



# CAMBRIDGE CITY COUNCIL

Dennis J. Carlone  
City Councillor

**DATE: MARCH 1, 2018**

**TO: DONNA P. LOPEZ, CITY CLERK**

**FROM: COUNCILLOR CARLONE**

**SUBJECT: COMMUNICATIONS AND REPORTS FROM OTHER CITY OFFICERS**

Please place the attached draft language on the Communications and Reports from Other City Officers entitled "AN ACT TO PRESERVE AFFORDABLE HOUSING IN THE CITY OF CAMBRIDGE THROUGH A TENANT'S RIGHT TO PURCHASE."

My intention is to amend the Calendar Item to insert this language.

Thank you for your attention in this matter.

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts  
in General Court assembled.*

*The undersigned, citizens of ..... respectfully  
petition for the passage of the accompanying bill or resolve, and/or for legislation.*

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**AN ACT TO PRESERVE AFFORDABLE HOUSING IN THE CITY OF CAMBRIDGE THROUGH A  
TENANT'S RIGHT TO PURCHASE**

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**Petitioners are requested to sign names and addresses legibly.**

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**AN ACT TO PRESERVE AFFORDABLE HOUSING IN THE CITY OF  
CAMBRIDGE THROUGH A TENANT’S RIGHT TO PURCHASE**

**SECTION 1.** (a) For the purposes of this act, unless the context clearly requires otherwise, the following words shall have the following meanings:

“Bona fide offer,” a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of development of the property for residential, industrial or commercial use, made by a party unaffiliated with the owner for a fixed consideration payable upon delivery of the deed. The owner shall have the burden of proof to establish that an offer of sale is a bona fide offer.

“Housing accommodation,” a building or buildings, structure or structures, or part thereof, rented or offered for rent for living or dwelling purposes, including, without limitation, houses, apartments, condominium units, cooperative units and other multi-family residential dwellings, but excluding a group residence, homeless shelter, lodging house, orphanage, temporary dwelling structure, transitional housing; publicly-assisted housing as defined in section 1 of chapter 40T of the General Laws, rental units in any hospital, skilled nursing facility, or health facility, public housing units managed by the

local housing authority; federal public housing units that are subsidized and regulated under federal laws to the extent such applicable federal laws expressly preempt the provisions of this section, any units held in trust on behalf of a developmentally disabled individual who permanently occupies the unit, or will occupy the unit upon turning 22 years of age, or a unit that is permanently occupied by a developmentally disabled parent, sibling, child, or grandparent of the owner of that unit, and any rental unit that is owned or managed by a college or university for the express purpose of housing students, faculty, or staff.

"Immediate family member", a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, or grandchild.

"Notice of intended sale," a written notice in a form approved by the City of Cambridge which shall include: (i) a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, and which shall be a bona fide offer as defined herein, and (ii) a notice of tenant's rights provided by this act.

“Owner,” a person, firm, partnership, corporation, trust, organization, limited liability company, or other entity, or its successors or assigns, that holds title to a housing accommodation.

“Registered tenant association,” a group or entity representing at least 51 percent of the households occupying the housing accommodation which has the legal capacity to hold an interest real property, and has delivered a registration statement attesting to same, on a form approved by the City of Cambridge, to the City of Cambridge’s Office of Housing Division and the Office of the City Manager or their designee by hand or by certified mail. Upon delivering such a statement, which must occur within 45 days after the day following the latest date of deposit in the United States mail of any notice of intended sale which complies with this act, such association shall be the sole representative of the tenants, and any prior notice of intended sale is deemed delivered to such association;

“Sale”, “Sell”, or “Sold,” any conveyance or transfer of an interest in the real property comprising part or all of the housing accommodation, excepting the following: eminent domain takings, mortgage deeds; deeds to or by the city or town in which such land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation;

deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to its parent corporation for no consideration other than the cancellation and surrender of capital stock of such subsidiary which do not change beneficial ownership; property transferred into a revocable trust for no consideration where the grantor is the current beneficiary of the trust; property transferred by the trustee of a revocable trust if the transfer would otherwise be excluded under this act if made by the grantor of the revocable trust; transfer pursuant to court order or court-approved settlement; and property transferred by devise or otherwise as a result of death. A nonexempt transfer subsequent to any exempt transfer or transfers shall be subject to the provisions of this act.

“Tenant,” a person or group of persons entitled to possess or occupy the housing accommodation pursuant to a lease or tenancy at will, the right to occupy having been established for no less than six months at the time of delivery of the notice of intended sale of a housing accommodation. If the housing accommodation is vacant at the time of delivery of the notice of intended sale a “tenant” shall include such a person or group of persons who had resided in the unit within the time period of twelve months prior to the date on which any advertisement, listing, or public notice is first made that the housing accommodation is for sale, provided that the tenant was not evicted for cause.

(b) Notwithstanding anything to the contrary, this act shall not apply to the following types of housing accommodations: (i) a housing accommodation comprised of 2 separate units each of which is owner-occupied, and (ii) a housing accommodation comprised of 2 separate units one of which is owner-occupied, the other unit of which is occupied by an immediate family member who has resided in said unit for at least 6 months at the time of the sale.

## **SECTION 2. Tenant Opportunity to Purchase**

- (a) Notwithstanding any general or special law to the contrary, in the City of Cambridge, before a housing accommodation may be sold, the owner shall give a notice of intended sale to each tenant, and to any registered tenant association, of any bona fide offer that the owner intends to accept for such sale. Such notice shall be mailed by regular and certified mail, with a simultaneous copy to the City of Cambridge's Housing Division and the Office of the City Manager, or their designee. If a housing accommodation contains more than one household unit, the owner shall also post a copy of such notice in a conspicuous place in a common area of the housing accommodation. If the notice of intent to sell does not contain all of the required material stated above, then the tenant,
- (b) registered tenant association, or their assignee, within 30 days after receipt, shall notify the owner in writing that notice is insufficient and does not comply.

(b) Beginning with the day following the latest date of deposit in the United States mail of any notice which complies with this section, the tenant, registered tenant association, or their assignee, and the City of Cambridge or its assignee, shall have, in the case of a bona fide offer, a right of first refusal to meet a bona fide offer to purchase the housing accommodation, which shall run for the period of days as set forth in section 3 of this act. Said right created herein shall inure to the tenant, registered tenant association, or their assignee, and the City of Cambridge or its assignee, for the time periods provided in this act. No sale of a housing accommodation shall occur unless and until the owner receives documentation in a form approved by the City of Cambridge demonstrating there has been compliance with the notice requirements of this act, and either the right to purchase has been exercised, assigned, or lapsed.

(c) During the time periods provided herein for the exercise of any right to purchase, the tenant, registered tenant association, or their assignee shall have the right at reasonable times and upon reasonable notice, to enter upon the housing accommodation for the purpose of inspecting or testing the land and premises. No owner shall unreasonably refuse to enter into, or unreasonably delay the execution or closing on a purchase and sale with a tenant, registered tenant association, or their assignee who have made an offer to meet the price and substantially equivalent terms and conditions of a bona fide offer for which notice is required to be given pursuant to this act. The parties must bargain in good faith. The following constitute prima facie evidence of a failure to bargain in good faith:

(i) failure of an owner to offer a price or term at least as favorable as that offered to a third party, within the periods specified in this act without a reasonable justification for so doing; (ii) failure of an owner to contract in a manner which substantially conforms with the price and terms of a third party contract within the time periods specified in this act without a reasonable justification for so doing; or (iii) intentional failure of a party to comply with the provisions of this act. Nothing herein shall be construed to require an owner to provide financing to a tenant, registered tenant association, the City of Cambridge, or their assignee.

(d) A tenant or registered tenant association, or the City of Cambridge, which has the right to purchase hereunder, at its election, may assign its purchase right hereunder to a qualified, eligible entity as defined by city ordinance or regulation for the purpose of continuing the use of the housing accommodation as permanently affordable rental housing. If the right has been assigned, the assignor shall provide written notice of the assignment, on a form acceptable to the City of Cambridge, to the owner, mailed by regular and certified mail, with a simultaneous copy to the City of Cambridge's Housing Division and the Office of the City Manager, or their designee.

(e) If there is a subsequent bona fide offer after the owner has delivered its notice of intended sale as required under this act that results in a material change, or if the terms of a third-party contract to purchase the housing accommodation materially change between the time an offer of sale is made and the sale of the housing accommodation, then the

owner shall first give each tenant, registered tenant association, and the City of Cambridge a new notice of intended sale which shall be subject to the rights set forth in this act. For the purposes of this subsection, a “material change” shall include, without limitation, a change in the purchaser or a reduction in the sale price of 10 percent or more. An owner shall not be required to deliver a new notice of intended sale if there is an increase in the sale price.

(f) A tenant, registered tenant association, the City of Cambridge, or its assignee holding a right to purchase the housing accommodation under this act, shall have the right to purchase the housing accommodation at full and fair market value, and at its’ option such value may be determined by an impartial appraisal performed by a certified appraiser hired at the equal expense of both the tenant, registered tenant association, the City of Cambridge, or their assignee, and the owner. The City of Cambridge may adopt qualification criteria for eligible appraisers. The appraisal shall be completed and delivered to the parties within 30 days after the notice of the intended sale. Upon determination of the value, the tenant, registered tenant association, or their assignee shall then have 120 days to exercise its option at said value. During the appraisal process, the owner may revoke the intent to sell at any time and with no recourse to either party except that the owner shall reimburse the tenant, tenant organization, or their assignee for its entire share of the cost of any contracted-for appraisal within 14 days of delivery of a written notice to withdraw the notice of intended sale.

(g) In any instance where the tenant, registered tenant association, the city of Cambridge, or their assignee are not the purchaser of the housing accommodation, the owner shall provide evidence of compliance with this section by filing an affidavit of compliance with the City of Cambridge's Housing Division, on a form approved by the City of Cambridge, and in the records of the registrar of deeds in the county where the property is located within 7 days of the sale.

(h) In any instance where an owner intends to sell, convey, or otherwise transfer an interest in a housing accommodation but asserts that the proposed transaction does not require the owner to deliver a notice of intended sale under this act, the owner shall first file a notice of transfer on a form approved by the City of Cambridge. Such notice shall be mailed by regular and certified mail at least 90 days prior to the proposed date of sale to any tenant or registered tenant association which would otherwise be entitled to a notice of intended sale under this act, with a simultaneous copy to the City of Cambridge's Housing Division and the Office of the City Manager, or their designee. An owner's failure to provide a notice of transfer shall create a rebuttable presumption that the sale is subject to the right to purchase provided by this act. A tenant or registered tenant association, the City of Cambridge, or their assignee may seek a judicial determination as to whether the proposed sale is subject to the right to purchase under this act, by filing a civil action within 30 days of receipt of the notice of transfer.

### SECTION 3. Statement of Interest; Exercising Right to Purchase.

(a) Housing accommodations with 2 or 3 units.

(1) The following provisions apply to a housing accommodation comprised of 2 or 3 rental units: (a) For a period of 30 days after the day following the latest date of deposit in the United States mail of any notice of intended sale which complies with this act, the tenants or its assignee, shall have the option to jointly provide the owner and the City of Cambridge's Housing Division or its designee, mailed by regular and certified mail, with a statement of interest which shall be a written notice in a form approved by the City of Cambridge which shall include: a clear expression of interest on the part of the tenant to exercise the right to purchase as provided by this act, provided that if the tenants acting jointly have failed to submit a written statement of interest, an individual tenant shall have 7 additional days to deliver a statement of interest in the same manner set forth in this clause, and provided further, that if an individual tenant has failed to submit a written statement of interest, the City of Cambridge or its assignee shall have 7 additional days to deliver a statement of interest in the same manner set forth in this clause. (b) If a written statement of interest has been mailed in accordance with this section, the parties shall have no less than 90 days from the date of the mailing of the statement of interest to negotiate and execute a purchase and sale agreement. If more than one individual tenant submits a written statement of interest, the owner shall negotiate with each tenant separately, or jointly if the tenants agree to negotiate jointly. For every day of delay in

providing information by the owner as required by this act, the negotiation period is extended by 1 day. If, at the end of the 90-day period or any extensions thereof, the tenants jointly have not contracted with the owner, the owner shall provide an additional 30-day period, during which any one of the current tenants may contract with the owner for the purchase of the housing accommodation. If the owner is required to negotiate with more than one tenant pursuant to this section, the owner may decide which contract is more favorable without liability to the other tenants. (c) Any purchase and sale agreement shall provide a reasonable period of time of not less than 90 calendar days from the execution of the agreement in order for the tenant to secure financing and financial assistance. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate. (d) If 240 days elapse from the date of the owner's mailing of the notice of intended sale and the owner has not sold or contracted for the sale of the housing accommodation, the owner shall comply anew with the terms of this act.

(b) Housing accommodations with 4 or more units.

(1) The following provisions apply to housing accommodations with four or more rental units: (a) Tenants may, but are not required to, form a registered tenant association. For a period of 30 days after the day following the latest date of

deposit in the United States mail of any notice of intended sale which complies with this act or the date of the filing of a registration statement with the City of Cambridge by a registered tenant association, whichever is later, the tenants shall have the option to jointly, or acting through a registered tenant association, or its assignee, shall provide the owner and the City of Cambridge's Housing Division or its designee, mailed by regular and certified mail, with a statement of interest which shall be a written notice in a form approved by the City of Cambridge which shall include: a clear expression of interest on the part of the tenants or registered tenant association to exercise the right to purchase as provided by this act, provided that if the tenants either acting jointly or through a registered tenant association have failed to submit a written statement of interest, an individual tenant shall have 7 additional days to deliver a statement of interest in the same manner set forth in this clause , and provided further, that if an individual tenant has failed to submit a written statement of interest, the City of Cambridge or its assignee shall have 7 additional days to deliver a statement of interest in the same manner set forth in this clause.. (b) If a written statement of interest has been

(2) mailed in accordance with this section, the parties shall have no less than 120 days from the date of the mailing of the statement of interest to negotiate and execute a purchase and sale agreement. For every day of delay in providing information by

the owner as required by this act, the negotiation period is extended by 1 day. If, at the end of the 120-day period or any extensions thereof, the tenants jointly or through a registered tenant association have not contracted with the owner, the owner shall provide an additional 30-day period, during which any one of the current tenants may contract with the owner for the purchase of the housing accommodation. If the owner is required to negotiate with more than one tenant pursuant to this section, the owner may decide which contract is more favorable without liability to the other tenants. (c) Any purchase and sale agreement shall provide a reasonable period of time of not less than 120 calendar days from the execution of the agreement in order for the tenant or registered tenant association to secure financing and financial assistance. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 240 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate. If the registered tenant

(3) organization's articles of incorporation provide, by the date of execution of the purchase and sale agreement, that the purpose of the such organization is to

convert the housing accommodation to a nonprofit housing cooperative with appreciation of limited

(4) share value, the owner shall afford not less than 180 additional days after the date of contracting or such additional time as required by this section. (d) If 360 days elapse from the date of the owner's mailing of the notice of intended sale and the owner has not sold or contracted for the sale of the housing accommodation, the owner shall comply anew with the terms of this act.

#### **SECTION 4.**

(a) The purposes of this chapter favor resolution of ambiguity by any judicial or administrative body or officer toward protecting the legal rights of tenants to the

(b) maximum extent permissible under law. If this act conflicts with another provision of law of general applicability, the provisions of this act control.

(b) The right of a third party to purchase a housing accommodation is conditional upon exercise of a tenant, registered tenant association, or their assignee's rights under this act.

The time periods for negotiation of a purchase and sale agreement and for the sale of a housing accommodation pursuant thereto under this act are minimum periods, and the owner may afford a reasonable extension of such periods, without liability under a third party contract. Third party purchasers are presumed to act with full knowledge of the rights provided for under this act.

(c) This law is in addition to and is not intended to abrogate any other right to purchase, or right of first refusal to purchase a housing accommodation, as provided by general or special law, or by city ordinance.

**SECTION 5.** The City of Cambridge is authorized to provide a grant or loan, or otherwise assist, from its affordable housing trust fund for the purposes of purchases of real property under this act.

**SECTION 6.** An owner may not require a tenant, registered tenant association, the City of Cambridge, or their assignee to prove financial ability to perform as a prerequisite to entering into a contract under this act. The owner shall not require the tenant to pay a deposit in excess of the lesser of: (a) the deposit in the third party purchase contract, (b) 5 percent of the sale price, or (c) \$250,000.

**SECTION 7.** (a) It is illegal for an owner to evict a tenant or tenants, or otherwise terminate a tenancy without just cause, in order to avoid application of this law. Any rights provided under this act are not waivable. It is illegal for an owner to require a tenant to waive any rights provided to the tenant under this act.

(b) Any aggrieved tenant, registered tenant association, the City of Cambridge, or their assignee may seek damages, including without limitation, relief in the form of a percentage of the sales price and/or injunctive relief in the form of specific performance to compel transfer of property, attorney's fees and costs, and under the provisions of chapter 93A of the General Laws.

(c) The City of Cambridge is authorized to enforce this act and may promulgate ordinances, rules, regulations, and any forms necessary for implementation or enforcement. The City of Cambridge may seek injunctive, declaratory, and compensatory relief in a court of competent jurisdiction.

**SECTION 8.** This act shall take effect upon its passage.