comply with Section 7-64 (b)(iii),"

with the provision that there be a 2 year holding period, which City staff will write up and insert into the ordinance.

The revised amendment passed on a voice vote.

President Ballantyne also motioned to amend the ordinance Section 7 to read "except as set forth in Section 7-64 (4)(c)".

The amendment passed on a voice vote.

President Ballantyne also motioned to amend Section 7-64 (4)(a) at the end of the first paragraph after the word "agreement" to read "Where there is more than one unrelated adult tenant in a household, the right to purchase shall only apply if (a) all tenants opt to purchase jointly or (b) if all tenants other than those opting to exercise their rights to purchase waive their right to purchase under this section".

Councilor Davis asked whether "household" should be changed to "unit" and Ms. Shacter clarified that the terms are interchangeable in the definition in this case.

The motion passed on a voice vote.

President Ballantyne motioned to amend Section 7-64 (4)(a) in the second paragraph after the word perpetuity, to remove the period and add to the sentence "in the event that the city or its designee purchases such unit and to the extent possible dependent on any restrictions of funding source, no tenant shall be displaced as a result of such sale".

The motion passed on a voice vote.

President Ballantyne motioned to reorganize the Definitions Section 7-63 including adding two paragraphs, so the section reads "'condominium or cooperative conversion eviction', shall mean

(1) an eviction of a tenant for the purpose of removing such tenant from a housing accommodation in order to facilitate the initial sale and transfer of legal title to a condominium or cooperative unit in such housing accommodation to a prospective purchaser or

(2) an eviction of a tenant by any other person who has purchased a condominium or cooperative unit in a housing accommodation when the tenant whose eviction is sought was a resident of the housing accommodation at the time the notice of intent to convert is given or should have been given to convert the building or buildings to the condominium or cooperative form of ownership pursuant to section 7-64. However, that the eviction of a tenant for non-payment of rent or other substantial violation of a rental

agreement shall in no event be deemed a condominium or cooperative conversion eviction, as long as the landlord would have taken the same action at the same time whether or not the owner was converting the building to condominiums.

If a prior owner transfers property to a prospective purchaser where the owner knows or should have known that the prospective purchaser intends to convert the property to a condominium or cooperative unit, and such prior owner seeks to evict the tenant in anticipation of conversion, such eviction shall be deemed to be a condominium or cooperative conversion eviction for the purposes of this section.

For purposes of this definition, the 'initial sale and transfer of legal title' shall mean the first bona fide sale or proprietary lease for fair market value; and "eviction" shall include, without limitation, any action by an owner of a housing accommodation which causes substantial deprivation of a tenant's beneficial use of such housing accommodation, materially impairs such tenant's beneficial enjoyment of such housing accommodation, or is intended to compel such tenant to vacate or to be constructively evicted from such housing accommodation. An eviction shall be presumed to be a condominium or cooperative conversion eviction if the owner has the intent to convert, as defined herein".

The motion passed on a voice vote.

Councilor Hirsch stated her continuing concerns that this revised ordinance with much greater protections for vulnerable tenants may have the opposite of the intended effect and may do more harm than good to our most vulnerable residents. It creates a disincentive for landlords to rent to vulnerable tenants. Councilor McLaughlin agreed with Councilor Hirsch's concerns, but noted that this will not make things any worse than they are now. Councilor Davis also agreed that this could impact an ill-motivated landlord, but the opinion of Ms. Shachter that overall this will help vulnerable tenants is what he will defer to. Councilor Ewen-Campen echoed Councilor Davis's point and shared that this is a legal tool to prevent evictions, and this is necessary and could make a big difference. President Ballantyne noted that with housing prices at their current levels, these provisions will likely not address the vulnerable populations at all. Councilor Clingan added that we want to allow the people who live here to stay here, regardless of their income levels. Councilor Rossetti shared that this has been a long time coming and it is a response to constituents who are concerned about developers flipping condo units. She wants to make sure that homeowners understand that this ordinance doesn't apply to owners who simply want to sell their homes. Councilor Mbah wondered if there was anything that would incentivize benevolent landlords and Ms. Schachter replied that there is an exemption from the comparable housing requirement for those landlords who are charging below-market rent. Councilor White noted that there are protections for the disabled and other populations under the fair housing law and suggested that the impact on benevolent landlords will likely be minimal. Ms. Shachter noted that it is possible that this could lead to some discrimination, but weighing the pros and cons leads her to believe that the changes in this ordinance would have a positive outcome. Councilor McLaughlin stated that the provisions for assistance with moving might be where the most benefits are seen, so the impact will still be positive, even if it does not succeed in keeping people in Somerville.

Councilor Davis motioned to approve the revised ordinance as amended.

The motion passed on a voice vote, with 10 Councilors voting in favor and Councilor Hirsch voting against.

Councilor Hirsch clarified that her primary concern was not with financial difference, but rather with notifications, i.e., 1 year vs. 7 years.

**RESULT:**

**APPROVED AS AMENDED**

**202523: That the City Solicitor prepare a draft ordinance to amend or replace the current Condominium Conversion Ordinance, and incorporate the strongest parts of relevant state**

law.

**RESULT:**

**WORK COMPLETED**

**207561: 9 residents submitting comments re: #205420, the proposed condominium review ordinance.**

**RESULT:**

**PLACED ON FILE**

**207619: 2 residents submitting comments re: #205420, the proposed condominium review ordinance.**

**RESULT:**

**PLACED ON FILE**

### **Short-Term Rentals Ordinance**

**(see [www.somervillema.gov/strs](http://www.somervillema.gov/strs) for revised draft ordinance and other documents)**

**206613: City Solicitor submitting an ordinance to require the registration of short term rental properties.**

Councilor Ewen-Campen motioned to adopt the revised draft from March 20 as the working version of the ordinance.

The motion passed on a voice vote.

Interim Director of Inspectional Services Department (ISD) Mr. Klein shared a presentation that covered the registration procedure; building code; implementation and enforcement; cost concerns; and ISD concerns.

President Ballantyne asked for clarification between an owner and an operator. Mr. Klein noted that tenants would have the ability to be an operator.

Councilor Rossetti asked whether the approval of licenses would be through the Council and the Licenses & Permits Committee. Mr. Klein replied that he thinks they would be issued directly through ISD and that fees are still being determined. Councilor Rossetti asked the Councilors to consider whether this should take place through the licenses and permits process. Councilor White inquired whether the existing staff would be sufficient to accommodate this need.

President Ballantyne asked for clarification on whether the code requirements would apply to an entire house or would be per unit. Mr. Klein shared that fire prevention code supersedes the building code. A change from the current code is that all units that will be available for short-term rental will be required to have hard-wired smoke and carbon monoxide detectors.

Councilor Ewen-Campen clarified that there would only be one inspection. Councilor Scott noted that the ordinance refers to a certificate of registration, but not Certificate of Occupancy. A Certificate of Occupancy is a part of the building code that prohibits a building from being changed until a new certificate is acquired. Councilor Scott asked whether this would require an owner to change the use of their building. Mr. Zaino responded that the use classification would not change, but a Certificate of Occupancy would still be required. Councilor Scott asked for data on how many buildings in the city currently have Certificates of Occupancy. Councilor White asked if the sprinkler requirements would

apply to all units in a multi-family home or whether it could apply to only the one unit being used for short-term rentals. Mr. Zaino replied that it would depend on whether the unit was properly fire-separated from the others. Councilor Scott clarified that if one unit in a condo applied for the certificate to use their property for short-term rentals, the requirements would cascade to the other units in the building. Councilor White noted that the unit owner would likely have to notify the condo association.

Councilor McLaughlin commented that this process seems needlessly onerous and people are unlikely to follow it. Councilor Ewen-Campen wondered whether Cambridge and Boston were following the same process and Mr. Klein responded that they are not interpreting the code as a change of use. Ms. Connor added that the building code has not caught up with short-term rentals as a phenomenon and Somerville is trying to err on the side of safety in its interpretation of the code. The City is trying to put pressure on the state body that establishes and regulates the building code for guidance. Ms. Phillips noted that the Building Commissioner's interpretation of the Building Code is where the authority lies to make the determination for the city. Councilor Davis noted that this would likely make things less safe, as it is difficult to comply with. Councilor White asked what analysis was used by Cambridge and Boston to arrive at a different interpretation and requested copies of any written guidelines or documents from those cities. Councilor White asked whether a city could ask for a variance from the state for a section of the Building Code and Mr. Klein knows of no cases of that occurring but thinks it may be possible. Councilor Rossetti reminded everyone that the importance of having a policy and ordinance in place was reinforced by a large fire several years ago in a short-term rental and it is important to focus on safety.

Councilor McLaughlin suggested that this ordinance could be simplified to dictate only when a short-term rental should be banned, and then allowing ISD to enforce the law that already exists. Councilor Davis commented that it is important that this moves forward, and that may mean reducing some language and deferring to ISD to bear the responsibility for determination of code enforcement. Councilor White asked what the current response from ISD is in terms of regulating short-term rentals and Mr. Klein stated that the current activity is solely reactive and at the request of neighbors who lodge complaints.

Mr. Proakis shared that the state Building Code is evolving and it is possible that if the City has an ordinance, future changes at the state level could make it easier to enforce. Also, there are two big differences between where we stand now and where we would stand with an ordinance. One is that currently, the City's interpretation of the zoning code is that rooms in homes can be rented short-term, while individual units cannot be. This relies on a line in zoning that is not particularly clear. The proposed ordinance would provide clarity in terms of what would be legal and what could be licensed by ISD. The second is that once an ordinance is in place, the value of using a vendor to vet the data that could provide addresses for enforcement could be realized by the City.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**206892: Chris Dwan submitting comments re: #206613, a proposed Ordinance for short-term rental properties.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**207178: That this Board take steps to reduce the terms of the Planning and Zoning Board members from 5 to 3 years.**

President Ballantyne asked whether making this change to the length of terms is even legal. Councilor White said per his research into 40A, there is no term limitation. Mr. Proakis said that his interpretation is that a change to the ZBA terms could only be done with a home rule petition to the State Legislature but the Council could make this change itself for the Planning Board. Councilor White stated that he wants

somebody from the City Solicitor's Office to be present the next time this question is discussed to hear the City Solicitor's opinion on whether the Council has the power to change the terms for the ZBA.

Mr. Proakis suggested that there are a number of reasons why it is not a good idea to shorten the terms, and said that while there is not time to discuss it now since the hour is late, he will argue when this is brought up again that shorter terms provide more power to the Administration over these Boards.

**RESULT:**

**KEPT IN COMMITTEE**

**Handouts:**

- Law Dept Response (with 205420)
- K Ballantyne Condo Conversion Amendments (with 205420)
- Generational Chart (with 205420)
- FINAL STR ISD Council Presentation 2019.03.21 (with 206613)
- Memo - B Ewen-Campen & Public Comment (206613)
- Short Term Rentals- edits after 02.07.19 meeting (with 206613)
- Short-Term Rental Ordinance 03.20.2019 ISD tracked changes (with 206613)
- STR Revenue Estimates\_032019 (with 206613)