

BRACH EICHLER L.L.C.

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TOWNSHIP OF MONTCLAIR
COMMITTEE OF PETITIONERS, and
MONTCLAIR PROPERTY OWNERS
ASSOCIATION

Plaintiff,

v.

TOWNSHIP OF MONTCLAIR;
MAYOR AND COUNCIL OF THE
TOWNSHIP OF MONTCLAIR and
STATE OF NEW JERSEY

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: ESX-L-

Civil Action

**VERIFIED COMPLAINT FOR
TEMPORARY AND PERMANENT
INJUNCTIVE RELIEF AND IN LIEU OF
PREROGATIVE WRIT**

Plaintiffs, Township of Montclair Committee of Petitioners and the Montclair Property Owners Association, by way of Complaint against Defendants say:

PRELIMINARY STATMENT

In the midst of a global pandemic, a healthcare and economic disaster of proportions never before experienced in our memory, the Township of Montclair refused all requests to postpone its partisan motivated adoption of a contentious rent control ordinance---knowing that by doing so the Plaintiff would not be able to exercise the power of protest through referendum. While the Plaintiffs are reluctant to engage in litigation during a state of emergency, they must promptly act to vindicate the public interest and its statutory power to petition the government to redress governmental action through referendum. This action seeks to preserve the *status quo* pending the

end of the State of Emergency and to protect the statutory power to engage in referendum activity provided in N.J.S.A. 40:69A-185 by seeking a stay and equitable tolling from the Court.

PARTIES

1. Plaintiff, Township of Montclair Committee of Petitioners is a group of Montclair residents that have organized pursuant to N.J.S.A. 40:69A-1 at seq to engage in referendum activity to challenge actions taken by the Township of Montclair pursuant to the statutory right of referendum. (“Committee”)

2. Plaintiff, Montclair Property Owners Association (“MPOA”), is an association of property owners organized to vindicate the common rights and grievances of its members, who individually own more than 1000 rental properties within the Township of Montclair. (“MPOA” or collectively with Committee “Plaintiffs”).

3. Defendant, the Township of Montclair (“Montclair”), is a municipal corporation, duly organized and existing pursuant to and in accordance with the laws of the State of New Jersey.

4. Defendant, Mayor and Council of the Township of Montclair (“Governing Body”) are the individuals currently holding positions of legislative and executive authority within Montclair and whose authority is derived from the Montclair Charter and who exercise authority under color of law.

5. Defendant, State of New Jersey, is named herein as a nominal defendant because this Complaint seeks to protect and vindicate Plaintiffs’ power of referendum under a New Jersey statute, N.J.S.A. 40:69A-185, and Executive Orders 103, 107 and 108 recently signed by Governor Phil Murphy as a result of the COVID-19 pandemic.

COUNT I

**INJUNCTION TO EQUITABLY TOLL THE EFFECTIVE DATE OF THE
ORDINANCE AND THE COMMENCEMENT OF THE TIME PERIOD TO PROTEST
ORDINANCE BY PETITION FOR REFERENDUM PURSUANT TO N.J.S.A. 40:69A-185
UNTIL THE STATE OF EMERGENCY IS LIFTED**

6. On April 7, 2020, Montclair enacted an “Ordinance amending the Code of the Township of Montclair to include Chapter 257 Rent Regulation” (the “Ordinance”). Attached hereto as **Exhibit “A”** is a true and accurate copy of the Ordinance.

7. Montclair operates under the Optional Municipal Charter Law (“OMCL”) popularly known as the Faulkner Act, N.J.S.A. 40:69A-1, *et seq.*, under a “council-manager” plan.

8. Citizens in a council-manager system have been granted the power of protest through referendum to challenge any ordinance passed by the council; but are required to complete the process within 20 days of the final passage and approval of the Ordinance in order to prevent the Ordinance from becoming effective.

9. The statutory framework is designed to protect this power of referendum by mandating that ordinances cannot be made effective prior to the 20 day period expiring. Specifically, N.J.S.A. 40:69A-185, provides in pertinent part:

No ordinance passed by the municipal council ... shall take effect before twenty days from the time of its final passage and its approval by the mayor where such approval is required. If within twenty days after such final passage and approval of such ordinance a petition protesting against the passage of such ordinance shall be filed with the municipal clerk and **if the petition shall be signed by a number of the legal voters of the municipality equal in number to at least 15% of the total votes cast** in the municipality at the last election at which members of the General Assembly were elected, **the ordinance shall be suspended from taking effect** until proceedings are had as herein provided

10. Upon gathering the required signatures and approval by the Clerk, a petition protesting an ordinance, the ordinance “shall be suspended until ... withdrawn by the Committee

of Petitioners or until repeal of the ordinance by the vote of the council or *approval or disapproval of the ordinance by the voters.*” N.J.S.A. 40:69A-189 (emphasis added).

11. The Committee has been organized to protest the adoption of the Ordinance and desires to engage in the activities necessary to gather the required signatures---approximately 1000--- submit the petition to the Clerk to stop the implementation of the Ordinance, and thereafter have the matter decided by the voters of Montclair.

12. Currently, the worldwide COVID-19 pandemic has resulted in a national and state declaration of a State of Emergency. This has resulted in the issuance of a number of Executive Orders by the Governor. Specifically, by Executive Order 103, dated March 9, 2020 Governor Phil Murphy has declared a State of Emergency and a Public Health Emergency in New Jersey to contain the spread of Covid-19.

13. On March 21, 2020, Governor Murphy signed Executive Order 107 implementing a statewide stay-at-home order directing all New Jersey residents to stay at home until further notice.

14. For their own health and safety, as well as to serve the public interest of containing the spread of a deadly virus, the citizens of Montclair are compelled to remain in their homes and to practice “social distancing” while avoiding gatherings of any kind outside the home.

15. Surprisingly, Montclair chose this historically challenging time to pass a strict rent control ordinance for Montclair property owners knowing that its actions could not be challenged by exercising the power of protest and referendum because of the physical limitations on movement and referendum activities due to the global pandemic and state of emergency.

16. The Ordinance is a significant law change affecting landlord-tenant relations and private property owners in Montclair. Historically, the issue of rent control in Montclair has been

considered twice in the past, and the voters have roundly rejected rent control in previous referendum.

17. Accordingly, the Committee plans to exercise the power of protest through referendum to challenge Montclair's adoption of rent control, and to prevent the Ordinance from becoming effective.

18. However, the Covid-19 pandemic and Governor's Murphy's orders prevent Plaintiffs from engaging in its statutory power of referendum and the constitutionally protected free speech and assembly rights that are necessary to exercise the power of referendum before the Ordinance becomes effective on April 27, 2020.

19. In this time of severely restricted social interaction, the public's power of referendum and the requisite need to gather signatures from Montclair voters within the statutory twenty (20) day period is significantly impaired if not barred as a matter of current emergency law.

20. Plaintiffs cannot canvass the Montclair community and engage in the necessary face-to-face interaction to educate the electorate and obtain their signature for a petition to protest the Ordinance. To do so would be a direct violation of Governor Murphy's orders and runs the risk of Plaintiffs' members' contracting or spreading Covid-19.

21. Accordingly, with the adoption of the Ordinance, Plaintiffs are faced with the choice of violating the executive orders and risking likely health and safety consequences for its members on the one hand or losing its statutory right to protest the ordinance and prevent its implementation by referendum on the other hand.

22. By Letter dated March 31, 2020, Plaintiffs requested that Montclair adjourn the final adoption hearing scheduled for April 7, 2020 to adopt the strict rent control ordinance and advised Montclair that in light of the Covid-19 pandemic and Governor Murphy's orders the

statutory power of referendum may exist, but it cannot be executed in any meaningful fashion. Thus, the letter informed, adopting the resolution in the current circumstances operates to deprive the Plaintiffs of their statutory rights. Attached hereto as **Exhibit “B”** is a true and accurate copy of the letter.

23. Montclair did not respond and chose to move ahead to adopt the Ordinance despite the current pandemic and its effect on Plaintiffs’ statutory right.

24. On the same day as Montclair was deciding to plow ahead with final adoption, the Governor issued additional emergency orders extending school board election deadlines; changed and extended tax certification deadlines; cancelled standardized student testing; closed the state parks and forests; and extended the public health emergency another 30 days.

25. When it adopted the Ordinance, the Governing Body considered whether to make the Ordinance effective immediately by declaring an “emergency”. The Governing Body declined to declare that it was necessary to implement the Ordinance immediately thus confirming that the implementation of the Ordinance is not an emergency. However the inability of the Committee to secure a suspension of the effective date of the Ordinance because of the global pandemic is irreparably and permanently lost unless a stay and equitable tolling relief to preserve the status quo is provided.

26. The Committee has organized and is desirous of engaging in referendum activities to protest the passage of the Ordinance in the midst of the pandemic. A true copy of the Petition Papers as specified in N.J.S.A. 40:69A-186 are attached as **Exhibit “C”**.

27. As a result of Montclair’s action to enact and adopt the Ordinance, Plaintiffs are exposed to a threat of immediate and irreparable harm to its statutory power of protest through

referendum unless the effective date of the Ordinance and the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 are stayed and tolled until the state of emergency is lifted.

WHEREFORE, Plaintiff Committee demands judgment against Montclair for the following relief:

(a) Entry of a temporary and permanent restraining order declaring that the commencement of the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 for the preparation of a referendum petition and the collection of the requisite number of voter signatures to protest the Ordinance is tolled until the State of Emergency and Executive Orders 103 and 107 are lifted;

(b) Entry of a temporary and permanent restraining order tolling the effective date of the Ordinance and staying the same until the State of Emergency and Executive Orders 103 and 107 are lifted;

(c) Entry of a temporary and permanent restraining order enjoining and restraining Montclair from enforcing or implementing the provisions of the Ordinance until further Order of this Court For attorney's fees and costs; and

(d) For such other relief as the Court deems just and equitable.

COUNT II

VIOLATION OF DUE PROCESS

28. Plaintiffs re-allege and incorporate by reference the allegations in the following paragraphs, as if fully stated herein.

29. Montclair's adoption of the ordinance in the manner and circumstances adopted violates Plaintiffs' due process rights because it deprived Plaintiffs adequate notice and opportunity to be heard.

30. In order to adopt a valid Ordinance the members of the public must be apprised by the government that a proposal is being considered. This is achieved by noting the consideration of an ordinance for first reading by stating as such on an agenda for the public notice for the meeting.

31. Specifically, the Open Public Meeting Act, N.J.S.A. 10:4-7, declares as its purpose and intent that “citizens have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon” In N.J.S.A. 10:4-8 adequate notice is defined as “written advance notice of at least 48 hours, giving the time, date, location and to the extent known, the agenda of any regular, special or rescheduled meeting.”

32. Montclair’s agenda for the March 10, 2020 public meeting did not provide the appropriate notice to the members of the public that it would consider the Ordinance on first reading. In fact, the only mention of rent control in that March 10 agenda was reference that the Ordinance would be discussed at the next council meeting on March 24, 2020. Attached hereto as **Exhibit “D”** is a true and accurate copy of the Agenda.

33. Notwithstanding its lack of any notice to the public in violation of the right of due process, Montclair adopted the Ordinance on first reading on March 10, 2020 ---the day after Governor Murphy issued his Executive Order declaring a state of emergency to exist in New Jersey. The Committee and the members of MPOA were not notified that the matter would even be discussed that day let alone adopted for first reading.

34. Thereafter, and upon information and belief the Ordinance language was first revealed to the public when it was published in the Montclair Times on March 19, 2020 after a state of emergency was declared in New Jersey ten days earlier.

35. Thereafter, on April 7, 2020 ----a mere 19 days after its unannounced adoption on first reading----Montclair's Governing Body considered the Ordinance for final adoption. Prior to the meeting, Plaintiffs and many other members of the public requested that this very important enactment should postponed to allow robust participation and in light of its failure to notify the public about the first reading and the ongoing Covid-19 pandemic that would prevent an effective public meeting.

36. On the same day as Montclair was deciding to plow ahead with final adoption, the Governor issued additional emergency orders extending school board election deadlines; changed and extended tax certification deadlines; cancelled standardized student testing; closed the state parks and forests; and extended the public health emergency another 30 days.

37. Montclair violated the Plaintiffs' due process rights and rights to participate pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq, by conducting the final meeting improperly.

38. Although N.J.S.A. 10:4-9.3 permits a public meeting to be conducted by electronic communication during a state of emergency, the April 7, 2020 meeting was an electronic disaster that did not allow for a full and fair opportunity of public participation. Due to severe technical difficulties, the meeting was impaired by: (1) the inability of members of the public to offer public comments while hearing and reacting to other comments because of the wholly inadequate telephone and video feed provided; (2) the constant cut-off of the phone line provided to call into the meeting; and (3) the inability of anyone to hear the comments of Council during the hearing.

39. Accordingly, Montclair's refusal to adjourn adoption of the Ordinance pending the current state of emergency, their inadequate provisions for public participation, and their failure to

advise the public of its consideration on first reading deprives Plaintiffs of their due process right here.

40. This violation of Plaintiffs' due process rights is compounded by the fact that adoption of the Ordinance under the circumstances above now effectively deprives the Plaintiffs of statutory power of protest through referendum under N.J.S.A. 40:69A-185. Because of the current Covid-19 pandemic, Plaintiffs cannot canvass Montclair publicly to obtain necessary signatures to support a petition protesting the Ordinance because of the pandemic and the governor's stay-at-home orders.

41. As a result of these actions, Plaintiff MPOA in its representative capacity on behalf of its members have been irreparably harmed and have suffered damage.

WHEREFORE, Plaintiff MPOA demands judgment against Montclair for the following relief:

(a) Entry of a temporary and permanent restraining order enjoining Montclair from enforcement of the Ordinance and further restraining implementation of the Ordinance;

(b) Declaring that the Montclair's enactment and enforcement of the Ordinance is in violation of the Plaintiff's due process rights and is therefore invalid, void and of no purpose and effect; and

(c) Such other relief as the Court deems just and equitable.

COUNT III

INVALID EXERCISE OF POLICE POWER

42. Plaintiffs re-allege and incorporate by reference the allegations in the following paragraphs, as if fully stated herein.

43. Montclair's refusal to adjourn the April 7, 2020 Final Adoption Hearing for the Ordinance and its adoption of non-emergency substantive legislation during the Covid-19 pandemic and a state of emergency is in violation of Montclair's police powers.

44. Montclair's refusal to adjourn the adoption of the Ordinance pending the current state of emergency effectively Plaintiffs of their statutory right of referendum under N.J.S.A. 40:69A-185. Plaintiffs do not currently have the realistic ability to engage the Montclair electorate publicly and to obtain necessary signatures to support a petition protesting the Ordinance because of the pandemic, the public fear of face-to-face contact and the governor's stay-at-home orders.

45. There is no rational basis for the adoption of the non-emergency Ordinance and refusal of adjournment of the adoption hearing during the pandemic that justifies depriving Plaintiffs and the public of the right of referendum and a meaningful opportunity to participate in the law-making process.

46. Montclair's refusal to adjourn the adoption hearing and its adoption of the Ordinance is void as an arbitrary, capricious and unreasonable exercise of Montclair's police power that prevents a fair and reasonable exercise of the statutory right of referendum.

47. As a result of these action, Plaintiff MPOA and in its representative capacity on behalf of its members have been irreparably harmed and have suffered damage.

WHEREFORE, Plaintiff MPOA demands judgment against Montclair for the following relief:

(a) Entry of a temporary and permanent restraining order enjoining Montclair from enforcement of the Ordinance and further restraining implementation of the Ordinance;

(b) Declaring that Montclair's enactment and enforcement of the Ordinance is in violation of the Montclair's police powers and is therefore invalid, void and of no purpose and effect; and

(c) Such other relief as the Court deems just and equitable.

COUNT IV

VIOLATION OF EXECUTIVE ORDER 108

48. Plaintiffs re-allege and incorporate by reference the allegations in the following paragraphs, as if fully stated herein.

49. On March 21, 2020, Governor Murphy signed Executive Order 108, which reads in pertinent part:

No municipality ... shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of Executive Order No. 107 (2020), or which will or might in any way interfere with or impede its achievement, or the achievement of Administrative Orders issued as authorized by my Executive Orders.

50. Executive Order 107 implemented a statewide stay-at-home order directing all New Jersey residents to stay at home until further notice.

51. The adoption of the Ordinance, however, encourages residents of the Montclair to disobey Executive Order 107 and to leave their homes and to interact with the public in order to exercise their statutory power of protest through referendum lest the twenty (20) day period prescribed by N.J.S.A. 40:69A-185 expire.

52. Montclair's adoption of the Ordinance is void as an arbitrary, capricious and unreasonable exercise of Montclair's police power and a direct violation of Executive Order 108.

WHEREFORE, Plaintiff, MPOA demands judgment against Montclair for the following relief:

(a) Declaring that the Ordinance is in violation of Executive Order 108 and is therefore invalid, void and of no purpose and effect.

(b) Such other relief as the Court deems just and equitable.

COUNT V

VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT

53. Plaintiffs repeat and reallege its previous allegations as if fully set forth herein.

54. The right to engage in protest of government action through referendum, is deemed by the New Jersey Supreme Court to be a substantive right under state law specifically N.J.S.A. 40:69A-185.

55. By depriving the Plaintiff of its substantive right to protest through referendum, Montclair has violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 et seq.

56. Plaintiff has been forced to institute this action to protect and enforce substantive rights granted to them under the laws of the State of New Jersey.

The New Jersey Civil Rights Act provides that :

- e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.
- f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

57. Proceeding to adopt a non-emergency ordinance during a global pandemic by Montclair, while the Governing Body knew that acting in such a manner would prevent the Plaintiff from exercising its substantive rights during a state of emergency.

58. Montclair and the Governing Body were acting under color of law, and are liable to the Plaintiffs for a violation of the New Jersey Civil Rights Act.

WHEREFORE, Plaintiff, MPOA demands judgment against Montclair and the Governing Body for the following relief:

(a) Declaring that the actions of the Montclair and its Governing Body amount to an impairment of the substantive rights of the Plaintiffs under color of law;

(b) Awarding injunctive relief, compensatory damages, and costs of suit including counsel fees incurred to vindicate and protect the Plaintiffs substantive rights; and

(c) Such other relief as the Court deems just and equitable.

BRACH EICHLER LLC
Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: 4/14/2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Plaintiff designates Charles X. Gormally, Esq. as trial counsel.

BRACH EICHLER LLC
Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: 4/14/2020

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that, pursuant to R. 4:5-1: (1) the within matter in controversy is not the subject of any other action pending in any other court or arbitration; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in the subject litigation is presently known.

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BRACH EICHLER LLC
Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: 4/14/2020

CERTIFICATION PURSUANT TO R. 4:5-1(3)

In addition, I certify that confidential personal identifiers have been redacted from the documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

BRACH EICHLER LLC
Attorneys for Plaintiffs

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: 4/14/2020

CERTIFICATION PURSUANT TO 4:69-4

Pursuant to R. 4:69-4, I hereby certify that all necessary transcripts of the local agency proceeding will be ordered as necessary.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

BRACH EICHLER LLC
Attorneys for Plaintiffs

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: 4/14/2020

VERIFICATION OF COMPLAINT

The undersigned, a Director of Montclair Property Owners Association, and the members of the Committee of Petitioners have read the allegations contained in the Verified Complaint and each of us certify that those allegations are true.

We certify that each of the foregoing statements made by me are true. We understand that if any of the statements made are willfully false, we are subject to punishment.

Ronald Simoncini

Ronald Simoncini MPOA

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Burt [Signature]

Committee of Petitioners

DATED:

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Ronald Simoncini MPOA



Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

DATED:

VERIFICATION OF COMPLAINT

The undersigned, a Director of Montclair Property Owners Association, and the members of the Committee of Petitioners have read the allegations contained in the Verified Complaint and each of us certify that those allegations are true.

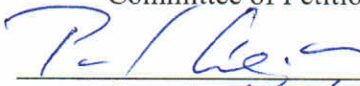
We certify that each of the foregoing statements made by me are true. We understand that if any of the statements made are willfully false, we are subject to punishment.

Ronald Simoncini MPOA

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners


Committee of Petitioners

DATED: 4.13.20

VERIFICATION OF COMPLAINT

The undersigned, a Director of Montclair Property Owners Association, and the members of the Committee of Petitioners have read the allegations contained in the Verified Complaint and each of us certify that those allegations are true.

We certify that each of the foregoing statements made by me are true. We understand that if any of the statements made are willfully false, we are subject to punishment.

Ronald Simoncini MPOA


Committee of Petitioners

Committee of Petitioners

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Committee of Petitioners

Committee of Petitioners

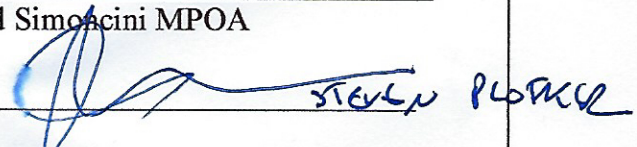
DATED:

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We certify that each of the foregoing statements made by me are true. We understand that if any of the statements made are willfully false, we are subject to punishment.

Ronald Simocini MPOA



Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

Committee of Petitioners

DATED:

EXHIBIT A

O-20-05

ADOPTED

ORDINANCE ESTABLISHING RENT CONTROL IN
THE TOWNSHIP OF MONTCLAIR

March 10, 2020
(date of introduction)

WHEREAS, the governing body of the Township of Montclair, County of Essex, State of New Jersey has determined, for the reasons stated in the findings below, that the regulation of residential rents is necessary in the public interest; now, therefore, be it

ORDAINED, by the Township Council of the Township of Montclair, that the following Chapter 257 – Rent Regulation, is hereby enacted and incorporated in the Township Code; and be it further

ORDAINED, that this ordinance shall take effect as provided by law, and all ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency, and any provision of this ordinance held to be invalid shall be severed and shall not affect the validity of the remaining provisions.

CHAPTER 257 RENT REGULATION

§ 257-1 Findings.

§ 257-2 Applicability; exceptions.

§ 257-3 Definitions.

§ 257-4 Rent Stabilization Board.

§ 257-5 Board staff.

§ 257-6 Professional services.

§ 257-7 Hearings.

§ 257-8 Appeals.

§ 257-9 Permitted increases.

§ 257-10 Maintenance of services.

§ 257-11 Vacancy Allowance.

§ 257-12 Anti-harassment provisions.

§ 257-13 Registration requirement.

§ 257-14 Compliance with housing and building codes.

§ 257-15 Fees.

§ 257-16 Violation and penalties.

§ 257-1 Findings.

- A. Approximately 40% of the residents of the Township of Montclair live in rental housing units, ranging from single-family houses to multiple dwellings of more than 100 apartments; and
- B. The rapid upsurge in the market and speculation in multiple dwellings with rental apartments has resulted in a substantial increase in the amount of rents over a short period of time, causing and threatening to cause the dislocation of tenants unable to adjust to the higher rents; and
- C. The governing body finds that intervention in the market is necessary to allow for a more gradual and orderly transition to higher rent levels without dispossessing existing tenants, and to maintain a supply of relatively affordable housing though the time of the rising market.

§ 257-2 Applicability; exceptions.

A. **Applicability.** The terms of this chapter apply to individual dwelling units within a building, including condominium or cooperative units in the process of being converted, or having been converted, rather than to an individual tenant occupying a dwelling unit. An agreement for occupancy of the dwelling unit shall not circumvent the application of this chapter by titling the agreement as other than a lease, such as, but not limited to a “use and occupancy agreement.”

B. **Exceptions.** This chapter shall not apply to:

- (1) Units in buildings with less than 4 residential units.
- (2) Units for which the amount of rent is determined as a function of household income by a government program.
- (3) Motels, hotels and similar type building and buildings intended for transient use, floor space used strictly for commercial purposes in any type building, including state-licensed rooming houses.
- (4) Dwelling units rented for the first time after the adoption of this chapter are exempt, and the initial rent may be determined by the landlord, but all subsequent rents shall be subject to the provisions of this chapter.
- (5) Dwelling units exempted by state or federal law.

C. **Establishment of base rent.** All rents established by landlords and tenants on [date of introduction of this ordinance], and any subsequent permitted increase which by its terms becomes part of the base rent, shall represent the base rent from which permitted increases are calculated.

D. **Tenure of rent stabilization.** This chapter shall be reviewed by the governing body after ten years to determine whether rent control legislation should be continued, modified or repealed.

§ 257-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AVAILABLE FOR RENT TO TENANTS

A dwelling unit is fit for habitation as defined by the statutes, codes and ordinances in full force and effect in the Township, and is occupied, or unoccupied and being offered for rent.

BOARD

The Rent Stabilization Board.

CODE COMPLIANCE

That the housing space and dwelling are free from all heat, hot water, elevator and all health, safety and fire code violations as well as free of all other violations of the chapter, the Property Maintenance Code and other applicable federal, state, county or local laws or regulations.

DIVISION

The Division of Housing and Urban Renewal of the New Jersey State Department of Community Affairs.

DWELLING

Any building or structure, including land, cooperative apartments and condominium apartments, or trailer, or land used as a trailer park, rented or offered for rent to one or more tenants or family units. Furnished rooms are subject to the terms of this chapter notwithstanding the fact that furniture is provided by the landlord and/or rent is paid on a weekly or biweekly basis.

DWELLING UNIT

Any unit used for residential purposes, including both rental, cooperatively owned and condominium units.

EQUALIZED ASSESSED VALUATION

The value of the residential portion of real property, calculated by dividing the assessed value of the property for municipal tax purposes, by the equalization ratio published by the Director of the Division of Taxation of the State of New Jersey, and multiplying the result by the fraction of the square footage of the floor area of the building and the area of the adjacent lot used for residential purposes, including corridors, storage space, stairwells and other such uses required in residential space, over the total square footage of the floor area of the building and the area of the adjacent lot, with areas used in common being allocated according to the same proportion.

GROUPS or ASSOCIATIONS

Combinations of building units or tenants which shall be recognized and permitted to proceed jointly if the Board finds a sufficient common basis of interest, facts or related connection; but such representation shall be established by appropriate landlord, tenants or others with such direct interest in the premises. Persons without such direct interests shall not represent a landlord, tenants or others, nor shall the unauthorized practice of law or other profession be authorized or permitted.

HOUSING SPACE

A. That portion of a dwelling rented or offered for rent for living and dwelling purposes to one individual or family unit, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the property.

B. Includes a garage, carport or parking space, which garage, carport or parking space is included in the agreement for the rental of housing space.

JUST CAUSE FOR EVICTION

That the landlord recovered possession of a housing space or dwelling for one of the reasons and in accord with the procedures set forth in N.J.S.A. 2A:18-61.1, as amended. Removal of a tenant due to a change in ownership is not permissible unless said removal is done in accordance with N.J.S.A. 2A:18-61.1.

LANDLORD

As used in this chapter, the person who owns or purports to own any building, structure or complex of buildings or structures in which there is rented or offered for rent housing space for living or dwelling purposes under either a written or an oral lease, provided that this definition shall not include owner-occupied two- and three-family dwelling premises.

LIVING AREA

The amount of total rentable space applicable to any given housing space, measured either in terms of rooms or square footage.

MAINTENANCE COSTS

Maintenance costs include real estate taxes, utility expenses, expenses for repairs, upkeep and maintenance respecting a dwelling unit, but shall not include principal or interest payments on any blanket encumbrance or other mortgage or encumbrance.

MAJOR CAPITAL IMPROVEMENT

A permanent improvement that is reasonably expected to last more than three years. The improvement must benefit the dwelling and must be subject to an allowance for depreciation under federal income tax provisions, but the Rent Stabilization Board, taking all factors into consideration, will make the ultimate determination. Capital improvements shall include but not be limited to new construction relating to the dwelling, new bath fixtures, kitchen cabinets, kitchen fixtures, air-conditioning installation, heating system installation, electrical rewiring, electrical outlets, replacement of doors, windows or other fixtures. Incidental repairs which are defined as expenditures that keep property in an ordinarily efficient operating condition and do not add to its value or appreciably prolong its useful life shall not be deemed capital improvements under this chapter.

MONTHLY MAINTENANCE CHARGE

The annual maintenance costs divided by 12.

PERIODIC TENANT

All tenants, including monthly tenants, who do not have a written lease.

RENT INCREASE, DECREASE OR ADJUSTMENT

The notice forwarded by the landlord to the tenant, or by the tenant to the landlord, by letter or in any other form, setting forth the proposed amount of rent increase, rent decrease or other rent

adjustment. Each such notice shall state in detail the reasons justifying or requiring the rent increase, rent decrease or other rent adjustment.

RENTAL STATEMENT

The statement which the landlord shall be required to sign and deliver to the tenant, when requested by the tenant, and vice versa, describing the housing space rented, the related services and equipment involved, whether such include the use of the basement, garage, clotheslines, washing utilities, heat, hot water, garbage removal, repairs, maintenance and the like, and the base rent and charge.

RESALE

Resale of a dwelling unit means any sale subsequent to the original sale thereof.

SECRETARY

The Rent Stabilization Board Secretary.

SERVICES

The provision of light, heat, hot water, maintenance, painting, elevator service, air conditioning, storm windows, screens, superintendent service and any other benefit, privilege or facility connected with the use or occupancy of any dwelling or housing space.

UNINHABITABLE BUILDING

A structure which is completely vacant and unfit for human habitation as defined by the statutes, codes and ordinances in full force and effect in the State of New Jersey, County of Essex and Township of Montclair.

§ 257-4 Rent Stabilization Board.

A. Established. A Rent Stabilization Board (the "Board") is established in the Township of Montclair.

B. Composition; terms.

(1) The Board shall consist of five members who shall be appointed by the governing body by resolution. For reasons of continuity and in the best interests of the public the terms of the first members appointed pursuant to this subsection shall be staggered terms of one-, two-, three-, and four-year term appointments, with two members receiving four year terms. Thereafter the term of office of the members of the Board shall be for four years each.

(2) In addition to the five regular members, the governing body may appoint two alternate members to the Board. The term of an alternate member shall be two (2) years. An alternate member shall be entitled to sit with, and participate as a member, in any meeting of or hearing before the Board. An alternate member who has attended the full hearing or hearings on a specific matter may vote upon any determination made during the absence or disqualification of any regular member.

(3) Members of the Board shall serve without compensation.

C. Disqualification of member. No member or alternate member of the Rent Stabilization Board shall be permitted to act on any matter in which that individual has, either directly or indirectly, any personal or financial interest.

D. Powers of Board. The Rent Stabilization Board is hereby granted and shall have and exercise all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including, but not limited to, the following:

(1) To issue and promulgate such rules and regulations as it deems necessary to implement the purpose of this chapter, including, but not limited to, the use of subpoenas, which rules and regulations shall have the force of law until revised, repealed or amended, providing that such rules are filed with the Township Clerk.

(2) To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.

(3) To hold hearings and adjudicate applications from landlords for rent increases or adjustments, as herein provided.

(4) To hold hearings and adjudicate applications from tenants for rent adjustments or reductions, as herein provided.

(5) To hear and adjudicate appeals from determinations of the Rent Regulation Officer.

(6) To approve and accept a settlement or other agreement on the subject matter of a dispute between a landlord and tenant.

(7) To require a landlord to produce for examination his/her books, records, tax returns, balance sheets, profit and loss statements and such other records as the Board may require in connection with any application, hearing, proceeding or purpose, as set forth herein.

(8) The Rent Stabilization Board, upon an application by a landlord or tenant or upon its own motion, may set a date for a hearing, consider proofs and grant, deny, modify or otherwise adjust all rentals, by increasing or decreasing same, and the Board may make such determinations as to conditions, services, equipment, terms and related matters pertaining to rentals and controlled premises as may be warranted within the intent and purview of this chapter and applicable state laws.

F. Quorums. A quorum for hearing shall consist of three members or alternate members, and a majority of those present shall be authorized to issue orders pursuant to and consistent with the powers and functions of the Board.

§ 257-5 Board staff.

A. Rent Regulation Officer; duties.

(1) Position created. There is hereby created the position of Rent Regulation Officer in the Department of Revenue and Finance, to be appointed by the Manager and compensated as provided in the then-current salary ordinance.

(2) Qualifications. The Rent Regulation Officer shall be appointed by the Manager.

(3) Duties. The duties of the Rent Regulation Officer shall be as follows:

- (a) To obtain, keep and maintain all relevant records and other data and information.
- (b) To supply information and assistance to landlords and tenants and to bring together tenants and landlords in formal conferences and suggest resolutions of conflicts between them in order to assist them in complying with the provisions of this chapter.
- (c) To ensure compliance by the landlord and tenants with the provisions of this chapter.
- (d) To remedy violations of this chapter by ordering rebates and increases and bring appropriate legal charges as provided by this chapter.
- (e) To accept, process, investigate and determine complaints from tenants of illegal rental increases.
- (f) To accept, process, review and investigate applications from landlords for rental increases or surcharges under the hardship increase or capital improvement recovery sections of this chapter.
- (g) To coordinate and supervise all staff associated with the operation of this chapter.
- (h) To attend all meetings of the Rent Stabilization Board.
- (i) To perform such other duties as the Rent Stabilization Board may specifically direct and as allowed by this chapter.

(6) Determination. Any determination of the Rent Regulation Officer under this section or such duties as may be delegated to him/her by the Rent Stabilization Board, by regulation, will be rendered by the officer, in writing.

(7) Appeal.

(a) Any person aggrieved by a determination of the Rent Regulation Officer may appeal to the Rent Stabilization Board, which may sustain, vacate, modify or reverse said determination. An appeal shall be filed no later than 30 calendar days after the date that the determination is issued. The appeal shall be in the form detailed herein, and shall be accompanied by the fee as set forth in this Chapter.

(b) Upon receipt of the appeal setting forth in detail the grounds for the appeal and the required fee, the matter shall be placed upon the Rent Stabilization Board agenda at the earliest convenient date for determination. During the pendency of the appeal, the rent for the subject unit shall be the rent as established by the Rent Regulation Officer.

§ 257-6 Professional services.

A. Retention of professional services. In the event the Rent Stabilization Board determines that a landlord or tenant's application for relief contains calculations of a complex nature, then the Board, in the interest of fairness and efficiency, may determine that the services of professional experts are required to assist the Board in evaluating and processing the application.

B. Estimate of fee. Should the Board determine that professional assistance is required, then the Board shall forthwith send a copy of the application and supporting documents to any professional expert retained to assist the Board in evaluating and processing the application. Within five days of receipt thereof, the professional expert shall submit to the Board and to the applicant an estimate of funds necessary to undertake the professional services to be rendered.

C. Escrow funds. The applicant shall forthwith deposit such funds in an escrow account maintained by the Township. The professional expert shall submit vouchers for all reasonable and necessary fees for the professional services rendered, which fees shall be paid from the escrow account in the manner prescribed by N.J.S.A. 40A:5-16 through 40A:5-18 and the ordinances of the Township. The professional expert, at the time of submission of any such voucher, shall forward a copy of same to the applicant.

D. Appeal of fee. In the event that the applicant questions the reasonableness of any such voucher, the applicant may make written protest of such voucher to the Board. In no event shall the Board authorize the payment of any voucher submitted pursuant to this section sooner than 10 days after its submission. Any of the aforesaid moneys which are left in the escrow account upon completion of the application shall be returned to the applicant after the Board reaches its decision. Should additional funds be required after the original funds are exhausted, such funds as shall be necessary in the judgment of the Board shall be paid by the applicant to the Township and placed in the escrow account.

E. Action upon application. The Board shall take no formal action on any application unless and until all escrow funds have been deposited with the Township, and any time limitations set forth in this chapter shall be extended until all such escrow funds are deposited with the Township.

§ 257-7 Hearings.

A. Opportunity to be heard. All interested persons shall be given the opportunity to be heard, with or without counsel, except that the Board, in its discretion, may limit repetitious testimony or ask that a spokesperson for the tenants be appointed.

B. The Rent Regulation Officer shall advise the appealing party of the date of the initial hearing on an appeal of his or her determination. The appealing party shall serve notice of the hearing date to the nonappealing party by regular and certified mail, return receipt requested, at least 20 days in advance of the hearing.

C. Oral decision by Board. In the event the Board renders its decision orally, immediately following the hearing the landlord shall notify the tenants of the Board's decision if that decision affects the rent or term of any tenancy. The notice shall be by regular and certified mail, return receipt requested. Within 30 days thereof, the landlord shall provide the Board with a copy of any notice served upon any tenant. The Rent Stabilization Board shall not be required to render its decision in writing unless requested to by the landlord within 30 days of the hearing.

D. Reserved decision. In the event the Board reserves decision, the Board shall render a written decision within 45 days of the hearing unless the Board, in its discretion, determines that an additional hearing is necessary.

E. Additional hearings. If an additional hearing is necessary, the Board shall so notify the landlord within 20 days of the initial hearing. A copy of the notice of hearing shall be posted conspicuously in the lobby of the building. The landlord shall serve notice of the hearing date to the tenant, by regular and certified mail, return receipt requested, at least 20 days in advance of the hearing.

§ 257-8 Appeals.

Either the landlord or a tenant may appeal the decision of the Rent Stabilization Board. All decisions of the Board are final. Any landlord or tenant wishing to appeal the decisions of the Board may do so in the Superior Court of New Jersey pursuant to its rules and procedures.

§ 257-9 Permitted increases.

A. Rent control established. All units, unless otherwise specifically exempted, shall be subject to the provisions of this chapter. Any and all increases not in accordance with the provisions of this chapter are void and shall be refunded or credited to the tenant.

B. Annual increases for covered units.

(1) The maximum permissible annual rent increase is 4.25%.

(2) Exception for qualified senior tenants. For apartments in which at least one tenant is sixty-five (65) years of age or older, the maximum annual permissible rent increase is 2.5%.

C. Hardship increase. This subsection applies where the annual operating expenses for any one building exceed at least 75% of the total annual gross income. Operating expenses shall include all reasonable expenses necessary to carry out the proper operation and maintenance of the property, including property taxes allocated to the year. Operating expenses shall exclude mortgage amortization, mortgage interest, interest or costs of financing, attorney's, expert's or engineer's fees related to the filing of hardship or capital improvement applications, depreciation or expenditures for capital improvements. In reviewing operating expenses, the Board shall consider normal and recurring expenses and may make adjustments for extraordinarily high or low operating expenses in any given year. Annual gross income shall include all income realized in connection with the operation of the premises including rentals from all residential and commercial units, as well as fees collected for parking, rental from machines, concessions and garages or other services. As to cooperatives and condominiums, the rent charges shall be at least equivalent to the maintenance costs charged by the association. This figure becomes the new base rent and may be increased by 10% after the first year.

(1) In considering a hardship application, the Board shall give due consideration to any and all relevant factors, including, but not limited to the following:

(a) The level and quality of service rendered by the landlord in maintaining and operating the building.

(b) The presence or absence of reasonable, efficient and economic management. Total management fees may not exceed 6%.

(2) An applicant for hardship relief shall submit to the Board 10 copies of the following:

(a) A statement for three prior twelve-month periods of gross rentals and actual expenses incurred for that time in connection with the operation of the building to be adjusted to reflect the actual period of time the applicant has owned the building if owned for less than three years.

(b) A list of all present owners of the property.

(3) A landlord shall not be entitled to apply for a hardship increase until (s)he has owned the property for at least 18 months.

(4) The Board's decision shall become effective after full 30 days' statutory notice to tenants.

(5) The Board shall promulgate rules, regulations and necessary forms to be utilized, notice to tenants of hardship applications and notice to tenants and landlords regarding hearings and general procedure. Those rules and regulations shall have the force of the law and shall be filed with the Township Clerk.

(6) With the filing of a hardship increase application, the landlord shall simultaneously deliver notice thereof to each affected tenant. At a minimum, a landlord seeking a hardship increase shall notify tenants, in writing, by regular and certified mail, return receipt requested, and provide tenants with a summary of the application and state the increase sought. Any tenant who receives such notice shall have 30 days to file any written comments with the Board regarding the application.

(7) Within 30 days of receipt of a complete application, the Board shall notify the landlord, in writing, of the time and place for the hearing. The hearing shall be held not more than 90 days nor less than 30 days, from the date of receipt of a complete application. The landlord shall immediately, upon receipt of such notification of hearing, serve such notice upon each affected tenant. The landlord shall serve notice of the hearing date to the tenant by regular and certified mail, return receipt requested, at least 20 days in advance of the hearing. Prior to any hearing on such application, the landlord shall present the Board with proof of service of notice to each affected tenant.

(8) No hardship application shall be considered or granted by the Board for a period of time more than one year after the expiration of applicant's last tax reporting year.

(9) The Board shall render a decision on a hardship application within 45 days of the conclusion of the hearing before the Board. Failure of the Board to render its decision within the time period, absent consent of the landlord, shall result in the application being deemed granted.

(10) A hardship increase shall become part of the base rent.

D. Major capital improvement or additional services surcharge.

(1) Application; notice.

(a) A landlord may apply for a major capital improvement surcharge or for a surcharge for major additional services not formerly provided to the tenants of units of housing space in the affected dwelling. The landlord shall make written application to the Board upon forms adopted by the Board for these purposes. Simultaneously with filing of a major capital improvement application, the landlord shall serve notice upon each affected tenant. The landlord shall submit with its application a letter of code compliance from the appropriate Township department.

(b) The Board shall promulgate rules, regulations, forms to be utilized and notice procedures to the tenant. At a minimum, a landlord seeking a major capital improvement surcharge shall notify tenants, in writing, by certified mail and provide tenants with a summary of the application and state the increase sought.

(2) Nature and cost of improvement. A landlord shall submit a detailed contract or proposal and proof of payment as to each improvement.

(3) Amortization of cost. The cost for a major capital improvement shall be amortized over the useful life of such capital improvement as determined by the Rent Stabilization Board and the Rent Stabilization Board's accountant.

(4) Notice of hearing. Within 30 days from receipt of all required application forms, the Board shall notify the landlord, in writing, of the time and place of the hearing. The landlord shall immediately, upon receipt of such notification of hearing, serve notice thereof upon each affected tenant. Prior to any hearing on this application, the landlord shall present the Board with proof of service of notice of the hearing upon each affected tenant.

(5) Time for application. No major capital improvement application shall be considered or granted by the Board for work completed more than one year before the date of filing of a request for a letter of code compliance from the appropriate Township department.

(6) Finding of improvement; apportionment of surcharge. Upon determination that the proposed improvement is a major capital improvement or that the proposed service is a major additional service not formerly provided to the affected tenant or tenants, the Board may grant a surcharge based upon the cost of the major capital improvement or major additional service. These costs shall include reasonable interest thereon. Any surcharge granted by the Board shall be fairly apportioned among the affected units based on the size of the units and the benefit of the improvement to each unit. If any such surcharge is granted, it shall not be considered a part of base rent and shall not be included in calculating the annual rent increases allowable under § 257-9. A surcharge for a major capital improvement shall expire at such time as the cost of the capital improvement plus reasonable interest have been covered by the surcharge, which shall be determined by the Board as part of its decision. A surcharge for additional services shall remain in effect as long as the services are provided.

(7) Notice of decision. The Board shall notify the landlord, in writing, of its determination under this subsection, and the landlord shall forthwith deliver a copy of the determination by certified mail to each affected tenant, to become effective upon thirty-day notice.

(8) Protected tenancy status.

(a) No major capital improvement surcharge shall be imposed upon any tenant who has been granted protected tenant status pursuant to N.J.S.A. 2A:18-61.22 or 2A:18-61.40.

(b) Any major capital improvement surcharge awarded within two years prior to the date of notice to the municipal administrative officer required by N.J.S.A. 2A:18-61.27 or 2A:18-40 shall immediately become null and void upon the grant of protected tenancy status. The protected tenant's rent shall be recalculated and reduced accordingly; however, no rebate of previously paid surcharge shall be granted.

(9) Compliance with codes. Permits, as required by law, are to be secured from all agencies having control and jurisdiction for alterations, repairs, replacements, extensions and new buildings. All work done shall adhere to appropriate code standards and shall be inspected by any agency having control and jurisdiction, and their approval obtained. Copies of such permits shall accompany the capital improvement application.

E. Property Tax Increase Surcharge. In the event of an increase in the real estate tax on the property from the previous year, the landlord may apply to the Rent Regulation Officer for approval of a surcharge to cover the increase only. The surcharge shall reasonably apportion the increase over all residential and commercial spaces in 12 monthly installments. Only one tax increase surcharge at a time may be charged to a rental space.

F. In the event that a tax appeal is taken by the landlord and the landlord is successful in the appeal and the taxes reduced, the tenant(s) shall receive 100% of the reduction as applied to its proportionate share of the taxes , after deducting all reasonable expenses incurred by the landlord in prosecuting the appeal.

G. Maximum annual increase. The maximum annual increase from all sources listed under this § 257-9, Permitted increases, shall not exceed 15% unless an efficient landlord cannot meet operation expenses or make a fair return on his/her investment. A tenant shall not receive an aggregate increase from all sources of more than 15% any twelve-month period.

H. Compliance with housing and building codes. Any landlord seeking an increase under this section must file, with its application, a letter from the appropriate Township department that the building and grounds are in code compliance with building and housing codes and regulations. No increase shall be permitted if the building or grounds is not in compliance with said codes and regulations.

I. Legal rent calculation. In calculating the maximum legal base rent, the Rent Regulation Officer and the Board shall allow all annual rent increases that may have been applied to an apartment, whether actually charged or not.

§ 257-10 Maintenance of services.

A. Continuation of services. During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space and dwelling as required under the lease or otherwise mandated by law.

B. Decline in services. When services, care or maintenance, or when the standards of service, maintenance, furniture, furnishings and equipment in the housing space or dwelling are not substantially maintained as specified above, any tenant may apply to the Board for a decrease in rent. A copy of such application shall be served upon the landlord setting forth, in detail, the reasons for the application.

C. Applicability to parking spaces. The provisions of this section shall also apply to any on-site parking or garage space occupied by the tenant in conjunction with rental and occupancy of housing space. If it is determined, after a hearing of the Board, as described in § 257-15, that the parking was a previously provided service, then the rent shall be decreased by 25% of the current monthly rent.

D. Hearing notice procedure. Upon receipt of the application by the Rent Regulation Officer, the Rent Regulation Officer shall schedule a hearing on the application and shall notify both landlord and tenant of the date, time and place of the hearing.

E. Maintenance of services. During a tenant's occupancy of a unit in which the landlord provides utilities to the units of the building, the landlord will be prohibited from constructing a separate apartment unit meter and billing for any utility service previously provided by the landlord as part of the services to the building, including but not limited to heat, hot water, water and sewerage.

F. Violation and penalties. A first violation of § 257-10E of this chapter shall be punishable by a fine of not more than \$2,000 for each unit in violation. Subsequent violations shall be punishable

by a fine of not less than \$2,000 for each unit. Each day during which an owner is in violation of § 257-10E of this chapter shall constitute a separate violation.

§ 257-11 Vacancy Allowance

(1) Notwithstanding any limitations on permissible rent increases under any other provisions of this chapter, upon the voluntary uncoerced vacation of any apartment, rent increases for which are controlled in this chapter, the landlord shall have the right to fix the rent for such vacated apartment at such sums deemed appropriate subject to the following:

(a) In order to qualify for a vacancy decontrol rent increase, the landlord shall first be required to file with the Rent Stabilization Board a written statement signed by the vacating tenant certifying to the Board that the landlord has not, in any way, harassed or pressured the tenant into vacating the housing unit and that the vacating of such unit was a voluntary act on the part of the tenant.

(b) Such statement shall also include the rent paid by the vacating tenant and the date the tenant will be vacating the unit. For the purposes of this section a vacation caused or necessitated by substandard, unsafe or unsanitary conditions shall not be deemed a voluntary vacation. Such noncoercion certification shall not be required in order for the landlord to qualify for the vacancy decontrol increase if:

(a) The increase does not exceed the total of all permissible increases authorized by any other provisions of this chapter;

(b) The tenant has moved from the unit without notice to the landlord;

(c) The unit has been vacated pursuant to a judicially mandated eviction;

(d) The tenant has refused to sign such certification, and upon appeal by the landlord the Rent Stabilization Board has found that such refusal was unwarranted and that there was in fact no coercion exerted by the landlord upon the vacating tenant.

(3) A hearing pursuant to Subsection B(2)(d) above shall be held before the Rent Stabilization Board upon at least seven days' notice to the public and the vacating tenant.

(4) The new base rent established pursuant to this section shall not be increased more than 10% over the base rent charged to the prior tenant at the time the apartment was vacated.

§ 257-12 Anti-Harassment Provisions

A. Harassment; reduction of services prohibited. Any tenants desiring to remain in their units may do so without provocation or retaliation from landlords. For the purposes of this section, harassment of tenants shall mean conduct, whether direct or indirect, committed intentionally or negligently by a landlord, or anyone acting on his/her behalf. These actions include, but are not limited to:

(1) A reduction in the quality of basic services necessary to the health safety and welfare of the tenants.

(2) Heat, hot water.

(3) Adequate security.

(4) Intermittent failures.

(5) Bothersome telephone calls or letters.

(6) Frivolous eviction threats or legal proceedings.

(7) Actions which would cause a reasonable person of like age and physical condition of a tenant to fear for his/her life, limb, property or home.

B. Investigation/prosecution of harassment complaints. The Township shall investigate and, if appropriate, prosecute complaints involving harassment filed by either tenants or landlords.

§ 257-13 Registration requirement.

A. Registration information; fee(1) Every owner of a multiple dwelling shall be required to file with the Township Clerk (and to furnish a copy to the Rent Regulation Officer) a statement showing the amount of rentals charged for each rental unit as of June 1, 2020, and as of June 1 in each succeeding year referred to in this chapter as rent rolls. Such statement shall be filed by July 1 in each year, except that the initial rental statement shall be filed within 30 days of the effective date of the adoption of this chapter or any amendment to this chapter. Each statement shall remain on file with the Township Clerk as a matter of public record in accordance with state-mandated retention policies. The annual statement shall be filed on the approved form provided by the Clerk, which may also be available on-line, and all information shall be completed. In the event an owner fails to file the completed rent statement within 15 days of receiving written notice sent by the Clerk via certified mail, return receipt requested, notifying the owner of its failure to file, the owner shall be prohibited from increasing any dwelling unit rental for a period of 12 months and continue to be prohibited from increasing any dwelling unit rental until a valid registration statement is on file.

(2) In those instances where the tenant of a rental dwelling unit in a condominium or cooperative is subject to this chapter, the owner of the dwelling unit must similarly file a statement showing the rental charged for that dwelling unit.

B. Registration Statement – contents.

A registration statement shall include at least the following:

- (a) The name of each tenant and the apartment number.
- (b) The number of rooms for each apartment.
- (c) The current rent for each apartment.
- (d) The amount of the last increase for each apartment.
- (e) The date of the last increase for each apartment.
- (f) If applicable, the services provided to the building and the telephone number.
- (g) If applicable, the superintendent's name, address and telephone number.

C. In the event a landlord or a prior property owner for the same property has not filed an annual registration statement the Rent Regulation Officer in determining a legal rent calculation and the Board upon any review of that determination shall be permitted to disallow any increase for that year that the landlord or prior landlord failed to file a rent registration statement.

D. Public document. For the purpose of disclosure, the registration statement shall be considered a public document which shall be made available for inspection pursuant to reasonable regulations established by the Township Clerk.

§ 257-14 Compliance with housing and building codes.

A. Compliance required prior to granting increase.

(1) Any landlord who seeks a hardship or major capital improvement increase under § 257-9 shall file with an application a certification from the office of the appropriate Township department to the effect that the building and grounds are in substantial compliance with Township building and housing codes, which certification shall be based on an application made by the landlord to the appropriate Township department not more than one month before the filing of his/her application with the Board. No such increase may be granted until such certification had been filed and, if a tenant contests the accuracy of such certification, until the Board has determined that there is substantial compliance.

(2) The Board shall deny the application until there has been such compliance.

§ 257-15 Fees.

There is hereby established a schedule of fees for applications to the Rent Stabilization Board.

Annual registration statement filing	\$ 10 per apartment
Legal rent determination	\$ 25 per apartment
Appeal of Rent Regulation Officer decision	\$ 100
Tax Surcharge Application	\$ 100
Capital Improvement or Service Increase Application	\$ 250
Hardship Application	\$ 300
Vacancy Allowance application	\$ 250

§ 257-16 Alternate service of notice.

Personal service or service by certified mail that is either refused or uncalled for may be re-mailed by ordinary mail and shall be effective as though personal service or notice by certified mail had been accepted.

§ 257-17 Violations and Penalties

Any person found guilty of violating any provision of this Chapter or of willfully filing with the Rent Stabilization Board or Rent Control Officer any material misstatement of fact shall be punishable

by a fine not exceeding \$2,000 or by imprisonment not exceeding 90 days, or both. A violation affecting more than one leasehold shall be considered a separate violation as to each leasehold.

This section shall be in addition to any remedies for noncompliance or violation of this Chapter set forth elsewhere in this Chapter.

RECORD OF COUNCIL VOTE											
	YES	NO	ABS	N.V.	AB		YES	NO	ABS	N.V.	AB
Councilor Baskerville	✓					Councilor Schlager	✓				
Councilor Hurlock	✓					Councilor Spiller	✓				
Deputy Mayor McMahon			✓			Mayor Jackson			✓		
Councilor Russo	✓										
X - Indicate Vote ABS - Abstain N.V. - Not Voting AB - Absent											

I HEREBY CERTIFY the foregoing to be a true copy of an Ordinance adopted by the Council of the Township of Montclair, in the County of Essex, at its meeting held on April 7, 2020.

Juliet G. Lee
Deputy Clerk of the Township of Montclair, N.J.

EXHIBIT B

BRACH | EICHLER^{LLC}

Charles X. Gormally
Certified Trial Attorney
Direct Dial: 973-403-3111
Direct Fax: 973-618-5511
E-mail: CGormally@bracheichler.com

March 31, 2020

VIA EMAIL - ikarasick@montclairnjusa.org

Ira Karasick, Esq.
Township of Montclair
Law Department
205 Claremont Avenue
Second Floor
Montclair, NJ 07042

Re: Montclair Property Owners Association

Dear Ira:

First and foremost, I hope that you and your family and friends are all safe and dealing with these unprecedented events. Looking forward to the return of normalcy.

Our firm is counsel to the Montclair Property Owners Association, a representative association of multifamily property owners in Montclair. I am writing to you in the hope that with the advantage of your advice and guidance that the governing body will defer action on an ordinance it apparently passed on first reading on March 10, 2020.

At its conference meeting of March 10, 2020 there was reference as a discussion item for consideration at the March 24, 2020 Council Meeting of an "Ordinance amending the Code of the Township of Montclair to include Chapter 257 Rent Regulation. I am advised that an ordinance effectuating the creation of rent control was adopted on first reading that night.

Our client group read about the consideration of rent control for the first time shortly after that March 10 meeting. We have also come to learn that it was the subject of discussion before the council and working groups leading up to the March 10. A copy of the ordinance has not been made publicly available as of this writing and I have just received a copy from the municipal clerk who was kind enough to provide me with a copy.

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Ira Karasick, Esq.
March 31, 2020
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I will defer comment on the actual approach taken by the municipality in the rent control proposal. Instead I am writing to suggest that serious consideration be given, especially in light of the national and state declaration of emergency due to the worldwide corona virus pandemic, to deferring action on the scheduled adoption of the ordinance on April 7, 2020. The impairment of public participation in the governing process and the consideration of a profound alteration of landlord/tenant relations in the midst of this pandemic seems too obvious to state. I do give credit to the governing body to its efforts to allow remote participation, however the public deserves a full measure of public participation on such an important issue.

This is especially so since the pandemic itself will undoubtedly place both landlords and tenants in drastically altered positions to maintaining the status quo ante. The State Government has anticipated this already and has precluded any eviction actions until the state of emergency is lifted. Thus, no tenant can be disadvantaged during an extended period of consideration for the ordinance. The operators of multifamily housing in Montclair expect that they will suffer an immediate and likely long term reduction in rent receipts without a corresponding reduction in taxes due the municipality on May 1, its mortgage payments due to their lenders on May 1, and the other expenses of the operations including payroll, insurance and fuel. It remains to be seen what relief if any will be provided to landlords who have a large reduction of operating revenue in the face of immutable and sometimes growing expenses. I respectfully suggest that the serious consideration that the residents of Montclair---tenants, landlords and homeowners alike--- deserve in considering the adoption of rent control, cannot be had in this emergency compromised environment. Municipal consideration of rent control in this very changeable setting is akin to building an airplane while it is in flight.

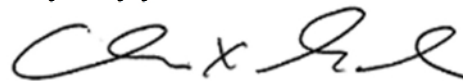
While this observation in and of itself might compel the municipality to defer action to a later date, we believe there are also significant legal obstacles to allowing this process to proceed during the pandemic which merit your attention. Adoption of this ordinance, like all other important legislative initiatives, in normal times, is subject to the power of the electorate to reject the ordinance pursuant to N.J.S.A. 40:69A-18 et seq---generally the power of referendum. As I am confident you are familiar with the state statute and its strictly construed provisions I will not repeat them here. Suffice it to say, the current ability of the public to exercise the power of referendum in the midst of social distancing orders, travel bans, and the well-founded fear of personal contact of any nature is problematic at best; while the statutory power may in theory exist, it cannot be exercised by the public in times of national and state emergency.

While we are prepared to protect the public's right to exercise referendum authority by seeking to restrain further municipal action and the possible adoption of the ordinance on April 7, 2020, we do not seek to engage in costly and time consuming litigation during these very difficult times. Your recommendation that significant legal issues compel the conclusion that deferring action on this proposed ordinance is in the public's interest would likely be persuasive to the governing body and de-politicize the issue to everyone's advantage.

Ira Karasick, Esq.
March 31, 2020
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We hope that you are compelled to the conclusion that the governing body should consider deferring action on the ordinance to a later date to permit it the consideration it deserves while protecting the public's power of referendum under state law. I would of course be willing to discuss this with you personally at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles X. Gormally". The signature is fluid and cursive, with a large initial "C" and "G".

Charles X. Gormally

CXG:njc

EXHIBIT C

Petition Papers pursuant to N.J.S.A. 40:69A-186 et seq

The Township of Montclair Committee of Petitioners; Paul Weingarten, Suzanne Miller, David Genova, Steve Plofker and Brandon McEwen are circulating the following referendum question for consideration of the voters of the Township of Montclair:

SHOULD THE ORDINANCE ADOPTED BY THE TOWNSHIP ON APRIL 7, 2020 DURING A STATE OF EMERGENCY TO INCLUDE CHAPTER 257 RENT REGULATION BE REPEALED ?

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Circulator Name and Address

EXHIBIT D

Council Meeting Agenda 03-10-20

TOWNSHIP COUNCIL CONFERENCE MEETING March 10, 2020

7:00 P.M.

2nd FLOOR CONFERENCE ROOM

Announcement: This is a conference meeting of the Council of the Township of Montclair.

OPEN SESSION

Sunshine Statement

Pledge of Allegiance

Roll Call

PUBLIC COMMENT

Please complete the sign-in sheet before addressing the Council

APPROVAL OF MINUTES

There have been presented to the Council the minutes of February 4, 2020. Are there any corrections or additions? Motion to adopt.

PENDING ORDINANCE(S)/SECOND READING

Ordinance [O-20-03](#): Ordinance repealing Chapter 161 of the Township of Montclair Code, titled "Flood Damage Prevention" and replacing it with a new Chapter 161, titled "Flood Damage Prevention" to address the requirements of the New Jersey Department of Environmental Protection, Bureau of Flood Engineering. Is there anyone present who wishes to be heard in relation to the proposed Ordinance? OPEN HEARING. CLOSE HEARING. VOTE.

Ordinance [O-20-02](#): Salary Ordinance for the American Federation of State, County and Municipal Employees, Local 2296, Council 52 for year 2020 through year 2026. Is there anyone present who wishes to be heard in relation to the proposed Ordinance? OPEN HEARING. CLOSE HEARING. VOTE.

NEW BUSINESS RESOLUTION(S)

[R-20-039](#): Resolution authorizing 2019 appropriation reserve transfers pursuant to N.J.S.A. 40A:4-59

Resolution [R-20-040](#): Resolution amending Resolution R-19-187 to extend the deadline for 65 Church Street Urban Renewal, LLC to submit a complete application for preliminary and final site plan approval to the Planning Board

Resolution [R-20-041](#): Resolution suspending parking fees in designated locations during the Montclair Film Festival 2020

Resolution [R-20-043](#): Resolution authorizing grant application submission and execution of an inter-local agreement with the County of Essex for the Rand Park & Canterbury Park playground surfacing improvements project

[Bill List Resolution](#)

DISCUSSION/ MARCH 24, 2020 AGENDA ITEMS

Resolution establishing a cash management plan and naming official depositories for the Township of Montclair for the calendar year 2020

Resolution renewing contract for 2020 parks maintenance services

Resolution renewing contract for 2020 annual tree removal contract

Resolution authorizing the execution of a recycling agreement with Atlantic Coast Fibers to process curbside fiber mix, old corrugated cardboard/containers(OCC) and commingled containers recovered through the Township's recycling program

Resolution authorizing the award of a contract to SHI International Corporation under NJ State Contract Number ITS58 and Subcontract Number 89851 for the renewal of the Microsoft Office 365 Enterprise Agreement for Township's Microsoft Office software suite for a period of three years

Resolution authorizing the award of a contract to CDW Government, LLC under New Jersey Cisco NASPO Valuepoint Datacom Contract NVP #AR233 (14-19) A87720 for the renewal of the Cisco Meraki Enterprise cloud controller subscription service for the Township's Wi-Fi for a period of five years

Resolution authorizing purchase contracts with certain approved Edgemarket Cooperative Pricing System contract vendors pursuant to N.J.S.A. 40A:11-10

Resolution authorizing the award of a contract to NJEdge.Net, Inc. under Edgemarket Cooperative Pricing System Contract # EMSS-19-002 for internet circuits for the Township's internet access for a period of three years

Resolution authorizing the execution of a professional services agreement with Raymond N. Carnevale for year 2020

Resolution awarding contract for replacement of water mains in Stonebridge Road and in the North Mountain Avenue/Godfrey Road neighborhood

Resolution authorizing execution of a professional engineering services agreement with H2M Associates, Inc. for construction administration and observation services in relation to the water main replacements in Stonebridge Road and in the North Mountain Avenue/Godfrey Road neighborhood

Resolution awarding contract for Bid # 19-18 for the year 2020 Sub-Area G sanitary sewer collection system rehabilitation

Resolution authorizing execution of a professional engineering services agreement with Suburban Consulting Engineers, Inc. for construction administration and inspection services in relation to the year 2020 Sub-Area G sanitary sewer collection system rehabilitation

Resolution awarding contract Bid # 19-19 for Maple Avenue/Woodland Avenue sanitary sewer repair [Year 2019 Community Development Block Grant]

Resolution authorizing execution of a professional engineering services agreement with Suburban Consulting Engineers, Inc. for construction administration and inspection services in relation to the Maple Avenue/Woodland Avenue sanitary sewer repair

Ordinance amending the Code of the Township of Montclair to include Chapter 257 Rent Regulation

EXECUTIVE SESSION

Resolution R-20-042: Resolution authorizing executive session without the public being permitted to attend in accordance with N.J.S.A. 10:4-12(b) (Subjects: Personnel and Contract Negotiations)

ADJOURNMENT